

LAYERS OF INJUSTICE: RE-EXAMINING THE LUCASVILLE UPRISING

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Twenty years ago, in April 1993, an eleven-day prison uprising, commonly known as the “Lucasville riot,” erupted at the Southern Ohio Correctional Facility. This is the longest prison uprising in United States history during which lives were lost. One hostage officer and nine prisoners were killed. Five prisoners were sentenced to death and others are serving lengthy sentences for crimes they allegedly committed during those eleven days.

As we re-examine what happened before, during and after the uprising, we see that responsibility for what occurred should be shared by the State as well as the prisoners.

The State does not know who the hands-on killers were. There was no physical evidence linking any suspect to any victim. The convictions depended almost entirely on testimony by prisoners who were rewarded for their testimony, without any objective corroborating evidence, and sometimes contrary to the testimony of the coroners. Convictions and death sentences were based on “complicity.” Based on such evidence, it is unfair to conclude that five men should be executed and others should serve the rest of their lives in prison. Twenty years is enough!

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1. WHY RE-EXAMINE LUCASVILLE?

April 2013 is the 20th anniversary of the eleven-day uprising at the Southern Ohio Correctional Facility (SOCF) in Lucasville. What purpose is served by once again asking questions about the origins of the disturbance, about the complicated story of the occupation of L-block, and about the trials that followed?

The answer is simply that I, along with a growing number of persons who have taken an interest in the Lucasville cases, am convinced that the truth about these events remains untold in the courts as well as in the media.

The narrative presented in trial after trial was intended to target supposed leaders of the occupation. Convictions rested on unreliable testimony of prisoner informants, who received substantial benefits before and after their testimony, was unsupported by objective evidence, yet continues to be credited by courts. We believe these trials, from beginning to end, were fraught with perjury and prosecutorial misconduct. However, the truth is not altogether inaccessible. In particular, it will be profitable to compare what Witness X testified in one trial with what he testified in others, an exercise too time-consuming for most defense counsel.

This booklet is based on a series of essays that appeared in *The Free Press Express* and on the website “Re-ExaminingLucasville.org” in preparation for a conference at Columbus State Community College on April 19-21, 2013, devoted to “Re-Examining the Lucasville Uprising.” Putting these articles on a website, in the *Free*

Press, and in the format of this short book, introduces the story to people who get most of their information from the internet or may not have seen the earlier publications.

I have written a book about the Lucasville uprising, *Lucasville: The Untold Story of a Prison Uprising*, published in 2004 by Temple University Press. A second edition, with a Foreword by Mumia Abu Jamal, was published by PM Press, Box 23912, Oakland, CA 94623, in 2011. And much of the evidence on which these chapters were based was pinpointed in a law review article entitled “*Napue* Nightmares: Perjured Testimony in Trials Following the 1993 Lucasville, Ohio, Prison Uprising,” *Capital University Law Review*, v. 36, no. 3 (Spring 2008).

I should add that I have read, and do not indiscriminately discount, Officer Larry Dotson’s narrative of his experience as a Lucasville hostage. For example, his account of how, blindfolded as he was, after the press conference on the morning of April 14 he heard a “dramatic increase of verbalized tensions within L-corridor,” corroborates what I learned from other sources.

Unlike a case where there is one homicide and one defendant, such as the Troy Davis and Mumia Abu Jamal cases, the Lucasville events involve ten homicides and approximately fifty men indicted and tried. (The reader may be helped by the chronology compiled by Alice Lynd that appears as an Appendix at the end of this booklet.)

Appeals of the five death-sentenced Lucasville defendants—Siddique Abdullah Hasan f.k.a. Carlos Sanders; Keith LaMar a.k.a. Bomani Shakur; Jason Robb; George Skatzes (pronounced “skates”); and James Were a.k.a. Namir Abdul Mateen—are in the federal courts. As of this writing, the next event open to the public may be an oral hearing

in Cincinnati before the United States Court of Appeals for the Sixth Circuit in the case of Keith LaMar.

Several other defendants—such as Darnell Alexander, Cecil Allen, Thomas Blackmon, Derek Cannon, Greg Curry, Leroy Elmore, Eric Girdy, Timothy Grinnell, Aaron Jefferson, Edward Julious, Kenneth Law, Rasheem Mathews, Johnny Roper and Orson Wells—are serving long sentences. Because these men were not sentenced to death they are no longer represented by counsel.

A number of prisoners who were in L-block during the rebellion and became prosecution witnesses have been released. These informants include Robert Brookover, Stacey Gordon, Miles Hogan, Louis Jones, Stephen Macko, Rodger Snodgrass, and Timothy Williams. Some of them are behind bars again for later offenses.

We do not forget the families of educator Beverly Jo Taylor and correctional officer Robert Vallandingham, who were murdered at SOCF, or the officers who were taken hostage but survived.

Contradictions

There is no DNA evidence that might throw conclusive light on what happened in L-block. Prosecutor Hogan, in the trial of George Skatzes, told the jury in his opening statement, “there’s no physical evidence that links George Skatzes to these crimes.” *State v. Skatzes* (Ct.Com.Pl. Montgomery Cty.), Case Nos. 94-CR-2890 and -2891, Transcript at 1566. And Sergeant Howard Hudson of the Ohio State Highway Patrol, who supervised the State’s investigation after the Lucasville disturbance, testified that there was **no physical evidence that linked any suspect to any weapon or any suspect to any victim**. Tr. at 1913.

Furthermore, where there was objective evidence, as in the testimony of medical examiners, often it flatly contradicted what prosecutors were telling the jurors. For example:

A contradiction between objective medical testimony and prosecution theory occurred in the trials of Jason Robb, James Were (also known as Namir Abdul Mateen), George Skatzes, and Siddique Abdullah Hasan (formerly Carlos Sanders) for the murder of Officer Vallandingham. The medical examiner who testified in those trials was Dr. Patrick Fardal, chief forensic pathologist and deputy coroner for Franklin County. In the Robb trial, the prosecution offered informant testimony that the men who killed Officer Vallandingham stood on an object like a metal weight bar and rocked back and forth on his neck, crushing the trachea. Dr. Fardal testified that there was “no injury to the voice box or the trachea” and that “Mr. Vallandingham died solely and exclusively as a result of ligature strangulation.” *State v. Robb* (Ct.Com.Pl. Franklin Cty.), Case No. 94CR-10-5658, Tr. at 4433, 4442. Undaunted, the prosecution presented the same lurid testimony about a weight bar in Hasan’s trial a year later. Dr. Fardal once again stated under oath that the cause of death was ligature strangulation, that the larynx had not been crushed, and that he could say with a reasonable degree of scientific certainty that there had been no rocking back and forth on Officers Vallandingham’s neck by two men standing on a weight bar. *State v. Sanders* (Ct.Com.Pl. Hamilton Cty.), Case Nos. B-953105 and C-960253, Tr. at 4166-67, 4174-76. Dr. Fardal testified similarly in *Skatzes*, Tr. at 4853, and *State v. Were II* (Ct.Com.Pl. Hamilton Cty.), Case No. B-9508499 (2003), Tr. at 1258.

Who Killed Officer Vallandingham?

The fundamental incoherence between, on the one hand, the narrative offered by prosecutors to southern Ohio juries, and, on the other hand, a fair-minded later investigation, is suggested by the fact that the State of Ohio still does not know who killed Officer Vallandingham.

There is general agreement of all parties that Officer Vallandingham was murdered by prisoners in pod L-6 on the morning of April 15. Who were these murderers?

