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## The Realities of Punishment

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## REVIEW ESSAY

### THE REALITIES OF PUNISHMENT

LIFE SENTENCES: RAGE AND SURVIVAL BEHIND BARS. By *Wilbert Rideau* and *Ron Wikberg*. Times Books, 1992. Pp. 342.

DAVID A. HARRIS\*

In an effort to address the problem of crime during the past dozen years, the United States has imprisoned more people for longer periods. From 1980 to 1990, the nation's prison population more than doubled, to well over one million.<sup>1</sup> America's rate of incarceration is unsurpassed by any country in the world, including South Africa and the former Soviet Union.<sup>2</sup> By 1991, one of every twenty-five American men were under the control of the criminal justice system.<sup>3</sup> The situation is even bleaker for young African-American males.<sup>4</sup>

In *Life Sentences: Rage and Survival Behind Bars*, Wilbert Rideau and Ron Wikberg confront the usually hidden side of the United States' legal and political shift toward incarceration-based justice. Composed of essays by Rideau and Wikberg<sup>5</sup> that first appeared in *The Angolite*—the award-winning publication written, edited and pro-

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<sup>1</sup> MARC MAUER, *THE SENTENCING PROJECT, AMERICA BEHIND BARS: A COMPARISON OF INTERNATIONAL RATES OF INCARCERATION* 6 (1991).

<sup>2</sup> WILBERT RIDEAU & RON WIKBERG, *LIFE SENTENCES: RAGE AND SURVIVAL BEHIND BARS* 258 (1992).

<sup>3</sup> MAUER, *supra* note 1, at 3. "Under the control of the criminal justice system" means incarcerated in prisons or jails, on probation or parole, or otherwise restricted by the authority of the criminal courts or their associated agencies.

<sup>4</sup> On any one day in 1989, approximately one in every four African-American males between the ages of 20 and 29 was under the control of the correctional system, either through incarceration, probation or parole. MARC MAUER, *THE SENTENCING PROJECT, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM* 3 (1990).

<sup>5</sup> One other inmate, Tommy Mason, is the author of two essays and the co-author of another with Wilbert Rideau. One essay is a transcription of a 1985 speech by C. Paul

duced by inmates at the Louisiana State Penitentiary in Angola, Louisiana—*Life Sentences* explains prison, and particularly mass imprisonment in late twentieth century America, in a way that other books have not.

*Life Sentences* is both well-written and painstakingly researched. Perhaps understandably, the authors do not always maintain complete detachment. They have both been inmates for many years. Wikberg was paroled from Angola in 1992 after serving more than twenty-one years for murder; Rideau remains in Angola, where he has been incarcerated since 1961 following a murder conviction. Instead of weaknesses, however, these experiences and the emotions they generate are among the book's strengths. From their unique vantage point, Rideau and Wikberg provide insights rarely seen elsewhere: the almost unimaginably violent culture of prison, the loss of hope by inmates serving long sentences, and the tragic economic implications for all of society.

Political leaders repeat the same slogans over and over—that the answer to crime lies in tougher laws, harsher penalties and more prisons. Few mention the costs; fewer still ask whether the current approach is working. *Life Sentences* tells us that the reality of punishment now revolves around vengeance, incapacitation and economics. Perhaps most importantly, we see that these forces, which have shaped our current penal system, point the way to a bleak future.

### I. ANGOLA AND *THE ANGOLITE*

The Louisiana State Penitentiary in Angola, Louisiana, has its roots in the nineteenth century. After the Civil War, Major Samuel Lawrence James became the leaseholder of the prison and its inmates.<sup>6</sup> He brutally worked the inmates and reaped a great profit for approximately twenty-five years.<sup>7</sup> In an effort to garner these revenues for itself, Louisiana resumed control of its penal system in 1901, purchasing the entire operation and James' 8000-acre Angola plantation from James' heirs.<sup>8</sup> The prison has gone through several cycles of cruelty, reform and deprivation in the years since.<sup>9</sup>

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Phelps, who was then Secretary of the Louisiana Department of Public Safety and Corrections.

<sup>6</sup> RIDEAU & WIKBERG, *supra* note 2, at 35-36. The inmates built levees, constructed railroads, and worked farms and plantations.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 36.

<sup>9</sup> *Id.* at 37-42. For example, Angola was relatively stable during the 1950s, but things changed in 1962. In that year, budget problems caused new difficulties that plunged the sprawling prison into the worst type of violence. *Id.* at 40-41.

By 1973, Angola was ruled by knives; stabbings were part of the prison routine.<sup>10</sup> In 1975, a United States district court ruled that conditions at Angola violated the Constitution and ordered improvements.<sup>11</sup> As a result, large-scale changes were implemented over the next fifteen years,<sup>12</sup> especially during the two terms of C. Paul Phelps as Secretary of the Louisiana Department of Public Safety and Corrections.<sup>13</sup> Phelps immediately attacked the "intolerable"<sup>14</sup> conditions at Angola, and he enjoyed a measure of success in addressing the monumental problems of the institution. He greatly reduced the violence at the prison, eliminated undesirable employees, improved security measures, and made sure that both staff and inmates did their jobs.<sup>15</sup> Phelps' success was even more impressive than it appeared, since it came as the number of inmates arriving at Angola began to increase markedly every year.

