

Locked Up: Exploring Prisoner Rights and the Eighth Amendment

Greg Bognich

Prior to the 1960s, prevailing attitudes about the rights of prisoners in the American criminal justice system could be summed up by a Virginia Supreme Court opinion written almost a century earlier:

A convicted felon ... punished by confinement in the penitentiary instead of with death ... is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all of his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State.¹

According to the Virginia Supreme Court, prisoners essentially had no rights, or in other words their rights were forfeited when they chose to break the law. Most courts accepted this interpretation of the law through the first half of the twentieth-century. They regularly refused to hear any cases concerning the conditions under which prisoners were confined. Known as the “hands-off” doctrine, this judicial laissez-faire attitude allowed prison administrators a large degree of autonomy. Prisoners were allowed certain privileges based upon their conduct and behavior while incarcerated. However, those privileges could

be arbitrarily granted or revoked by prison officials who were subject to little oversight.

If a prisoner felt his constitutional rights were violated, there was little recourse. The main course of action was to file a writ of habeas corpus. According to Article 1, Section 9 of the U.S. Constitution: “The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.” The writ is a court order ordering a person (a warden or jailer) holding a prisoner to produce that person in court so the legality of his confinement can be adjudicated.² However, courts would only issue the writ in cases of unlawful confinement, not a challenge to the conditions in which the prisoner was confined. If this method failed, a prisoner could petition the governor in state cases or the president of the United States in federal cases, in hopes of obtaining executive clemency.

The 1960s ushered in a socially volatile period in U.S. history. A combination of events, including an increase in poverty, particularly in urban areas, the civil rights movement, and growing animosity toward the Vietnam War, led to a spike in the crime rate. Faced with increasing pressure from the American public, both the executive and the judicial branches of government were forced to respond. They began turning away from the “hands-off” approach to take

a more activist role in criminal justice.

In 1965, President Lyndon Johnson formally launched the President’s Commission on Law Enforcement and the Administration of Justice. The commission was made up of several task forces, each mandated to study the crime problem and the structure of criminal justice administration, and make recommendations for change. The recommendations were summarized in a report titled *The Challenge of Crime in a Free Society*, published in 1967. While acknowledging that some jurisdictions had made dramatic improvements in their policies toward treatment of inmates, the commission had to acknowledge a basic fact of prison life:

Life in many institutions is at best barren and futile, at worst unspeakably brutal and degrading. To be sure, the offenders in such institutions are incapacitated from committing further crimes while serving their sentences, but the conditions in which they live are the poorest possible preparation for their successful reentry into society, and often merely reinforce in them a pattern of manipulation or destructiveness.³

The Supreme Court also got into the act during this decade. The court justices began hearing a series of cases that

UNITED STATES PENITENTIARY, LEAVENWORTH, KANSAS.
TO THE PRISONER RECEIVING THIS LETTER:—Do not send in with prisoners on holidays, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, etc., any letters, packages, or other articles, except those mentioned above. Prisoners corresponding with relatives must comply with the following directions: **Write plainly in the English language only.** In addressing letters and newspapers, **write the prisoner's full name and register number plainly in ink on the envelope or wrapper** in order to insure the prisoner receiving them. **All letters and newspapers improperly addressed will be returned to the sender.** Prisoners who are permitted to receive packages must have the packages inspected and stamped according to the regulations. **Average charges are furnished by the Department.** Daily and weekly newspapers of a respectable character are furnished to the prisoner's room number. In addition, books, tracts, and other reading matter are furnished to the prisoner on request. **All letters, papers, books, newspapers, etc., are strictly examined before being delivered to the prisoner, and may be held for some time if they are not on the order, upon the approval of the Warden, in his discretion and license. No envelopes, books, papers or cigars will be admitted, nor any articles, except those mentioned above. Tobacco and pipes may be furnished by the Department, upon special permission of the Warden. Two weeks' notice must be given to the prisoner before any articles are furnished. All letters and newspapers are subject to examination and seizure by the Department. **PLAINLY IN INK** on the envelope or wrapper should be sent in care of **F. O. Box 7, Leavenworth, Kansas.** Letters addressed to "General Delivery" in this institution will not be delivered. **Do not** in letters, pay but one line of writing on each "round line." Letters addressed to "General Delivery" in this institution will not be delivered. **CORRESPONDENCE WITH PRISONERS IS DISCHARGED FROM THIS PENITENTIARY. NO PAPER LETTERS WILL BE RECEIVED.****

PUT YOUR NAME AND REGISTER NUMBER HERE. PUT FULL ADDRESS OF YOUR LETTER HERE. ONE YORK, COUNTY AND STATE Street and Number or Care of Free Delivery.