On January 18, 1996, **prisoner Alvin Jones a.k.a. Mosi Paki** was tried before an administrative body known as a Rules Infraction Board (RIB) for being one of two killers. Jones was found guilty. Sergeant Howard Hudson, the State's chief investigator of the Lucasville murders, signed a summary of his own witness testimony to the RIB including the statement: “[**Kenneth**] **Law took himself out of act & replaced himself with inmate Darnell Alexander.**” (Emphasis added.) Thus, as of 1996, the State identified Officer Vallandingham's hands-on killers as Alvin Jones and Kenneth Law.

On February 24, 2004, however, Chief Lucasville Prosecutor Mark Piepmeier and Assistant Prosecutor William Breyer filed a “Motion to Dismiss Defendant's Petition to Vacate” in the Skatzes case wherein they outlined a theory that Carlos Sanders had ordered James Were to supervise the killing of Officer Vallandingham, and stated on page 26 of the brief that “**Inmates Law and Allen were the other two participants.**” (Emphasis added.) “Allen” was Cecil Allen, another Lucasville defendant.

Thus, the State of Ohio has identified four men—Alvin Jones, Kenneth Law, Cecil Allen, and (in place of Law) Darnell Alexander—as possible candidates for the two men who killed Officer Vallandingham.

In 2010, documentary filmmaker Derrick Jones interviewed Daniel Hogan, who prosecuted Robb and Skatzes and is now a state court judge. Hogan told Jones on tape: “I don’t know that we will ever know who hands-on killed the corrections officer, Vallandingham.” Later Mr. Jones asked former prosecutor Hogan: “When it comes to Officer Vallandingham, who killed him?” and Mr. Hogan replied: “I don’t know. And I don’t think we’ll ever know.”

If Not Them, Then Who?

Unsure who the actual killers of Vallandingham were, the State concentrated at trial on naming those who it claimed **ordered** the killing: Sanders, Robb, Skatzes and Were. All four men were said to have been present at a meeting of prisoner representatives between 8 and 9 a.m. on the morning that Officer Vallandingham was killed, Thursday, April 15.

The critical evidence was a so-called tunnel tape that secretly recorded the conversation above the tunnel in pod L-2. The transcript of Tunnel Tape 61 was revised over a period of two years in preparation for the trials. Prisoner informants Anthony Lavelle and Rodger Snodgrass took part in the editing process, supposedly identifying for members of the prosecution team the voices of prisoners who were present at the meeting. Nevertheless, the product was so problematic that, in the second trial of James Were, Judge Fred Cartolano ordered the court’s own reporter to listen to Tunnel Tape 61 over a weekend and report her corrected version. When the reporter testified on Monday

that what she heard was dramatically different from the version of Tunnel Tape 61 offered as an exhibit by the State, Judge Cartolano abruptly ordered that her work product should be disregarded and the prosecution's version received into evidence.

Even so, Tunnel Tape 61 does not report a decision to kill a hostage guard. The transcript of Tunnel Tape 61 that became the official version, first at the Robb trial and then in later proceedings, is available to the reader as an appendix to the first and second editions of my book, *Lucasville*. The transcript shows that the prisoners who took part in the April 15 meeting certainly discussed killing a guard. But, recognizing the grave possible consequences of such action, the discussants agreed to wait until a second meeting later that same day to make a final decision.

Given the State's inability to determine who did the actual murder and the inconclusive content of Tunnel Tape 61, a fair assessment of who ordered the killing of a hostage officer requires more than a transcription of that tape. Such an assessment must examine what each prisoner in question did and said, individually, at the meeting and afterwards.

For the moment, let us consider only the alleged role of Hasan (Sanders), whom the State portrayed as the mastermind and supreme leader of the whole insurrection.

Informant Rodger Snodgrass testified at Hasan's trial that Hasan was present at every meeting of the prisoners in rebellion and played the role of "lead chair" at the morning meeting on April 15. It was Hasan, Snodgrass stated under oath, who called for a supposed "vote" on whether to kill a guard. *State v. Sanders*, Tr. at 2651.

Yet the transcript of Tunnel Tape 61 is unclear whether Hasan was even present at the meeting. In James Were's first trial, Sergeant Howard Hudson was asked if he

recognized the voices on Tunnel Tape 61. He said that he did, and named the men whose voices he recognized. Sergeant Hudson was asked and answered: “Q. [Did you hear] any voice that you have identified as belonging to Hasan, the Muslim faction leader, the imam? A. No, sir, I don’t believe he appears.” *State v. Were I* (Ct.Com.Pl. Hamilton Cty.), Case No. B-9508499 (1995), Tr. at 1037, see also 1046. The prosecution’s own transcript of Tunnel Tape 61 shows that Stanley Cummings, not Hasan, chaired the meeting on the morning of April 15.

Perhaps recognizing the problem they would face in connecting Hasan with the April 15 meeting, prosecutors presented to the Were and Sanders juries an imagined sequence of events in which, later that morning in pod L-6, Hasan directed Were to direct the killers to murder an officer.

This scenario rested entirely on the testimony of a single prisoner, Kenneth Law, who was at the time an informant. In Chapter 6 we shall follow the concoction of this falsehood step by step as it evolved and was used at trial in 1995-1996, and then unraveled when Law recanted.

The Law of Prosecutorial Misconduct and What Is to Be Done?

Here we shall pause in the recitation of official skullduggery and ask, as a conclusion to this chapter, What is the law of prosecutorial misconduct? And if we satisfy ourselves that such misconduct occurred in the Lucasville prosecutions, what can we do about it?

The knowing use of false or perjured testimony constitutes a denial of due process if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. *United States v. Lochmondy*, 890 F.2d 817, 822 (6th Cir. 1989),

citing *United States v. Bagley*, 473 U.S. 667 (1985). The same result obtains when the prosecutors, although not soliciting false evidence, allow false evidence to go uncorrected when it appears. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Giglio v. United States*, 405 U.S. 150, 153 (1972). And the principle that a State may not knowingly use false evidence, including false testimony, to obtain a conviction, continues to apply when the false testimony goes merely to the credibility of the witness, because the jury's "estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence." *Napue*, 360 U.S. at 269.

The burden in establishing prosecutorial misconduct is on the defendant. It is not enough to show that two government witnesses testified differently. In order to prevail on a claim that his or her due process rights had been violated by the use of perjured evidence, a defendant must show the statements (a) were actually false; (b) were "material," that is, sufficiently significant to have potentially caused a different outcome; and (c) were known or should have been known by the prosecution to be false. *United States v. O'Dell*, 805 F.2d 637 (6th Cir. 1986), *cert. denied*, 484 U.S. 859 (1987).

Underlying these formulations there is an interesting history going back to the false imprisonment of a radical labor organizer named Tom Mooney at the time of the First World War. See the opening pages of my article, "*Napue* Nightmares." But for us, confronting the 20th anniversary of the apparent miscarriage of justice in the Lucasville trials, there is a more immediate question: What can we do about it?

One of the Five said to Alice and myself more than fifteen years ago: "I don't believe in the criminal injustice system. We have to reach the court of public opinion." He hoped that we could develop a documentary like *The Thin Blue Line* to prove the

innocence of the prisoners sentenced to death. The support campaign outside the courts may well have contributed to the reversal of the death sentence in the case of Mumia Abu Jamal.

Each of the Lucasville prisoners condemned to death has a separate case and a separate defense team. Separate individual cases do not readily demonstrate the **patterns** of prosecutorial misconduct that affect all Lucasville defendants, like the blatant use of uncorroborated snitch testimony. We need an out-of-court strategy.