It was under Phelps that *The Angolite* flowered. At other penal institutions, officials automatically censored inmate publications to insure prison security.<sup>16</sup> Phelps believed differently. He thought it in the institution's interest to have a credible source of information to replace the prison's unreliable grapevine.<sup>17</sup> Phelps called in the editor of *The Angolite* and proposed the unthinkable: the paper was to have full freedom to investigate, photograph and publish so long as it adhered to professional standards.<sup>18</sup> The results were stunning. Just five years later, the mainstream press called *The Angolite* "the most probing and literate inmate publication in the U.S."<sup>19</sup> Since then, *The Angolite* has been recognized with awards generally won by more traditional publications.<sup>20</sup>

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<sup>10</sup> *Id.* at 41. From 1972-1975, stabbings killed 40 inmates and seriously wounded 350 others.

<sup>11</sup> *Id.* at 41-42.

<sup>12</sup> *Id.* at 42. The court ordered the state to relieve overcrowding, improve protection of inmates and employees, hire more corrections officers and hire sufficient personnel to provide adequate medical and psychiatric care. Admission of new prisoners was barred until the changes were made. *Id.*

<sup>13</sup> *Id.* at 44. Phelps was Secretary from 1976-1981 and 1984-1988. He also served for a time as Angola's warden.

<sup>14</sup> *Id.* at 46.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 47.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (quoting *Jail Journal*, TIME, Mar. 10, 1980, at 62).

<sup>20</sup> For example, the essay entitled *The Sexual Jungle*, RIDEAU & WIKBERG, *supra* note 2, at 73-107, won the 1980 George Polk Award. *The Sexual Jungle* also garnered a 1980 National Magazine Award nomination for *The Angolite*. Another essay, entitled "The Long-termers," *id.* at 217-42, received the 1989 Certificate of Merit from the American Bar Association's Silver Gavel Committee.

*Life Sentences* shows how and why *The Angolite* made a difference at Angola, not only to the institution as a whole, but to individual inmates. The facts are unvarnished; the reader is not spared details in an effort to make the description of prison more palatable. The writing is clear and to the point, eminently readable. What emerges is a stark portrait of an institution driven by fear and economics.

## II. VENGEANCE AND INCAPACITATION

### A. THE PURPOSES OF PUNISHMENT

Much of *Life Sentences* centers around the overcrowding, violence and hopelessness that dominates Angola and other American prisons. In order to understand why American prisons are brimming with inmates and how this affects society as a whole, we must first discern the purpose or purposes of punishment for crimes.<sup>21</sup> Once the objectives of punishment become clear, the implications of recent criminal justice policy, both for Angola and the rest of the American correctional system, emerge.

There is wide agreement that punishment serves at least five functions.<sup>22</sup> Some of these have been more popular in the past than they are now. For others, the opposite is true. Two of these purposes are now preeminent: incapacitation and vengeance.

#### 1. *Specific*<sup>23</sup> or *Special*<sup>24</sup> Deterrence

Under this view of punishment, also called prevention or intimidation,<sup>25</sup> courts attempt to deter individual criminals from future harmful acts by making punishment for past crimes an unpleasant experience that the criminal henceforth will wish to avoid.<sup>26</sup>

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<sup>21</sup> Punishment for crimes has been discussed in a variety of ways. Some commentators discuss the criminal law in terms of the theories of punishment. *E.g.*, JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 4-12 (1987). They discuss punishment as based on either utilitarian theory, in which punishment is used to maximize the net good of society, *id.* at 4, or retributive theory, under which punishment is meted out or withheld because the wrongdoer deserves it, regardless of whether society gains anything by it. *Id.* at 6. Others think about punishment in terms of its purposes, *i.e.*, what it is supposed to accomplish. *See infra* notes 20-38, and accompanying text. The latter approach proves more illuminating for our purposes.

<sup>22</sup> The purposes listed here would show up in most scholars' lists. MARVIN E. FRANKEL, CRIMINAL SENTENCES 106 (1973) ("Different scholars would shorten or lengthen the list, or prefer other terminology.")

<sup>23</sup> DRESSLER, *supra* note 21, at 5.

<sup>24</sup> FRANKEL, *supra* note 22, at 106.

<sup>25</sup> WAYNE R. LAFAVE & AUSTIN W. SCOTT, CRIMINAL LAW 23 (2d ed. 1986).

<sup>26</sup> *Id.* Note the connection to utilitarian theory, which assumes that "human beings generally act rationally and hedonistically. They will act to increase personal pleasure and reduce personal pain." DRESSLER, *supra* note 21, at 5.