Name **T. A. Katting** Name Mon. G. W. Wickerham,
 Register No. **5903** No. Department of Justice. Street
 Town **Washington,**
 County **D.C.**
 State **August 25th 1904**

MON. G. W. Wickerham,
 Sir:— I wish to call your attention to some of the conditions in this institution. I was transferred from the old to the new prison here in January 1904, and placed to work in stone shed assigned to a cell in basement of new cell building, these cells are ily ventilated and worse lighted, and so damp at that time that water often stood on the floor. I contracted a severe cold which finally developed into tuberculosis of the stomach. I could get no efficient treatment under Dr. Shomar, the old open barn like stone shed, the continual breathing of dust, the poor quality of the food, all contributed to aggravate the disease until my right lung became affected.

after Dr. Yohs come here some two years ago, I have received proper medical attention, but I have had a continuous pain in top of right lung for twenty months, a chronic sore throat, a cold and spitting which is often tinged with blood, for more than two years. I have made efforts to get out of the stone shop on account of the dust. I have seen the Warden, the Doctor, the Deputy Warden, and the Inspector. I now appeal to you.

Any prisoner with longer than five years, and assigned to work in the stone shop is being unjustly discriminated against, there is now some twenty-five "like timers" including myself in that "gang". There has never been any account taken of a prisoner's physical condition here in assignment to work, unless the prisoners happens to be wealthy or prominent, and this class are given the good jobs and take their meals on "bankers table". Furnished good food at Government expense, the rest of us eat hash made largely of liver and such food as we can get. We are not even allowed the privilege of obtaining in all up to date prisons, or buying fruits, or other little knick knacks, absolutely necessary to good health. All I ask, or ever have asked, is to be assigned to work not injurious to my health. I expect no favor. I am known here as one of the "mutimers", and I have come to the conclusion that it's impossible for us to get a square deal under the present administration. It would seem that such a man as Warden McCaughy would be above a personal vengeance, after these men being punished in various ways, - dragging balls and chains for months, - being chained up in their cells, after eight men have served terms aggregating twenty-three years, and eight of us are still doing life. I think they ought to be satisfied.

In early part of 1904 I was told by the Deputy Warden in presence of Capt. Tralnford, "that we are going to give every damn one of you fellows hell, we are not through with you yet, there are my orders from the Warden and Capt. Tralnford you see they are carried out", (I quote his own words) I can say truthfully that this order has been literally carried out. I believe I can convince the Department that we are justly entitled to a transfer to some other federal prison, if you will send an agent here to investigate our case or allow me to transmit a statement through the Inspector, dealing comprehensively with conditions before and at the time of the "Mutiny" the manner and procedure of our trial, the treatment we have received since, the things we must contend with etc., but if you will not take some action, it will be necessary that I employ an attorney to take these matters up for me, for its only within human nature to endure so much, we have about reached the limit, the Deputy Warden on the elective officer, in I believe largely responsible for abuses existing in this (over)

challenged the constitutionality of the conditions of prison life. Specifically, the Court addressed the right of an inmate to bring legal action against his overseers (*Monroe v. Pape* and *Cooper v. Pate*), the right of an inmate to secure legal services while incarcerated (*Johnson v. Avery*, *Younger v. Gilmore*, *Wolff v. McDonnell*, and *Bounds v. Smith*), to practice one's religion (*Cruz v. Beto*), and the right of an inmate to medical services (*Estelle v. Gamble*). However, the Court acknowledged that certain individual rights could be curtailed by the needs of prison officials to maintain a safe environment. The court also denied prisoners the right to form a labor union (*Jones v. North Carolina Prisoners' Labor Union*).