There are important precedents. In 1975, Governor Hugh Carey of New York proclaimed an amnesty for both prisoners and guards involved in the Attica events of 1971. In 2000, after the grounds for convicting several defendants had been shown to be unreliable, Governor George Ryan of Illinois declared a moratorium on executions. Later, he pardoned four prisoners and commuted the sentences of the remaining prisoners on death row to life without the possibility of parole. In 2011, Governor Pat Quinn signed a bill abolishing the death penalty in Illinois.

At the 20th anniversary conference in April 2013, we must discuss our strategies for achieving a comparable result in Ohio.

2. WHAT CAUSED THE UPRISING?

History books often contain a chapter that tries to answer the question: What caused such-and-such a revolt or revolution?

For example: What caused the “Boston Massacre” in 1770 when British troops stationed in Boston fired on a crowd that was pelting them with frozen snowballs and oyster shells? What caused the “Boston Tea Party” of 1773 when chest after chest of tea imported from Great Britain was thrown into Boston harbor? What caused the beginning of actual warfare at Lexington and Concord on April 19, 1775?

It is very difficult to be sure why human beings suddenly throw caution to the winds, and, knowing that there may be enormous consequences, take a stand and risk everything. Unsure as to the real causes of a rebellion, the historian may take refuge in a chapter title like “The Gathering Storm.”

Let’s see if we can do better regarding the causes of the longest prison uprising in United States history in which lives were lost, at the Southern Ohio Correctional Facility (SOCF) in Lucasville, April 11-21, 1993.

The Authorities’ Account of Causes

After the rebellion, there were several official investigations and reports as to why the “riot” had occurred. Among these were:

- A report commissioned by Ohio Department of Rehabilitation and Correction (ODRC) director Reginald Wilkinson on “The Initial Hours,” 3 to 6 p.m. on April 11,

1993. This inquiry focused on the intriguing question, Why didn't the authorities respond more quickly and effectively when the disturbance began in L-block?

- A Time Line concerning the activity of the Hostage Negotiating Team.
- A report by the Ohio State Highway Patrol, prepared in November 1993, and largely devoted to rebutting facts alleged in the work of the Correctional Institution Inspection Committee (CIIC). (The CIIC is an oversight body consisting of four members of the Ohio Senate and four members of the Ohio House of Representatives.)
- An "Interim Report" on the riot by the CIIC, issued on April 11, 1994.
- A report entitled "Technical Assistance Visit" by Lanson Newsome, a criminal justice consultant.

The most substantial investigations conducted after the end of the uprising were the so-called "Mohr Report," overseen by legislators headed by Gary C. Mohr, presently ODRC director; a report by AFSCME Local 11, the union of correctional officers; and a report by prison expert Steve Martin, in support of a lawsuit filed by Attorney Alphonse Gerhardstein on behalf of various parties injured during the eleven days.

The Mohr Report, entitled "Disturbance Cause Committee Findings," was issued on June 10, 1993, only two months after the beginning of the disturbance. The Report called attention to a series of objective factors including:

- Following the murder of SOCF educator Beverly Jo Taylor in 1990, Warden Arthur Tate was appointed and instituted a set of repressive practices known as "Operation Shakedown."

· SOCF was overcrowded. Operation Shakedown established a population ceiling of 1,609. On April 11, 1993, the prisoner population was 1,804. Three quarters of the maximum security prisoners at SOCF were double celled.

· After an assault in 1992 on a correctional officer at the Mansfield Correctional Institution (ManCI), and the officer's subsequent death from medical negligence, 492 close or medium security prisoners were transferred from SOCF to ManCI. About the same number of prisoners, many of them young and militant and 96% of them classified maximum security, were transferred from ManCI to SOCF.

· SOCF was located in an overwhelmingly white rural community. The great majority of correctional officers were white; 57% of the prisoners were African American. Between January 1992 and April 1993, 74% of all reported use of force cases involved black inmates.

Among the documents attached to the Mohr Report there is one of particular interest. Some prisoners have speculated that the warden, or the guards, wanted a riot at Lucasville so as to justify construction of a new "supermaximum security" prison or the employment of more correctional officers. In the Mohr Report appendix there is a letter from Warden Tate to South Region Director Eric Dahlberg, dated March 22, 1993, approximately three weeks before the disturbance began. The letter seeks funds for a "maximum security unit . . . to be constructed in the existing space formerly known as the death-row recreation area in J block." Jason Robb worked as a plumber in SOCF at the time. He says he saw the blueprints for the new "unit." It was to be a free-standing structure, half underground, with 100-150 cells. (The supermax built at Youngstown after

the uprising had cells for 504 prisoners.) Jason recalls flags in the grass of the recreation yard to mark the boundaries of the proposed building.

The immediate cause of the uprising was Warden Tate's insistence that prisoners submit to testing for TB by means of injection of a substance containing phenol, regarded by many Muslim prisoners as a form of alcohol. Hasan brought to the Warden's attention a letter from Muslim religious authorities in Port Elizabeth, South Africa, condemning the test as contrary to the Islamic religion. On April 5, 1993, the warden convened a meeting with three Muslims: Siddique Abdullah Hasan (Carlos Sanders); Namir Abdul Mateen (James Were); and Taymullah Abdul Hakim (Leroy Elmore). The Muslims explained their concern and called attention to alternative means of testing for TB.

After the meeting, Hasan sent a "kite" or written message to the warden that stood his ground but was extremely conciliatory in tone. The "Report and Recommendation" of the guards' union contains a remarkable statement about Warden Tate's response. The union's Report states that the warden's response "appears unnecessarily confrontational" and was "a perhaps misplaced display of 'we are running the prison' attitude." AFSCME Report, Bate-stamped page 00112 and note 14.

Mr. Martin's Report made use of many depositions and investigative interviews with prison staff. Martin concluded that: 1) Three members of the warden's staff warned him not to proceed with a plan for TB testing that would cause the whole prison to be locked down and each prisoner to be injected in his cell, if necessary by force, in plain view of other prisoners in the pod; 2) Warden Tate departed SOCF on the afternoon of Good Friday, April 9, leaving an institution in which staffing levels would be

“dangerously low” because of the Easter holiday and without informing relatively inexperienced weekend shift supervisors of the “volatile” state of the prison.

The most important document produced by the authorities concerning the causes of the rebellion was a memorandum dated November 30, 1989, several years **before** the uprising in April 1993. Indeed, it was written **before** the murder of educator Beverly Jo Taylor, and **before** the consequent appointment of Warden Arthur Tate and the beginning of Operation Shakedown. This memorandum by Shirley Pope, Senior Research Associate, CIIC, is addressed to Terry Morris, Warden, SOCF. It is entitled “Concerns Pertaining to Unit Management and Snitch Games.” It is stamped CONFIDENTIAL.

The memorandum begins by describing how it came to be written. From August 21, 1987 to November 1, 1989, 427 prisoners (more than a fifth of SOCF prisoners) wrote to the CIIC. According to Ms. Pope, 180 prisoners, or 42 percent of the total number of SOCF correspondents, wrote to the CIIC about concerns pertaining to “Personal Safety.” The next most frequent category of complaints was “Complaints Against Staff,” voiced by 119 or 28 percent of prisoner correspondents.

Also, between March and November 1989, CIIC staff interviewed more than 102 prisoners. As of the date the memorandum was written, an additional 91 prisoners had requested interviews, and “more have been interviewed when they visited this office after being paroled from SOCF.” Staff, too, had been extensively interviewed. These interviews, Ms. Pope stated,

were like no others in my nearly 12 years with the CIIC. . . . They spoke of the relationship between snitch games and unit management, violence, gangs, racial tension, drugs, gambling, sex and extortion rings, job assignments, cell assignments, unit moves, lack of personal safety, fear of other inmates and distrust of staff.