Whether punishment actually deters individuals is, at best, hard to measure.<sup>27</sup>

## 2. General Deterrence

General deterrence aims to affect the behavior not of the individual offender, but of others who observe the individual's punishment. The reasoning is that the unpleasant fate of the offender will cause others to avoid criminal behavior.<sup>28</sup> Like specific deterrence, the success with which penal systems meet this goal is difficult—perhaps impossible—to measure.<sup>29</sup>

## 3. Rehabilitation or Reformation of the Offender

The purpose of punishment for rehabilitation is to treat the offender so that he is returned to society improved, without the need or desire to commit further harm.<sup>30</sup> This idea assumes that behavior of offenders has prior causes which, if addressed and rectified, will change future conduct.<sup>31</sup> While formerly quite popular,<sup>32</sup> rehabilitation has fallen out of favor, perhaps (at least in part) because it has not been shown to produce satisfactory outcomes.<sup>33</sup>

## 4. Incapacitation

Incapacitation aims to protect society from offenders deemed dangerous because of their past criminal conduct<sup>34</sup> by removing the offender from society.<sup>35</sup> If offenders are imprisoned, the reasoning goes, they cannot commit crimes during their sentences.<sup>36</sup> For of-

<sup>27</sup> LAFAYE & SCOTT, *supra* note 25, at 23.

<sup>28</sup> FRANKEL, *supra* note 22, at 106; LAFAYE & SCOTT, *supra* note 25, at 24. LaFave & Scott refer to general deterrence as "general prevention." LAFAYE & SCOTT, *supra* note 25, at 24. Again note the connection to utilitarian theory. DRESSLER, *supra* note 21, at 5 (under utilitarian theory, "[the defendant] is punished because it is believed that his punishment will cause other people to forgo [sic] criminal conduct in the future.").

<sup>29</sup> LAFAYE & SCOTT, *supra* note 25, at 24-25; JOHANNES ANDENAE, PUNISHMENT AND DETERRENCE 9 (1974) ("The disagreement over the importance of general prevention is of course largely due to the fact that its effectiveness cannot be measured.").

<sup>30</sup> LAFAYE & SCOTT, *supra* note 25, at 24.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., Francis Allen, *Legal Values and the Rehabilitative Ideal*, 50 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 226 (1959).

<sup>33</sup> LIVINGSTON HALL & SHELDON GLUECK, CRIMINAL LAW AND ITS ENFORCEMENT 18 (2d ed. 1958).

<sup>34</sup> Implicit in deeming an offender dangerous to society because of criminal conduct is a prediction about the offender's future conduct. Not everyone is sanguine about the accuracy of such predictions. E.g., ANDREW VON HIRSCH, DOING JUSTICE 21 (1976) (the ability to predict dangerousness with precision is, at best, unverified).

<sup>35</sup> LAFAYE & SCOTT, *supra* note 25, at 23. This idea is also referred to as restraint, isolation or disablement. *Id.* and n.15.

<sup>36</sup> Even the most cursory reading of LIFE SENTENCES will show that this view is incor-

fenders thought to be beyond rehabilitation,<sup>37</sup> proponents of incapacitation may argue for capital punishment or imprisonment for life without possibility of parole.

### 5. Vengeance

The idea of using punishment as a form of vengeance, also referred to as retribution or retaliation, is that one who has caused suffering must be made to suffer.<sup>38</sup> While this may result in certain benefits to society, such as reduction in crime because the offender or others will be deterred from future criminal conduct,<sup>39</sup> this is not the object of retributive punishment. Rather, society exacts revenge because punishment for culpable behavior is just in itself.<sup>40</sup>

Of these purposes, vengeance and incapacitation now predominate. Incapacitation and even capital punishment keep more and more inmates away from society for longer periods, exacting revenge and buying society the illusion of safety. The rehabilitative theory has clearly fallen from public and academic favor.<sup>41</sup> Deterrence of either type has also become secondary.

The portrait of Angola in *Life Sentences* is a perfect example of the societal preference for vengeance and incapacitation. Inmates enter Angola in ever greater numbers, with longer sentences. There is little or no concern for the condition in which they will someday leave. The executive clemency process, by which long-term inmates might earn release based upon extraordinary rehabilitative efforts, work capriciously at best.<sup>42</sup> Political leaders have be-

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rect. The best that can be hoped for is that those imprisoned will commit crimes only against other inmates, and not against persons outside prison. The former half of the previous sentence is certainly true; Rideau and Wikberg show over and over again that serious crime, especially rape and murder, are common at Angola. RIDEAU & WIKBERG, *supra* note 2, at 40-42 and 73-107. The latter half of the statement only holds true as long as those convicted are held. Once released, offenders are able to commit crimes against society again. "It has also been noted that resort to restraint without accompanying rehabilitative efforts is unwise, as the vast majority of prisoners will ultimately be returned to society." LAFAVE & SCOTT, *supra* note 25, at 24.

<sup>37</sup> But see VON HIRSCH, *supra* note 34, at 21 (future dangerousness difficult to predict).

<sup>38</sup> LAFAVE & SCOTT, *supra* note 25, at 25-26.

<sup>39</sup> *Id.* at 26.

<sup>40</sup> VON HIRSCH, *supra* note 34, at 51; FRANCIS ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* 66 (1981).

<sup>41</sup> ALLEN, *supra* note 40, at 66.