The National Archives in Kansas City retains records related to Leavenworth (Kansas) Federal Penitentiary. One popular series of records is the inmate case files. Every inmate incarcerated at Leavenworth is assigned a prisoner number and a corresponding case file. The contents of those files can vary widely, but many contain personal correspondence. One example is a copy of a letter written by one prisoner to the attorney general in 1909 (see p. 78). It was sent along with another letter (see pp. 80–81) written by the warden of the penitentiary in response to the prisoner's letter. The prisoner explicitly complains about the conditions of his confinement and seeks a transfer to a different institution. The warden presents a long history of the prisoner in order to justify the actions taken against him, while trying to dispel what he believes are some myths the prisoner has complained about.

Understanding the prisoner's background is necessary for putting these letters into proper context. Thomas A. Kating, inmate #5903, was originally sent to Leavenworth penitentiary in 1900 for stealing horses. He was arrested in Indian Territory (present-day Oklahoma) and given a five-year sentence. On November 7, 1901, Kating was one of the leaders in a mass escape attempt of 27 prisoners. During the riot, one prisoner and one guard were shot and killed. His initial

escape attempt was successful, but he was captured and returned almost two years later. Kating, along with seven other escapees, subsequently received life sentences for the death of the guard. There was no direct evidence to prove any one of the prisoners had pulled the trigger. Kating was involved in another escape attempt shortly after writing his letter to the attorney general. On April 21, 1910, Kating and four other inmates took control of a supply train within the prison walls. They drove the locomotive through the prison doors in the west wall. It was a bold and daring move, but once again he was recaptured and sent back to Leavenworth. He continued his letter writing campaign and complained to anyone who would listen about the conditions at the penitentiary. One person who did seem to listen was President Woodrow Wilson. In 1913, Kating wrote a 19-page letter to the president airing his grievances regarding the prison administration dating back more than a decade. Only two and a half months later, Kating's sentence was commuted by Wilson. He was released from federal custody on July 21, 1914.

Today, prisoners have more rights than ever in recorded history. Some would argue that the pendulum has swung too far in the other direction, and that prisoners have far too many rights. Yet prison reform advocates see the advances in the rights of prisoners as small gains in a larger struggle. Gone are the days of the gallows and the ball-and-chain, but the United States is still the country with the highest per capita incarceration rate in the world. There continues to be a growing racial disparity among incarcerated individuals, and prison allocation funds are continually being reduced by state legislatures and Congress. As a result of the loss of funding, there has been an explosion of growth in the private, for-profit prison industry, which presents its own set of challenges for reformers. The search for available alternatives to mass incarceration will dominate the talking points concerning prison reform well into the twenty-first century.

Activities for the Classroom

Discussion

Imagine you are Attorney General G.W. Wickersham in 1909. You have just received these two letters (see pp. 78, 80–81). Kating wants a full investigation to be conducted on the prison administration. He would also like a personal interview with one of the investigators in order to tell his side of the story. Warden McLaughry insists that his administration has done nothing wrong, and he argues that Kating's story is full of lies. The warden also invites a full investigation to be conducted. What would be your next course of action? What is Kating referring to when he writes about the "bankers table?" Kating argues that his escape attempts were the only reasonable action to be taken under such dire circumstances. Do you believe his escapes were justified? Kating has been described by one writer as "the type of inmate jailers love to hate."⁴ Why do you think the writer made this characterization?

Classroom Debate

The Eighth Amendment to the Constitution forbids the use of "cruel and unusual punishment." Has the prison administration broken the law by requiring someone complaining of lung problems to continue working in a stone shed? Do you think the punishment of "dragging balls and chains" and "being chained up in their cells" qualifies as cruel and unusual? Divide the class in half; consider a classroom debate in which students discuss the pros and cons of punishment in the American prison system. Numerous articles are available for research on this topic that can help students build an argument around the current prison system and argue the merits of what constitutes cruel and unusual punishment. In addition, students could go further and research/debate the entire concepts of prison reform, a controversial issue since the early twentieth century.

9-8-29.

Attorney General,

Washington, D. C.