Beginning in Fall 1986, the memo went on, there had been increasing reports from prisoners whose lives had been threatened or who were being extorted, “some of whom had attempted or were contemplating suicide due to their denial of PC [Protective Control],” as well as an increase in complaints from “those seeking transfer for personal safety reasons, some of whom had already been stabbed.”

Specific incidents reported to the CIIC included the account of an officer who “wrote that he paid \$50 to an inmate to stop a hit [a stabbing] on another officer,” and the murder of prisoners Tim Meachum, Billy Murphy, and Dino Wallace. “Snitch games,” as understood by Ms. Pope, implicated staff who “reportedly broke confidences by running to the predator with what was said, or reportedly lying to the gang with claims that the inmate snitched on them regarding their drug deals, [and] those who reportedly caused unwarranted disciplinary action to be taken against an inmate as a reported favor to a snitch.”

Regarding weapons, the memorandum narrated, it was alleged that knives could be bought from staff, and that “a staff person allegedly provided a gun that is reported to be hidden in the institution (whereabouts unknown).” Inmates claimed staff had approached them “offering to make it worthwhile if they would stab another inmate.” One victim of a stabbing claimed that he knew it was coming because his cell was shaken down daily to ensure that he would have no weapon when attacked. “A security staff person reportedly apologized to him afterwards, explaining that he has a family. . . . In another case, after a stabbing, a staff person reportedly approached the inmate who [had done the stabbing] and said, ‘Why didn’t you kill the son of a bitch?’”

What this memorandum shows is that fundamental causes of the 1993 rebellion appear to go back before Ms. Taylor was murdered, before the warden whom prisoners called “King Arthur” was appointed, before the humiliating and dehumanizing practices of Operation Shakedown were put in place.

The most devastating sentence in this devastating portrait of a snakepit behind bars is the following, written (to repeat) in 1989: “[The prisoners] **relayed fears and predictions of a major disturbance unlike any ever seen in Ohio prison history.**” (Emphasis added.)

What the Prisoners Themselves Said

Before, during, and after the eleven days, the prisoners in rebellion had no obvious way to tell their side of the story.

On the first full day of the L-block occupation, Monday, April 12, prisoner Anthony Lavelle improvised a public address system to broadcast the prisoners’ demands. The authorities thereupon turned off electric power in L-block. The prisoners responded by writing their demands on bedsheets and hanging the sheets out of windows in the occupied pods. These lists of **what the prisoners wanted** appear to provide the best evidence of **the causes of their rebellion as perceived by the prisoners.**

The bedsheets presented the following demands:

- No petty harassment, walking in crowded groups behind yellow lines, forced to wear ill-fitting clothes, haircut standards applied at a whim of officers. Arbitrary rules created to appease an officer’s anger.
- Reduce the overcrowding.
- Low security inmates should not be in SOCF.

- [You are] locked in a cell with another inmate you can't get along with.
- No more forced integrated celling.
- Mail and visiting [policies] are arbitrarily applied.
- Phone calls to be able to speak to their families other than 5 minutes at

Christmas.

- Abolish unit management, also security status ratings (Max 3 & 4).
- Complete overall review of records of all inmates for parole and transfer status.
- Ban the use of unsubstantiated criminal records, dismissed R.I.B. and court cases

. . . at parole hearings.

- Inmates' committee needed for cross review with staff overseers.
- Reasonable pay per work assignments.
- Medical treatment that fits the medical guidelines, many people here are given

aspirins for serious medical problems.

- Food preparation and variety needs to be seriously upgraded.
- Education programs have been so diluted as to only accommodate those of a

lesser security.

- Ideal programming, outside help from statewide groups.
- Agree not to destroy personal property.
- If peaceful ending [to the uprising], cameras present when officers enter.
- Medical personnel for the injured.
- No rep[risals] against any inmates.
- No selection of supposed leaders!

In trials held after the negotiated surrender, prisoners involved in the uprising continued their efforts to explain why they had rebelled. As I describe in my book *Lucasville* (2nd edition at pages 156-159), the most determined effort to introduce such evidence came in the trial of the alleged leader of the disturbance, Hasan.

The judge at Hasan's trial was a former Cincinnati prosecutor. The outrageous bias evident in his rulings included the following:

First, the judge permitted prosecutors to say in Opening Statement, Tr. at 1153: "This riot was the idea of one man. This riot was planned by one man. This riot was organized by one man," and in Closing Argument, Tr. at 5055, 5067: "Whose riot was this? . . . Who called for this riot? . . . Ladies and gentlemen, first and foremost, without question this was his [Hasan's] riot." Yet when Warden Tate testified and defense counsel tried to question him about prison conditions that caused the riot, Judge Cartolano barred that line of questioning, stating, "This is a murder case. It has nothing to do with the riot, except that it happened in a prison at the time of the riot." Tr. at 1399-1400.

Second, the defense team was anxious to show that an alternative means of testing for TB had already been used at Mansfield Correctional Institution and to this end called a prisoner named Frederick Crowder. Judge Cartolano refused to let Mr. Crowder testify, opining: "This case is not a case concerning the riot. . . . The justification or the necessity or the wrongness of the riot is irrelevant. . . . I don't care what they did at Mansfield concerning a TB testing. It is irrelevant." Tr. at 4666.

Finally, and most revealingly, Judge Cartolano refused to permit testimony during the sentencing phase of Hasan's trial by an expert witness named Joseph R. Rowan. Mr.

Rowan is an authority on prisons who had testified as an expert in 150 trials. He was prepared to testify that “it is highly likely this riot could have been prevented.” The judge forbade Mr. Rowan from testifying, declaring that “riots are not created by the prison. Riots are created by the inmates.” Tr. at 5332.

To be sure, maximum security prisoners at SOCF in 1993 are not precisely comparable to the well-to-do gentlemen in wigs and knee britches who assembled at Carpenters Hall in summer 1776 to declare independence from Great Britain.

But there are similarities. Prisoners in L-block might well have said, as does the Declaration of Independence: “Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shown, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed.”

But, it was said in 1776, and could also have been said in 1993: “When a long Train of Abuses and Usurpations, . . . evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.”

3. NEGOTIATING STRATEGIES

A Tragedy?

When people use the word “tragedy,” they ordinarily mean something completely bad and sad, like the mass killings in the movie theater in Aurora, Colorado. Almost as many human beings were killed during the eleven-day uprising in Lucasville (ten) as in the Aurora movie theater (twelve). But does the word “tragedy” adequately describe what happened at the Southern Ohio Correctional Facility?

I think the correct answer is, Yes, but in two different ways. One of the meanings the dictionary gives for “tragedy” is “a lamentable, dreadful, or fatal event or affair,” a “calamity,” a “disaster.” The dictionary gives an example: “the tragedy of the President’s assassination.” Certainly the Lucasville uprising was such a tragedy. The ten persons murdered were unarmed and outnumbered. They never had a chance.

But the dramatic presentations in ancient Athens or in Shakespeare’s London were tragedies in a second sense. The “tragic hero” in these plays, like the Greek king Oedipus, or Hamlet and Othello in the plays of Shakespeare, was a well-intentioned person who had a “tragic flaw.” The flaw was some aspect of the hero’s character that brought him down and caused his destruction.

One can look at the Lucasville events in this way, too. When prisoners sought to occupy L-block they did not intend to kill anyone. Nor can the prison administration be fairly accused of desiring the death of Officer Vallandigham. Somehow the chain of

events spun out of the control of both sides, prisoners and prison administrators. Things happened that nobody wanted to happen.

Let's take a closer look. How did the uprising begin? What were the hopes of the prisoners involved? What about the state's response? Why did the authorities turn off the water and electricity, and rebuff the prisoners' attempts at negotiation, on Monday, April 12? How important were the words used by the state's public information officer, Tessa Unwin, on April 14?