<sup>42</sup> Whatever its value to individual inmates and the prison system, executive clemency in Louisiana has always been tainted by considerations of race, class, politics and corruption. These have been "the major factors influencing who is punished and for how long." RIDEAU & WIKBERG, *supra* note 2, at 239. Indeed, the former chairman of the Louisiana Board of Pardons admitted in 1987 that pardons and commutations of sentences were sold during his tenure, and he was himself sentenced to federal prison. *Id.* at 221.

come totally incapable of opposing these trends for fear that an opponent may later characterize their actions as soft on crime.<sup>43</sup> Thus, punishment does little except to fulfill society's wish for revenge and keep offenders away from the rest of the state's population.

#### B. VENGEANCE AND INCAPACITATION AT ANGOLA

Societal vengeance takes many forms at Angola, chief among them the conditions under which inmates have lived for over a century. For example, those running Angola have often looked the other way as the strong have preyed upon the weak. Rideau and Wikberg illustrate this most clearly in the chapter entitled, "The Sexual Jungle,"<sup>44</sup> in which the authors discuss the frequent rape of inmates by other inmates, and the virtual enslavement of these rape victims as rapists' "wives" for the duration of their sentences.<sup>45</sup> In return, rape victims are "protected" from other inmates.

Rideau and Wikberg illustrate the cruelty of this system of institutionalized sexual slavery with the story of inmate James Dunn. Dunn came to Angola at the age of nineteen and was promptly raped and enslaved by another inmate.<sup>46</sup> Dunn's sentence was relatively short; he knew he needed protection from other inmates, so he submitted.<sup>47</sup> He was released from Angola, but he soon returned to the prison for parole violation and burglary.<sup>48</sup> When he did, his rapist, who was still at Angola, let him know in no uncertain terms that nothing had changed: Dunn still belonged to him.<sup>49</sup> Years later, when his owner was about to be released, Dunn begged him not to follow the common practice and sell him to another inmate, who would then own him.<sup>50</sup> Dunn got his wish, but it took more than he expected to remain free. He fought off several attempts to

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<sup>43</sup> *Id.* at 259.

<sup>44</sup> RIDEAU & WIKBERG, *supra* note 2, at 73-107.

<sup>45</sup> Perhaps the most powerful point made in *The Sexual Jungle* is that rape and domination are not just features of the "free" culture; they exist within prison, with weaker men enslaved as "women" to their rapists. Rideau and Wikberg call these sexual slaves "substitutes, for expression . . . , for reinforcement of masculinity, for a sexual outlet, for income and/or services, for the sense of self-worth and importance, and so on." *Id.* at 81. Thus the predatory sexual psychopathology one sees outside of prison is reflected by the culture inside prison. Rideau and Wikberg were not the first to notice this. See SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE*, 257-68 (1975) (prison rape reflects sexual and racial aggression and tensions in larger society).

<sup>46</sup> RIDEAU & WIKBERG, *supra* note 2, at 77.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 78.

<sup>49</sup> *Id.* at 78-79.

<sup>50</sup> *Id.* at 79-80.



re-enslave him. Eventually, when an aggressive inmate came after him, Dunn did the only thing he could—he killed his attacker.<sup>51</sup> Dunn received a life sentence. What should have been a relatively short stay in prison nearly consumed Dunn's adulthood.

Perhaps the most powerful example of vengeance and incapacitation, however, is Rideau and Wikberg's account of "long-termers."<sup>52</sup> These are inmates serving lengthy sentences who remain incarcerated even as others, whose crimes were arguably worse, are released.<sup>53</sup> Despite any progress toward rehabilitation, and the fact that the time they have served puts them well beyond their violent youth, these inmates are still incarcerated. The Louisiana penal system assigns no one to review their cases or to see whether continued imprisonment is necessary or wise.<sup>54</sup> Even when these inmates overcome their own illiteracy, ignorance of the workings of the system, lack of family support, and poverty, they are ignored when they apply for executive clemency.<sup>55</sup> To the extent that their requests receive any attention, it is likely to be both thoughtless and negative; law enforcement and prosecutor's offices oppose many requests for sentence reduction almost automatically, regardless of the merits.<sup>56</sup> Whether the offender has changed, shown contrition, had a good disciplinary record while in prison, or improved his own life or the lives of other inmates does not matter.<sup>57</sup>

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<sup>51</sup> *Id.* at 80.

<sup>52</sup> *Id.* at 217-42.

<sup>53</sup> *Id.* at 220-21.

<sup>54</sup> *Id.* at 236 (state has no philosophy for pardons). In 1984, Governor Edwin Edwards formed the Forgotten Man Committee, which was designed to find and deal with the cases of long-term inmates forgotten in the penal system. *Id.* at 234. Eighteen months later, all of its recommendations rejected, the Committee dissolved. *Id.* at 194.

<sup>55</sup> *Id.* at 235.