Sir:-

I enclose herewith a letter to you written by T.A. Katting a prisoner in this penitentiary. The history of this prisoner is as follows:-

He was received October 26, 1900 from the Indian Territory on a sentence of five years for horse stealing. He gave his age at that time as twenty-four years. He was then a man of slender build, but quick, alert and evidently had been something of an athlete, though he gave his occupation as "Store Clerk". During the last days of October 1901, a young prisoner from the Territory named Kanto was discharged by expiration of sentence. He came from the same locality with Katting, whose real name is Brinson. Katting, Clark and Hewitt formed a conspiracy to make a break from the new penitentiary, the construction of which had recently been commenced and which was surrounded merely by stockade on the new prison were marched help. The prisoners working on the new prison were marched from the old prison about 2-1/4 miles to the new each morning and returned every evening. They usually started from the new prison to march back to the old about four o'clock in the afternoon in order to have day light for the entire march.

These three prisoners named made an arrangement with Kanto to call upon Katting's brother Tom Brinson when he would get home and receive from Tom arms which he, Kanto promised to secrete at the new prison site, he being familiar with the locality and knowing how to best place them. Kanto carried out his contract and within a few days, "planted" two first class revolvers with ammunition under the coal pile in a little engine house from which the hoisting engine were run. Clark, one of the conspirators worked at this hoisting engine on the 7th day of November 1901 when the whistle blew for the men to gather in the afternoon to return to the old penitentiary. Clark started from the engine house, and said the confusion which always attended the quitting of work, putting away tools, etc., prepared story to the prisoners looking together for something, he slipped around to where Katting was employed and gave one of the revolvers to him. Hewitt Katting near by joined them with an iron bar and another named Parker, whom they procured into the work armed himself with a hammer. Together they rushed to the Superintendent's office where he, the guard in charge of the work and an assistant or two were conferring about the next day's work, and those men held up their hands and form in line at the same time detaining Parker to smash the telephone, each one taking an officer on his battery and working him in front of the prisoner, proceeded to the exit gate. The guard at the exit gate could not fire without killing an officer or foreman.

42.-

While he hesitated as to his duty, Katting and Clark got within range of him and drawing their revolvers on him made it sure death for him to hesitate longer, and under this compulsion he delivered his gun an ordered to a colored man who had come up and was ordered to receive it and take charge of three other guns that had been stored in the wards box, the practice being to march the prisoners out with an escort of armed guards, then to store the guns of the guards who were in direct charge of the prisoners while working in gangs with the armed guard at the west gate until the evening, should be concealed. Their plan was to make way for all the prisoners to escape out of the west gate, but finding that a working gang outside was under charge of several armed guards, Katting and Clark directed the movement of the prisoners along the inside of the west wall through a depression that there existed which screened them from fire of guards from other parts of the yard until they should reach the southwest corner of the enclosure. By this time there were from thirty to forty prisoners under their immediate command out of 350 prisoners working in the grounds. At the southeast corner of the yard they fired upon and disabled the guard in the box, secured three more rifles and three more revolvers, directed their attention to the guard in the box about the center of the north line of the enclosure who bravely opened fire upon them and stopped their advance in that direction. Katting, Clark and Hewitt being crack shots directed the opening of fire upon him, and he was soon mortally wounded and disabled. Having the superintendent and three or four other officials in their charge on a postagon to prevent escape of fire upon them from any quarter, they were making successful headway when one of the hostages suggested that they break through the enclosed stockade at this point, which they did and 26, including the three conspirators named escaped before a guard could be reached from any quarter to stop the break. The remaining prisoners were now united and started on the march for the old prison, while the 26 fugitives under charge of these leaders found their way across the outside territory to the main road leading into Levensworth which is about one-half mile from the prison, and there after impeding horses, carriages, wagons and every vehicle that presented itself along a well traveled highway, they dispersed in squads in various directions.

I have given this lengthy statement in order to show more clearly the part the writer of this letter took in it and his readiness to commit murder in order to facilitate escape. He made good his escape. He returned but failed to recapture his until October 24, 1903 when he was re-captured near Leumont, Col. After having been trailed all over the country. He was indicted by the Federal Grand Jury, tried before Judge Riner of Wyoming who gave to Kanto to hold the court, plead guilty and was sentenced to life imprisonment, which sentence he is now serving. He has been treated in no respect differently from the other prisoners in this institution save that he has been watched closely and not allowed the privileges of a trust. It being believed that he has always been and is now ready to take advantage of any opportunity that may open to him, and that he will not allow the life of either prisoner or officer to stand in the way of his escape if he deems it possible to escape, by again committing murder. He was assigned to work in


Research Project Assignment

Assign students a research paper/project around the topic of habeas corpus. Numerous court cases are available through either Docs Teach or the National Archives online catalog that can aid in this research. Additional sources to consider include the President's Commission on Law Enforcement and the Administration of Justice files located at the Lyndon B. Johnson Presidential Library, searchable in the National Archives catalog: www.archives.gov/research/catalog, or through the Johnson Presidential Library at www.lbjlibrary.org/research. Additional information can be found in DocsTeach at www.Docsteach.org, using the search term "8th amendment."