What Were the Prisoners Trying to Do?

During the early afternoon of Sunday, April 11, a group of Muslim prisoners gathered on the recreation yard. They had been discussing all week Warden Tate's plan of testing every prisoner for TB by injecting a substance that contained alcohol, in violation of their religious beliefs. The prisoners' proposal that the test be done by some other means had been rejected by the warden. Additionally, prisoners had learned that SOCF was to be locked down while officers went from cell to cell and injected prisoners, by force if necessary, in full view of other prisoners. Prisoners working in the kitchen reported making bag lunches, presumably to feed inmates during the lockdown.

There was a precedent for a relatively brief and essentially nonviolent occupation of a cellblock that appeared to achieve results. In October 1985, conditions in J block, the disciplinary cellblock at SOCF, had deteriorated badly. Prisoners, among them John Perotti, Jay D. Scott and Eric Swofford, overpowered two guards and held them hostage for 15 hours. The inmates demanded transfers and better conditions, and described their demands to the media over prison telephones. The guards were released unharmed. Conditions improved.

In 1993, according to Muslim informant Reginald Williams, prisoners believed that if they could create just enough disturbance at SOCF to cause headquarters in Columbus to intervene, Warden Tate's intransigence about how to conduct TB tests could be overcome.

In Namir's first trial, Williams stated that the Muslims' plan was to occupy only a single living area, L-6, so as "to get someone from the central office to come down and address our concerns." *Were I*, Tr. at 1645. Williams repeated in Hasan's trial that "**we were going to barricade ourselves in L-6 until we can get someone from Columbus to discuss**" **how the TB tests might be done.** *State v. Sanders*, Tr. at 2129. On cross-examination there was the following exchange: "Q. You're saying the plan was to have a brief barricade in order to bring attention to the fact that religious beliefs were being trounced upon? A. Exactly." Tr. at 2215.

Williams also testified that when prisoners first approached the guards in L-block there was no intention to hurt them. Williams himself encountered Corrections Officer Michael Stump, "put the knife to his neck, and informed him to give me his keys and he won't get hurt. . . . He was saying, Don't stab me. And I was telling him: I'm not going to stab you. I just want the keys." But Stump reached for the knife and it broke in such a way that Stump held the blade. "So at that time guys just started jumping on him, because he had the knife in his hand." *State v. Sanders*, Tr. at 2140-41.

As in this encounter between prisoner Williams and Officer Stump, so throughout the seven occupied living areas or "pods" of L-block, prisoners and officers faced off and, after brief hostilities, officers were injured and taken hostage. **What those who**

began it seem to have imagined as a brief, nonviolent demonstration had become a full-scale prison rebellion.

Late the next morning, April 12, prisoners George Skatzes, with a megaphone, and Cecil Allen, carrying a very large white flag of truce, went out on the recreation yard to try to negotiate an end to the uprising. Skatzes said over and over that he and the other prisoners in rebellion wanted no harm to come to the hostage officers. After several frustrating minutes of shouted conversation, Skatzes called out: “We’re trying to do something positive. All you’re doing is fucking us around.”

Actually, Skatzes was correct. At that time, the State of Ohio and prison authorities did not want to negotiate.

What Was the State’s Response?

Remarkably, even astonishingly, the State of Ohio admits that when prisoners tried to negotiate, prison authorities deliberately stalled. Sergeant Howard Hudson of the Ohio State Highway Patrol was a member of the state’s hostage negotiation team during the eleven days and its principal investigator after the surrender. Testifying in Hasan’s case, Hudson stated: “The basic principle in these situations . . . is to buy time, to maintain the dialogue between the authorities and the hostage taker and to buy time. . . .” And again, “[T]he basic principle is to maintain a dialogue, to buy time, because **the more time that goes on the greater the chances for a peaceful resolution to the situation.**” *State v. Sanders*, Tr. at 2719, 2721 (emphasis added). As it turned out, he could hardly have been more mistaken.

Indeed, not content merely to drag out negotiations, prison authorities aggravated the situation on the morning of Monday, April 12 by cutting off both water and electricity

to L-block. One effect of cutting off water was to cause human waste to back up in L-block toilets. The result of cutting off electricity was more serious. Prisoners could, and did, monitor the ongoing crisis as presented in the media by using battery-powered radios. But by shutting down electric power, the state prevented prisoners from using conventional means to broadcast their message—their description of prison conditions and their demands for change—to the world.

Prisoner Anthony Lavelle was handy with electricity and by early Monday morning he had improvised loud speakers. As he put it, he “hook[ed] a PA system up somehow.” He found a six-foot-tall speaker that was bolted into the ceiling of the gym, and extracted it. He positioned the system in L-7. Through it the occupiers could direct a message toward the SOCF parking lot.

Another prisoner, the late James Bell a.k.a. Nuruddin, had made a tape with a list of demands. After the besieged prisoners started playing the demands, a helicopter used by the state drowned out the sound. The prisoners stopped playing the tape, then tried again, and again the helicopter “drowned it out.” Shortly thereafter, Lavelle testified, “the power was turned off, so that was the end of that.” *State v. Sanders*, Tr. at 3632-3633.

The prisoners’ notion that the authorities cut off power in order to obstruct their communication with the outside world is confirmed by Officer Larry Dotson, a hostage in L-block throughout the eleven days. He writes that reporter Tim Waller from WBNS-TV Channel 10 had offered on TV to help with negotiations. Warden Tate, according to Dotson, ordered the electricity cut off to L-block. Gary Williams, *Siege in Lucasville: The 11 Day Saga of Hostage Larry Dotson* (Bloomington: 1st Books Library, 2003), pp. 120-121.

Cutting off water and electricity had a still graver consequence. A morning meeting of prisoner representatives on Thursday, April 15, decided that unless the authorities restored water and electric power they would consider killing a hostage. At the direction of his colleagues, Skatzes used the telephone to communicate to negotiators the probability that a hostage officer would be killed if there was no immediate step toward restoration of utilities. There was no response, and Officer Vallandingham was murdered. Dotson reports that his fellow hostage Officer Anthony Demons stated immediately after his release on April 16 that Officer Vallandingham's death was caused by cutting off water and electricity in L-block. *Id.*, p. 166.

The foregoing helps to explain why the prisoners began to use sheets hung from windows to communicate with the world outside L-block, and why two of these sheets stated in large letters, "THE STATE IS NOT NEGOTIATING" and "This Administration is Blocking the Press from Speaking to Us!!!"

But there was one more well-intended but harmful episode that contributed to the tragic death of Officer Robert Vallandingham.

Why Tessa Unwin's Statement Mattered

About mid-morning on Wednesday, April 14, a public information officer for the prison department named Tessa Unwin met with representatives of the media. As was the case throughout the rebellion, reporters, who lacked any access to objective information about what was going on inside L-block, spun scraps of alleged information into hypothetical horrors.

The reporters asked Ms. Unwin about sheets hung from the windows of L-block

that threatened to kill a guard. She answered, according to a tape of her remarks, *State v. Robb*, Tr. at 1045-1046:

It's a standard threat. It's nothing new, that if we don't have something in three and a half hours, we're going to kill a hostage.

It's not a new thing. They've been threatening things like this from the beginning. It just happened to be something they hung out

We're talking to a lot of different people. Like we've said before, you know, some of them will get on and make a threat, some of them will get off and make a concession. That's just how it goes.

In themselves, Ms. Unwin's words were accurate and seem to have been intended to quiet the overdramatic apprehensions of the media.