<sup>56</sup> Prosecutor Henry N. Brown, Jr., who the authors discuss in the chapter entitled "The Deadliest Prosecutor," acknowledges this practice. *Id.* at 281. While prosecutorial and law enforcement objections to clemency should be respected, Brown says, these objections must be viewed as lacking any current perspective on the offender's life. Most prosecutors react to requests for clemency reflexively, without any information on the offender or his activities since sentence was imposed. *Id.*

<sup>57</sup> Author Rideau himself is perhaps the best example of this. Rideau has been imprisoned for murder at Angola since 1961. He taught himself to read during his eleven years on death row and has served as editor-in-chief of *The Angolite* since 1975. Yet, despite the fact that it would be difficult to imagine an individual more improved during over 30 years of imprisonment, and the fact that he has served much more time than many other convicted murderers, every application for Rideau's release has been denied. One possible explanation for this may be that, through the very success Rideau has experienced with *The Angolite*, he has become visible to the outside world, making the political and public relations cost of his release much higher than it would be for a more typical inmate. Francis X. Clines, *Two Killers at Last Separated by Freedom*, N.Y. TIMES, Aug. 18, 1992, at A1 (Rideau's celebrity has kept him from being released while co-author Wikberg is now free); see also Judith Colp, *Murderer, He Wrote; Killer, Author Ron*

American society's collective exaction of vengeance through mass imprisonment carries a real price. It is hopelessness, both individual and collective, in the inmate population. The chapter entitled "Conversations with the Dead" discusses Cocky, an inmate who has been at Angola for thirty-three years. Cocky has been forgotten by his jailers; he sits in a small shack on the grounds of Angola, simply existing—without hope, yet unable to imagine an alternative. The conversation Rideau and another inmate have with Cocky, who has been in Angola since 1945, illustrates this insitutionalized futility.

"Think they'll let you out, Cocky?" Billy asks.

"Ah hope dey do."

"But if they don't—say—they told you they weren't ever going to let you out, what would you do?"

"Ah'll jest have to stay heah, Ah guess."

"Do you think you deserve to be free, Cocky?"

He laughs. "Ah tell you—if air a man deserves his freedom, Ah do."<sup>58</sup>

The authors explain how such an attitude forms over the long, grinding years in prison:

For most, the prison experience is a one-way ride on a psychological roller coaster—downhill. And the easiest thing to do, in a world where almost everything is an assault against you, is to permit yourself to be defeated by the overwhelming indifference and sense of hopelessness that steals into your daily existence, slowly, almost unnoticeably sapping your drive, your dreams, your ambition, evoking cries from the soul to surrender, to give up the ghost, to just drift along with the tide of time and human affairs, to not care. Only the hungriest can escape the chains of deterioration and apathy.<sup>59</sup>

Rideau wonders whether his destiny will ultimately be the same as Cocky's:

I simply could not relate to spending all of my life suffering for the sheer sake of suffering, despite the half a lifetime I've already spent here. Where was the redeeming value in fighting to exist so that one could exist only to suffer? If one's only mercy in this madness was to be death, why should one wait through a lifetime of pain before knowing the peace of the grave? Why perpetuate a struggle for mere existence when existence will only be for existence' sake?<sup>60</sup>

The result of this hopelessness at Angola has been a series of attempted escapes by prisoners with exemplary records and an esca-

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*Wikberg's New Lease After a Life Term*, WASH. TIMES, Oct. 6, 1992, at E1 (attributing Rideau's continued confinement to race (Rideau is black, Wikberg is white) and opposition of victim's family, as well as his high profile as *The Angolite's* editor-in-chief).

<sup>58</sup> RIDEAU & WIKBERG, *supra* note 2, at 56.

<sup>59</sup> *Id.* at 59-60.

<sup>60</sup> *Id.* at 70.

lation in senseless violence.<sup>61</sup> These events presage the likely future of prisons nationwide, as more inmates are incarcerated for longer periods, many for the rest of their lives.

Of course, there is nothing either as vengeful or as finally incapacitating as execution. In a chapter aptly entitled, "The Horror Show," Wikberg documents the cruelty of execution by electrocution, which Louisiana used until 1991. Using blunt language and photographs, Wikberg puts the lie to the oft-heard assertion that those who are electrocuted do not feel pain.<sup>62</sup> On the contrary, Wikberg shows that electrocution produces massive burns and an "unmistakable" pattern of severe mutilation.<sup>63</sup> The condemned person remains conscious, fully experiencing the "gruesome burning of his own body."<sup>64</sup>

The horror of execution is brought to a fine point in two chapters which begin and end the book, entitled "The Deathmen." In these chapters, Rideau and Wikberg interview "Sam Jones" (a pseudonym), Louisiana's state executioner. Jones goes about his job with a casual efficiency. His sentiments concerning the condemned people he kills show how he is able to do his job so well.

They trash, simple as that. That's all they are. Pure trash. If they was any good, they wouldn't be in that spot where they at . . . . When I strap them in the chair and the warden gives me the nod, I'll push the button. I don't care who it is.<sup>65</sup>

Thus, the result of this country's infatuation with vengeance and incapacitation is the overcrowding of prisons with frustrated, hopeless inmates who have nothing to lose. The cost in human lives and suffering is obvious; the cost in dollars and lost opportunities is less so, but at least as important.

### III. ECONOMICS

Economics was the driving force behind Angola's origin as a camp of rented, brutalized slaves in the latter half of the nineteenth century.<sup>66</sup> Today, it is economics that determines what Angola offers to those who must live there. It is ironic, then, that even though

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<sup>61</sup> *Id.* at 247-48 (in one three-week period in 1989, there were three desperate escape attempts, which were highly unusual not only because they occurred within so short a period, but also because the inmates were all reliable "trusties"). *Id.* at 254-55 (during May and June 1989, inmates were killed in several stabbings, and another was injured in an escape attempt that included a high-speed chase and a gun fight).