Research Resources

Several National Archives facilities house inmate case files from the Bureau

of Prisons for Federal penitentiaries, including San Francisco (Alcatraz) and Atlanta (Atlanta USP).

A web page for prison research resources at the National Archives is available at: www.archives.gov/research/prisons/. Included are links to the prison inmate indexes for Alcatraz, Atlanta, and Leavenworth Federal Penitentiaries. Also included are research guides for McNeil Island Penitentiary and a guide for researching Criminal Case Files from Fort Smith, Arkansas. 

Notes

1. *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871).
2. For more information, see James Landman, "You Should Have the Body: Understanding Habeas Corpus," *Social Education* 72, no. 2 (2008): 99–105.
3. *The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice* (Washington D.C.: U.S. Government Printing Office, 1967), 159.
4. Joe Jackson, *Leavenworth Train: A Fugitive's Search*

for Justice in the Vanishing West (New York: Carroll & Graf, 2001), 203.

Citations for Letters

Thomas A. Kating, Federal Inmate, to George W. Wickersham, U.S. Attorney General, Washington, D.C., August 29, 1909; File folder #5903; Inmate Case Files, 1895–1957; U.S. Penitentiary, Leavenworth, Kansas; Records of the Bureau of Prisons, Record Group 129; National Archives at Kansas City.

Robert W. McClaughry, Prison Warden, to George W. Wickersham, U.S. Attorney General, Washington, D.C., September 2, 1909; File folder #5903; Inmate Case Files, 1895–1957; U.S. Penitentiary, Leavenworth, Kansas; Records of the Bureau of Prisons, Record Group 129; National Archives at Kansas City.

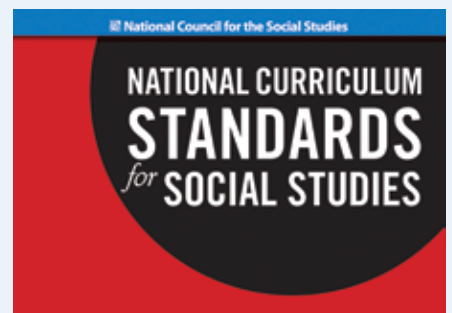
GREG BOGNICH is an Archives Technician at the National Archives at Kansas City in Missouri. He can be reached at greg.bognich@nara.gov. **KIMBERLEE RIED** served as editor on this article and is the Public Programs Specialist at the National Archives in Kansas City. She can be reached at kimberlee.ried@nara.gov.

National Curriculum Standards for Social Studies

A must for curriculum developers, social studies departments, teachers, and teacher education programs. Like the original standards, published in 1994, the book is based on the ten themes of social studies. It includes a revised section on essential social studies skills and strategies. It offers a sharper focus than the original standards on:

- Purposes
- Questions for Exploration
- Knowledge: what learners need to understand
- Processes: what learners will be capable of doing
- Products: how learners demonstrate understanding

Curriculum standards provide a framework for implementing content standards, and identify the student learning outcomes teachers should seek when they teach specific social studies disciplines. The standards emphasize the overarching purposes of social studies programs in schools: to promote the knowledge and skills that young people need in order to make informed and reasoned decisions for the public good as citizens of a culturally diverse democratic society in an interdependent world.



Visit the NCSS Online Store at www.socialstudies.org/store. Ten or more copies receive a 20% discount off the non-member price. To order by purchase order, please email as attachments to ncss@pbd.com; fax to 770-280-4092, or mail to NCSS Publications, P.O. Box 936082, Atlanta, GA 31193-6082. By phone, call 1-800-683-0812.

Regular price: \$ 29.95**
Member price: \$ 19.95**

****Add Shipping and Handling to prices.**