However, in the context of prison culture as understood by both prisoners and correctional officers, her message communicated a lack of respect. All sources agree that Ms. Unwin's words provoked a strong hostile reaction among prisoners in L-block, listening on battery-powered radios. Officer Dotson, although blindfolded, heard a dramatic increase in "verbalized tensions." He reports shouts of "they don't think we're serious" and "we are going to have to give them one before they will take us seriously." *Siege in Lucasville*, p. 107.

What is fascinating is the assessment of the correctional officers' union, even after the end of the uprising. Here it is:

The circus-like atmosphere surrounding media coverage of this event took on tragic dimensions . . . when an off-hand comment by a Department press spokesperson was aired to the inmates. . . . [R]eporters began to interrogate the Departmental spokesperson regarding inmate death threats against the hostages which had been displayed on sheets hung from L-block windows that day. Instead of providing the standard "no comment" response, the spokesperson dismissed the threats by stating that they were merely "part of the language of negotiations."

As anyone familiar with the process and language of negotiations would know, **this kind of public discounting of the inmate threats practically guaranteed a hostage death!**

. . . When an official DR&C spokesperson publicly discounted the media threats as bluffing, **the inmates were almost forced to kill or maim a hostage to maintain or regain their perceived bargaining strength.**

Ohio Civil Service Employee Association, AFSCME Local 11, *Report and Recommendations Concerning the Ohio Department of Rehabilitation and Correction and Southern Ohio Correctional Facility* (Aug. 1993), p. 71 (emphasis added).

The AFSCME report concludes: “While it is impossible to ascertain the precise reason that Officer Vallandingham was murdered the following day, hostage accounts that his death was a direct result of this blunder by the Departmental spokesperson are logical and credible.” *Id.*, pp. 71-72. I agree.

Shared Responsibility

The revised edition of Officer Dotson’s book offers additional testimony from prison staff and official investigations as to the authorities’ share of responsibility for what happened. Gary Williams, *Siege in Lucasville* (revised edition), pp. 204-205.

Among his observations are these:

- “The rotary telephone system at SOCF effectively impeded prompt communication of the disturbance to key institutional staff who were not on-site.”

Warden Tate was not notified “until two hours after the initial disturbance.”

- “Tactical command was not effectively established and organized by SOCF during the first two hours, thereby forestalling and preempting an early opportunity to rescue five correctional officers and one inmate who had taken refuge in the rear stairwells of L-2, L-4, and L-5.”

• “The Disturbance Control Team was not assembled until two hours into the siege (5:00 p.m.); the SOCF Tactical Response Team was not assembled until 5:45 p.m.; . . . inmates had erected a barricade at the lower crash gate into L-corridor, thereby negating any real possibility for launching a successful assault on L-block.”

• The last sentence of this book’s revised edition, on page 271, offers the final judgment that ODRC “top-level administrators . . . lit the fuse that led to the explosive riot at SOCF.”

The point of all this evidence of misconduct or misjudgment by the authorities is not to argue that the prisoners in L-block were innocent. The prisoners, as a body, killed ten helpless human beings: nine fellow prisoners and a hostage officer. The point is that the authorities **shared the responsibility** for these deaths.

4. THE SETTLEMENT

Unlike the 1971 uprising in Attica, New York, when the armed forces of the State stormed the occupied recreation yard and more than forty persons were killed, the Lucasville rebellion ended with a negotiated agreement. An assault force was assembled at Lucasville and an assault plan was drawn up. (See my *Lucasville*, 2011 revised edition, p. 85.) But the assault never happened.

Instead, after the death of Officer Vallandingham the authorities became serious about negotiations. Gathering specifics from the lists of demands set forth on the sheets prisoners hung out of L-block windows, the authorities set forth what they would do about twenty-one of the prisoners' demands. Warden Tate signed the document to indicate his agreement.

The document was then proffered to the three negotiators chosen by the prisoners: Siddique Abdullah Hasan, representing the Sunni Muslims; Anthony Lavelle of the Black Gangster Disciples; and Jason Robb, a member of the Aryan Brotherhood. In this way the authorities were able to maintain the fiction that they were not “negotiating.”

The State did a second thing. Attorney Niki Schwartz of Cleveland had been involved in major litigation to correct conditions of confinement at the “Old Mansfield” prison. (This is the prison used as a movie set in the filming of *The Shawshank Redemption*.) ODRC general counsel Greg Trout called Attorney Schwartz to ask him to assist in a peaceful settlement at Lucasville. Attorney Schwartz agreed to contribute what he could and was flown to SOCF on Sunday, April 18.

Later Schwartz, as a witness in the trials of Jason Robb and Siddique Abdullah Hasan, described his experiences. He said that Trout had asked him to be an “attorney for the inmates, because the inmates had asked for a lawyer.” *State v. Robb*, Tr. at 5581. Once he arrived in Portsmouth, Schwartz was told by prison officials that “they didn’t want me to negotiate to try to improve the deal.” *Id.* at 5582.

Schwartz testified that legally the authorities were not bound to honor an agreement negotiated under duress, but he had taken the position that unless the authorities were prepared to honor the 21-point agreement, he was unwilling to go further. *Id.* at 5583-5584. The officials gave him their word that they would honor the agreement. They said, according to Schwartz: “There’s a lot of things in there we should have been doing anyway.” *Id.* at 5584.

The authorities asked Schwartz, because he had dealt with the prison authorities in the past, to “vouch” for the fact they intended to keep their word. *Id.*; also *State v. Sanders*, Tr. at 5485-5487.

What the 21-Point Surrender Agreement Promised, and Why It Didn’t Happen

In retrospect, the State kept its word with regard to many of the 21 points, but dramatically failed to honor the two most important. These were Point 2: **“Administrative discipline and criminal proceedings will be fairly and impartially administered without bias against individuals or groups,”** and Point 14: **“There will be no retaliatory actions taken toward any inmate or groups of inmates or their property.”** (Emphasis added.)

It should also be noted that even with regard to most of the other points, the State promised to do no more than see what could be done. For example, regarding the hated

restriction that limited telephone calls to family and friends to **one five-minute call per year**, the authorities responded in Point 12: “Attempts will be made to expedite current plans to install a new phone system.” As to the absence of “programs” for self-improvement under Warden Tate’s Operation Shakedown, Point 13 vaguely declared: “We will work to evaluate and improve work and programmatic opportunities.” Respecting interference with mail, prisoners were told in Point 15: “A complete review of all SOCF mail and visiting policies will be undertaken.”

These are promises so noncommittal that it is hard to imagine how prisoners could have filed grievances or lawsuits alleging their violation.

However, the critical provisions of the 21-point agreement (Points 2 and 14 prohibiting retribution against alleged leaders) were not enforced for a reason that had nothing to do with their wording. Investigators and prosecutors were under heavy pressure to convict and punish somebody.

A new capital punishment law had been enacted by the state legislature several years before but there had been no executions pursuant to its provisions. The residents of Portsmouth, the county seat of Scioto County, were incensed about the murder of Beverly Jo Taylor in 1990, which was repeated, so it seemed to them, by the strangling of hostage officer Robert Vallandingham in 1993. In each case, as perceived by the local population, a helpless hostage was brutally murdered by the person or persons who had kidnapped them. It didn’t help that the man who killed Ms. Taylor, a mentally-challenged inmate named Eddie Vaughn, was black, as were the unnamed “Muslims” who, the prosecution told juries, had killed Officer Vallandingham. Eddie Vaughn was not sentenced to death because of his mental limitations.

After the April 1993 events, about 26,000 residents of southern Ohio signed petitions and form letters demanding that the capital punishment statute of Ohio “be applied.” (See Appendix Three in *Lucasville*.)