<sup>62</sup> *Id.* at 293, 295.

<sup>63</sup> *Id.* at 294.

<sup>64</sup> *Id.* at 295.

<sup>65</sup> *Id.* at 317.

<sup>66</sup> See *supra* note 5 and accompanying text. I use "economics" in this discussion to

vengeance and incapacitation remain most important to the public, only economics shows any promise of illuminating both the difficulties inherent in current criminal justice policy, and a better way to handle people convicted of crimes.

The history of criminal justice policy and budgetary changes in Louisiana during the 1980s is instructive. In the early part of the decade, most states experienced economic hard times.<sup>67</sup> Louisiana, rich in reserves of crude oil and natural gas, enjoyed an unprecedented flow of tax dollars into its state treasury.<sup>68</sup> The state government embarked on a spending spree, but the good times did not last long; in the second half of 1982, huge across-the-board budget cuts were ordered.<sup>69</sup> Those cuts included expenditures for the state prison system. Spending for prisons is always an easy target; inmates have no political power and are despised by the rest of the state's citizens.<sup>70</sup> While officials protested that there was only so much budget-cutting that could be done, given court-enforced constitutional requirements for running a prison, Angola's administrators ultimately had no choice.<sup>71</sup>

These budget cuts at Angola came at a time when public attitudes in Louisiana called for the imposition of harsher punishment on persons convicted of crimes. Longer sentences would surely increase the burden upon the correctional system, regardless of the realities of the budget process. Nonetheless, politicians and citizens did not want to pay for the increased correctional services that tougher law enforcement would inevitably mean.<sup>72</sup> Thus, Louisiana continued to administer criminal justice as if cost were not a concern.<sup>73</sup>

The results were predictable. In Louisiana in 1982, there were over 9500 inmates in the penal system; that number was expected to grow by almost one-third in two years.<sup>74</sup> With a net increase of ap-

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describe the development, production, management and distribution of material wealth. See WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 416-17 (1984).

<sup>67</sup> RIDEAU & WIKBERG, *supra* note 2, at 148.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 149.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 151.

<sup>72</sup> *Id.* at 155. Charles Davoli, who served as Special Assistant to the Governor of Michigan charged with responsibility for criminal justice planning before coming to Louisiana as the Assistant Secretary of the Office of Adult Services, aptly describes the public's attitude. In most states, "[the public] essentially said, 'Yeah, we want to lock them up, we want mandatory sentences—but we ain't going to pay for it,' and I can't explain that." *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 154.

proximately 850 new inmates each year throughout the 1980s, the state's prison population ballooned.<sup>75</sup> For every new prison cell, taxpayers pay an average of \$60,000; keeping an inmate in that cell costs an additional \$25,000 per year.<sup>76</sup>

Louisiana's situation mirrors that of correctional systems and institutions around the country. The influx of inmates into criminal justice systems everywhere continues at an unrelenting pace.<sup>77</sup> The nation finds itself caught between a proverbial rock and hard place of its own making. People demand longer and tougher sentences, which greatly increase correctional costs; as expenses mount, legislatures are forced to cut back on spending for social, educational and other state services.<sup>78</sup> By refusing to fund the expanding penal system with new taxes (two words that instill almost as much fear in the typical politician as the phrase "soft on crime"), states become obligated to spend more and more money on prisons, leaving fewer dollars available for the "free" population.<sup>79</sup> Perhaps most discouraging of all, no matter how many prisons are built, there remains only one certainty: Locking more people in prison cells will not reduce the number of persons to be incarcerated. This "Iron Law of Corrections" means that "[f]or every prison bed built, a judge and a district attorney somewhere will fill it."<sup>80</sup>

Thus, the correctional system has become "a runaway train, the biggest growth industry in the nation."<sup>81</sup> There is no sign that the trend will abate any time soon.<sup>82</sup> Louisiana, for example, continued to increase both sentences and funds for building jails and prisons throughout the 1980s, even while it was forced to cut back on many other, more generally beneficial, expenditures.<sup>83</sup>

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<sup>75</sup> By 1989, Louisiana had 12 prisons holding 14,200 inmates, with "4300 housed in local jails because of lack of space" in the state penal system. *Id.* at 256.

<sup>76</sup> *Id.* at 154.

<sup>77</sup> By 1989, the United States had well over one million people confined in prisons and jails; over four million people were under the direct control of the criminal justice system, at a yearly cost of over \$60 billion. *Id.* at 258. There is no end in sight; federal and state prison populations will increase 30 percent by 1995. *DOC's Project Future Prison Populations*, CORRECTIONS COMPENDIUM (Nov. 1991).

<sup>78</sup> RIDEAU & WIKBERG, *supra* note 2, at 194-95.

<sup>79</sup> *Id.* at 258-59.

<sup>80</sup> *Id.* at 258, (quoting Seldon Hale, Chairman of the Texas Board of Criminal Justice).