The petitioners insisted that the time to begin such executions was now. The public officials to whom it was addressed, the petition concluded, “must accept their responsibility to carry out the wishes of the Voters of the State of Ohio.” The petition was addressed to the governor, the president of the Ohio Senate, and the speaker of the Ohio House; a delegation presented the petition at the state capitol in June 1993.

In such an over-heated atmosphere legal niceties were likely to be disregarded. It seems certain that persons who signed the petition were members of the juries that convicted Orson Wells and Eric Scales. Petition signers may also have been among the members of the grand jury that issued capital indictments in the summer of 1994. In November 2011, Chief Judge Susan Dlott of the Southern District of Ohio ordered that the names of those grand jurors be produced for Lucasville defense counsel in Hasan’s case.

Rebuttals

The best rebuttal witnesses to this oversimplified popular sentiment may be the hostage officers themselves.

We have already cited *Siege in Lucasville* written by hostage officer Larry Dotson in cooperation with Gary Williams. Dotson refers to a lawsuit filed by the “union recommended law firm” of Carr and Sherman. The pleadings and court orders in this litigation have recently come into the possession of the author.

The plaintiffs in Case No. 94-05290, in the Court of Claims of Ohio, were Robert Vallandingham's widow, Peggy Vallandingham, and hostage officers John Kemper, Richard Buffington, Darrold Clark, Kenneth Daniels, Harold Fraley, Conrad Nagel, Jeff Ratcliff, Robert Schroeder, Larry Dotson, and their families. Officer Michael Hensley and his family were added as plaintiffs when the complaint was amended in April 1995. Officers Rodney Pennington and Michael Stump, who were "seriously injured" although not taken hostage, were also plaintiffs. Defendants were the Ohio Department of Rehabilitation and Correction and three administrative agencies with oversight over the construction of public buildings.

According to the Complaint:

- The ODRC "knew or should have known of the prisoners' plan to riot before its occurrence" thereby intentionally and/or negligently placing Plaintiffs in a position of known danger.

- When the uprising began, the ODRC failed to protect hostage Plaintiffs by not following its own policies and procedures.

- The ODRC was responsible for making the critical decisions in negotiations and despite knowing "that the inmate captors knew their [that is, Defendants'] negotiation protocols," acted deliberately, negligently and/or with wantonness and recklessness and/or with negligence. Defendants' acts and omissions in negotiations included "refusal to negotiate in good faith."

- The ODRC allowed "false public information" to be disseminated that was "highly probable and/or foreseeable to result in serious bodily injury or death to the hostages." This is a reference to Ms. Unwin's statement on April 14.

• On or about April 11, 1993, officers had sought refuge in “safe havens” at the end of the cellblocks as they had been trained to do by the ODRC. It had been represented to the officers that these areas “were entry proof” due to their construction with steel bars but this proved not to be the case.

Officer Dotson tells us in his memoirs that before this lawsuit was filed, “It’s almost like they were only being kind to us so that we wouldn’t sue them. When we did, it was like ‘the gloves came off’.” Gary Williams, *Siege in Lucasville* (revised edition), p. 167.

Nevertheless, rather than contesting the truth of the allegations in the officers’ Court of Claims lawsuit, ODRC and the other defendants settled before trial. The amounts of money allocated to particular plaintiffs (one third of which went to their lawyers) included the following:

Peggy Vallandingham	\$850,000
Kenneth Daniels	150,000
Richard Buffington	120,000
Darrold Clark	250,000
John Kemper	380,000
Conrad Nagel	35,000
Larry Dotson	120,000
Jeff Ratcliff	200,000
Robert Schroeder	80,000
Rodney Pennington	55,000
Harold Fraley	50,000

Michael Stump	25,000
Michael Hensley	300,000

In addition, according to Officer Dotson, ODRC settled for \$4.1 million a class action filed on behalf of three groups of inmates: those who were killed, those who were injured, and those who lost property. Gary Williams, *Siege in Lucasville* (revised edition), p. 240.

Conclusion

It seems that the Southern Ohio Correctional Facility was a prison that had “gone wrong” before the murder of Beverly Jo Taylor in 1990 or Warden Tate’s refusal to consider alternative means of testing for TB in 1993. The decision to build a prison in an all-white community, where more than 90 percent of the guards were white men drawn from the area and more than 50 percent of the prisoners came from inner-city ghettos, set the stage for trouble. The further decision to implement a more restrictive prison regime after the tragic death of Beverly Jo Taylor in 1990 made trouble an everyday event at each of the more than 1500 cell fronts in SOCF.

During the uprising, the authorities deliberately stonewalled, that is, dragged out negotiations with the prisoners in rebellion, mistakenly assuming that “the more time goes on the greater the chances for a peaceful resolution to the situation.” The decision to cut off water and electricity, followed by the statement to the media on the morning of April 14 dismissing the prisoners’ threat to kill a guard, tragically resulted in the death of the hostage officer.

We shall now turn to examination of the investigation, prosecution and trials that led to convictions of individuals for the ten deaths that occurred during the uprising.

5. LAYERS OF INJUSTICE

Targeting the Leaders

The State does not know who the hands-on murderers were, they targeted the men whom they considered leaders and convicted them for aggravated murder on the basis of the doctrine of “complicity.”

The prisoners in rebellion saw it coming. On the bedsheets that they hung out the windows of L-block they demanded: “No selection of supposed leaders!” In their telephone negotiations the prisoners declared: “There must not be any singling out or selection of any inmate or group of leaders as supposed leaders in this alleged riot.” And in the list of 21 demands agreed to by the authorities as the basis for surrender, and signed by Warden Tate, Point No. 2 stated explicitly: **“Administrative discipline and criminal proceedings will be fairly and impartially administered without bias against individuals or groups.”**

But from the very first moments after the surrender, the authorities, whether investigators or prosecutors, were intent on blaming the supposed leaders. During an interview with Emanuel Newell, an injured prisoner, as he was being removed from L-block on the night of the surrender, a trooper asked: “OK, the leaders were Hasan, who else?” And, regarding George Skatzes, Newell answered “No” when asked: “Was he involved in the killing of the inmate next to you, in anyway?” And, “When the guard was taken out was he in anyways involved in it?” (OSHP Tape A-19, Interview #104.)

Emanuel “Buddy” Newell had no reason to make up testimony favorable to riot participants. He was assaulted with intent to kill by Rodger Snodgrass. But Newell states under oath in an affidavit that as he lay in the infirmary after the surrender, Lieutenant James Root, lead investigator Sergeant Howard Hudson, and Troopers Randy McGough and Cary Sayers talked with him. According to Newell:

These officers said, “We want Skatzes. We want Lavelle. We want Hasan.” They also said, “We know they were leaders. We want to burn their ass. We want to put them in the electric chair for murdering Officer Vallandingham.”

John Fryman was a prisoner who was assaulted by other prisoners and almost killed as the rebellion began. He was no friend of the insurrectionists. Confined to the prison infirmary after the surrender, Fryman was accosted by correctional officers. He later stated in an affidavit:

They made it clear that they wanted the leaders. They wanted to prosecute Hasan, George Skatzes, Lavelle, Jason Robb, and another Muslim whose name I don’t remember. They had not yet begun their investigation but they knew they wanted those leaders. I joked with them and said, “You basically don’t care what I say as long as it’s against these guys.” They said, “Yeah, that’s it.”

Testifying in Robb’s trial, Attorney Schwartz concluded that implementation of the assurance in Point Two of the settlement agreement that criminal prosecutions would be fair had been “an absolute disaster.”