<sup>81</sup> *Id.* at 259.

<sup>82</sup> *Id.* at 257-59; see also Rhonda McMillion, *Hard Time*, 79 A.B.A. J. 100 (Mar. 1993) (mandatory minimum sentences, federal sentencing guidelines and other influences helped to quadruple federal prison populations between 1980 and 1992, with a total of 106,000 federal inmates expected by 1996).

<sup>83</sup> RIDEAU & WIKBERG, *supra* note 2, at 195.

## IV. A CHANGE OF DIRECTION?

It may be, however, that the economics of corrections is what will ultimately change the nation's seemingly insatiable appetite for vengeance and incapacitation. The dizzying amounts of money spent on incarceration, which have begun to force cuts in spending on many other high priority items, may simply force a re-examination of the simplistic criminal justice policy of the last dozen or so years.

According to Rideau and Wikberg, the United States now spends more on criminal justice than education.<sup>84</sup> Observes Jerome Miller, president of the National Center on Institutions and Alternatives, "[w]e're trading textbooks for prisons."<sup>85</sup> As state governments cut expenditures in many areas, they must maintain ever higher levels of spending on corrections. Mandatory sentences lock these expenses into the budget process; an inmate with a twenty-year sentence without possibility of parole will need to be housed, fed and clothed for twenty years.

Despite these facts, we have failed to recognize (or even to examine) the results of America's great experiment with incarceration: Even as imprisonment and its costs have soared, crime has not decreased.<sup>86</sup> Our streets are no more safe today than they were when the binge of toughness and prison-building began in 1980.<sup>87</sup>

Using extensive interviews of correctional officials, Rideau and Wikberg make a strong case for the use of less expensive alterna-

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<sup>84</sup> *Id.* at 258.

<sup>85</sup> *Id.*

<sup>86</sup> *E.g.*, Fox Butterfield, *Study Cites Role of Biological and Genetic Factors in Violence*, N.Y. TIMES, Nov. 13, 1992 at A12 (National Research Council Study, entitled "Understanding & Preventing Violence," finds that despite nearly three-fold increase in amount of prison time served for violent crimes between 1975-1989, there was no demonstrable deterrence of violent crime); Darrell Steffensmeier & Miles D. Harper, *Did Crime Rise or Fall During the Reagan Presidency? The Effects of 'Aging' U.S. Population on the Nation's Crime Rate*, 28 J. OF RES. IN CRIME AND DELINQ. 330 (Aug. 1991) (controlling for the decrease in population of the most crime prone group (males age 15-24), crime figures for 1980s are inconclusive while imprisonment soared); *see also* Ralph Blumenthal, *Less Crime to Count; Was it Community Policing? Experts Try to Explain Drops in Major Crimes*, N.Y. TIMES, Mar. 27, 1992, at A16 (New York's 1991 decrease in crime, first since 1955, "bucks the national trend" and may be an aberration); *Crime Rate Stable*, NEWSDAY, Oct. 27, 1992, at 14 (Bureau of Justice Statistics report indicates violent crimes increased by seven percent in 1991, while other types remained unchanged).

<sup>87</sup> Evidence of this fact abounds even beyond statistics. *See, e.g.*, Felicity Barringer, *Washington's Departing Police Chief Laments the Sleep of Murderers*, N.Y. TIMES, Sept. 20, 1992, § 4, at 7 (tougher penalties, mandatory sentences, more law enforcement and the death penalty have not and will not make a difference in the war on crime); Don Terry, *More Familiar, Life in a Cell Seems Less Terrible*, N.Y. TIMES, Sept. 13, 1992, § 1, at 1 (given the large percentage of persons who are incarcerated, prison seems to have lost its ability to inspire either shame or fear).

tives to prison. Parole, eliminated in the federal correctional system<sup>88</sup> and significantly weakened and even gutted in many states,<sup>89</sup> is an obvious candidate. In "The Dynamics of Parole," Rideau and Wikberg argue that the public has a negative and inaccurate view of parole, largely because public officials and the media feed "a grossly distorted picture of criminal-justice operations to the public."<sup>90</sup> Parole in Louisiana, for example, is one of the most successful components of the criminal justice system. During 1980, a mere one percent of those inmates released on parole went back to prison, and most of those parole violations were technical ones, not the commission of new crimes.<sup>91</sup> C. Paul Phelps, who has served as Louisiana's secretary of corrections, says that with enough parole officers, at least one-third of all inmates incarcerated in Louisiana's prisons could be successfully released on parole.<sup>92</sup> In contrast to the \$25,000 per year that it costs to house an inmate in prison, the cost of parole supervision was \$1.42 a day, or \$518 per year, in 1981.

Parole is, of course, only one of many alternatives to incarceration that would be suitable for many inmates and much cheaper than imprisonment. Other alternatives, such as house arrest accompanied by electronic monitoring, will no doubt become more popular as the fiscal dynamics of current criminal justice policy become more obvious.

Some political leaders, at least at the state and local levels, appear to be understanding this new economic reality. Governors, the officials upon whom the burden of correctional spending falls most directly, have begun to search for alternative policies even as they acknowledge the potentially high political costs of even opening the debate.<sup>93</sup> Perhaps it is not too much to hope for a shift in policy.

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<sup>88</sup> William F. Weld, Foreword, A.L.I.-A.B.A. FEDERAL SENTENCING GUIDELINES 2 (1988) (federal sentencing guidelines eliminate parole from federal prisons).

<sup>89</sup> RIDEAU & WIKBERG, *supra* note 2, at 256.

<sup>90</sup> *Id.* at 140. For example, according to Pamela Harris, chair of Louisiana's Parole Board, the media reports that almost any probationer or former convict who commits a crime is called a parolee. *Id.* at 140, 142.

<sup>91</sup> *Id.* at 141.

<sup>92</sup> *Id.* at 141-42.

<sup>93</sup> Michael deCourcy Hinds, *Feeling Prisons' Costs, Governors Look at Alternatives*, N.Y. TIMES, Aug. 7, 1992, at A17 (escalating prison costs are forcing governors to examine alternatives, despite risk of being labelled too soft on crime). Michael deCourcy Hinds, *But Does Punishment Fit the Budget?*, N.Y. TIMES, Jan. 22, 1993, at B8 (spending on corrections is "the fastest- or second-fastest growing part of state budgets," creating a fiscal "time of reckoning" for current criminal justice policy); Michael deCourcy Hinds, *The Price of Punishment in Delaware*, N.Y. TIMES, Aug. 7, 1992, at B10 (Delaware's Statistical Analysis Center provides legislators with analysis of effects of proposed legislation on criminal justice system).

Rideau and Wikberg force us, however, to see a future even darker than the present. The cost of our current approach to criminal justice may be high, but, they argue, a whole industry has grown up with a vested interest in maintaining our current attitudes and levels of expenditure. They call their theory "prisonomics."<sup>94</sup>

The massive growth of the criminal-justice system simultaneously bred a large commercial/political constituency or private lobby with a vested interest not in curbing or halting the flood of prisoners but in maintaining, if not increasing, their numbers. For all the law-and-order rhetoric about reducing crime, a solution to crime is not in their best interests. . . . To commercial interests, increased criminal-justice operations and prisoners translates into increased profits; to economists and political leaders, growth means more jobs for the less educated, less productive segment of the populace at the expense of others of the same socioeconomic strata (imprisonment of three persons creates jobs for two in corrections); to law enforcement there is increased power and appropriations; to the more politically mean-spirited, it means expansion of the net of government control over the less desirable element of society, the "inferiors" in life.<sup>95</sup>

This vision is chilling. Rideau and Wikberg see a world in which a substantial industrial and political sector finds it profitable to encourage the rhetoric behind our current vengeful and vindictive public mood. These interests prefer prisons to education, to spending on social services, to less restrictive types of law enforcement and penology, even to any approach that seeks to reduce crime by attempting to address its root causes rather than simply incarcerating offenders.

This view may seem too cynical. How could it be that we would choose to keep spending our money where it is obviously least productive? Why would we choose prison beds over college scholarships? Why would we keep investing our resources in a strategy that clearly does not control crime? The answer is that whether these approaches make sense, there is no question that we continue to pursue them, almost without thought or question. Based on our fear of crime and criminals,<sup>96</sup> we are willing to lock up ever larger numbers of our fellow citizens, regardless of the consequences.

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<sup>94</sup> RIDEAU & WIKBERG, *supra* note 2, at 257-60.

<sup>95</sup> *Id.* at 259-60. See, e.g., Don Terry, *Town Builds a Prison and Stores Its Hopes There*, N.Y. TIMES, Jan. 3, 1993, at A14 (Appleton, Minn., built municipally owned prison with aim of incarcerating inmates from overcrowded prisons elsewhere, creating jobs and profits).

<sup>96</sup> The ironic part of the fear of crime our political leaders encourage is that those to whom this issue is pitched are actually the people who have the least to fear from crime. Michel McQueen, *People With the Least to Fear From Crime Drive the Crime Issue*, WALL ST. J., Aug. 12, 1992, at A1 (suburban whites, to whom crime rhetoric is designed to appeal, are least likely to be crime victims).



## V. CONCLUSION

*Life Sentences* provides us with an informed and original look inside prison and the penal system. The authors merely begin, however, with the horrors of daily life: brutality, murder, gang-rape and slavery. To their credit, Rideau and Wikburg take us beyond the misery and hopelessness of the lives of individuals; they help us examine the larger currents and policy arguments with which society must deal.

In the end, we are forced to recognize that the economics of punishment control Angola and all our correctional systems. Economics has governed criminal justice policy since before the turn of the century. This single force shapes the lives and experiences of inmates at Angola and other prisons in numerous ways, but it is now beginning to shape the lives of law-abiding Americans. As more prisons are built to house more inmates serving longer sentences, there is simply less money for the other things society needs. Perhaps this fact will be what ultimately brings change to correctional policy.

One hopes that Rideau and Wikberg are incorrect in their assertion that economic forces will compel the criminal justice system to produce more and more inmates. Only time will tell. However these issues are ultimately resolved, this book's enduring contribution may be in forcing us to see that money—not justice—has everything to say about where the penal system has been, and where it is going.