Daniel Hogan, who prosecuted Jason Robb and George Skatzes, told filmmaker Derrick Jones that he believed that serious misconduct during the eleven days supposedly committed by members of the Aryan Brotherhood had been ordered by the highest-ranking member of the group in L-block. However, Hogan continued, AB members Jason Robb and George Skatzes “didn’t want to talk.” Accordingly, Hogan went on, he

proceeded against Robb and Skatzes, despite the fact that (so he said), “I don’t think they were the ones actually running the show.”

The Making of a Snitch

How were accomplices induced to become witnesses for the prosecution? Here is an example. (OSHP Interview #945.)

The investigator explained to the prospective witness: “We got this **sliding scale**.” If the prisoner says, “I ain’t saying nothing,” the investigator would recommend that he be charged with Aggravated Murder.

“Are we going to go to the prosecutor and say, ‘Hey, we think we ought to fry this guy’.” Or, do we say, “He was forced to do it.”

Do we say, “Murder without any specifications, and a sentence to run concurrently” with whatever he was already serving?

The prisoner asked the investigator, how could he testify while in prison with the men he would testify against? The investigator responded, “You won’t.” The investigator would tell the prosecutor, “He’ll testify if we can guarantee his protection.”

In this particular case, the prisoner wanted parole. He explained, he could clear up a lot “if they guarantee me a parole.” The interview continued:

[TROOPER 1]: I need to know what I can take to the prosecutors. . . .
What can you clear up for me that I can go tell the prosecutors about that we don’t already know? I’ve got to have something. . . .

[TROOPER 2]: You know what they’re going to say though? They’re going to say, “What can you tell us about Vallandingham?” They say that every single time. “What can this guy tell us about Vallandingham?” . . .” . . .

[TROOPER 1]: I need to w[h]et them a little bit. The more I w[h]et them, the more they’re willing to deal.

[PRISONER]: I have something for you. I'm ready to go home. I think you know what I'm saying.

[TROOPER 1]: Are you going to give me Vallandingham?

[PRISONER]: Yep.

Prosecutorial Discretion

As suggested by the troopers in the investigative interview, prosecutors exercise discretion in who they indict, what charges they bring, what penalties they seek, and whether or not to include death penalty specifications.

In exchange for testimony that leads to convictions, the prosecution—but not the defense—can offer immunity from prosecution, a plea bargain with dropped charges, reduced or concurrent sentences, protection while in prison, and letters to the parole board saying the prisoner cooperated with the prosecution.

The State of Ohio makes no apologies for its use of plea bargains in exchange for testimony. Anthony Lavelle was one of the principal witnesses against George Skatzes. At a sidebar during the Skatzes trial, the prosecutors explained to the judge, referring to Anthony Lavelle, “[T]he state told him, you are **either going to be my witness, or I’m going to come back and try to kill you**. He made his decision [to cooperate] based on that.” *State v. Skatzes*, Tr. at 4047.

In closing argument at the trial of George Skatzes, Prosecutor Hogan explained, Tr. at 5751, 6101:

Anthony Lavelle [testified]: [“I’ll tell you why I’m here; I was on my way to death row.”] . . . Anthony Lavelle doesn’t have any problem understanding what he did and where he was going. . . . The State cut a deal with him, that’s true.

. . . Mr. Skatzes had his opportunity and he chose not to take it. Had Mr. Skatzes taken it . . . Mr. Skatzes . . . would be up there on the witness stand

testifying and Mr. Lavelle could be sitting over there. I make no apologies for that.

. . . [B]y the nature of the crime the State is going to have to cut deals with people who have seen things, who have done things. . . .

Snitch Testimony Is Inherently Unreliable

Heightened reliability is required in capital cases. Convictions based on the testimony of informants, who are offered reduced charges, parole, or other benefits in exchange for their testimony, are inherently unreliable in the absence of independent and objective corroborating evidence connecting the defendant to the crime. The uncorroborated testimony of prisoner informants, so-called “snitch” testimony, was the principal basis for every Lucasville capital conviction.

Ohio seeks to guard against the perjury of snitches by requiring the judge to give the following instruction to the jury (ORC § 2923.03(D)):

The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.

However, common sense suggests that reading to a jury this long sentence that begins with a double negative and is made up of unfamiliar words is unlikely to protect a defendant.

In recognition of the unreliability of informant testimony, the House of Delegates of the American Bar Association resolved on February 14, 2005, that the ABA “urges federal, state, local, and territorial governments to reduce the risk of convicting the innocent, while increasing the likelihood of convicting the guilty, by ensuring that no prosecution should occur based solely upon uncorroborated jailhouse informant

testimony.” Likewise, the California Commission on the Fair Administration of Justice declared in 2006:

A conviction can not be had upon the testimony of an in-custody informant unless it shall be corroborated by such other evidence as shall independently tend to connect the defendant with the commission of the offense Corroboration of an in-custody informant cannot be provided by the testimony of another in-custody informant.

The Lucasville prosecutors ignored the necessity for objective corroboration of informant testimony.

Prosecutors have many ways to make perjured testimony appear convincing to a jury. For example, an informer may describe the scene of a crime with seeming truthfulness since, after all, often the witness was actually there and simply ascribes to others the actions he himself committed.

After determining which prisoners were prepared to become informants, prosecutors sought to ensure that their witnesses at trial would tell consistent stories. Many of the prospective witnesses were assembled at the Oakwood Correctional Institution in Lima, Ohio, at what became known as the “Snitch Academy.”

Emanuel Newell described life for the potential prosecution witnesses at Oakwood. Cell doors were left open. Commissary items were available in abundance as were special meals. Agreeing with Newell, prisoner Anthony Walker stated in a deposition that prospective witnesses at Oakwood got all the cigarettes they wanted and that their doors were never locked. Deposition of Anthony Walker, Feb. 3, 2006, *LaMar v. Warden*, Civ. No 1:04CV00541 (U.S.D.Ct., S.D.Ohio).

Newell also stated under oath that prisoners at Oakwood were encouraged to coordinate their narratives and, on occasion, prosecutors instructed witnesses what they

were to say. For instance, according to Newell, if a potential witness at the Snitch Academy described perpetrators who wore masks, “We were advised that because the prosecutors required specific visual identification” we should say that the accused did not wear masks and, moreover, that it was the accused who committed the crimes about which the witness was being questioned. Affidavit of Emanuel Newell, June 4, 2007, paragraphs 6-10.

Use of perjured testimony by an in-custody informant was not limited to the capital cases. Derek Cannon was tried for the murder of an inmate on the first day of the Lucasville disturbance. Cannon’s defense was that he was on the recreation yard when the uprising began, he returned to L-block briefly, but he did not enter L-6 where the victim was killed. At Cannon’s trial, the informant testified that Cannon had confessed not only that he murdered the inmate, but that Cannon had also tortured and murdered the hostage officer who was killed several days later. This informant was the last witness at Cannon’s trial. According to Cannon’s attorney, the judge said the jailhouse informant impressed some jurors as to what kind of a person Cannon was.

Derek Cannon **could not have been present** in L-block on April 15 when the officer was killed. Contemporaneous records, not made available to the jury, show that Cannon was taken off the recreation yard during the early hours of April 12, and he was transferred to another prison a few days later. Cannon is serving a sentence of 26 years to life.

In several aspects of the courts’ proceedings concerning the five men who were sentenced to death, prosecutors have been able to cite and rely on the law as pronounced by state and federal courts. But that doesn’t mean that these convictions and sentences are

just! It only means that these men, and other Lucasville defendants, are victims of what George Skatzes calls “the criminal injustice system.”

Let’s consider two of the judicial doctrines that stand between the Lucasville Five and light at the end of the tunnel.

The Death Qualified Jury

A jury’s recommendation of the death penalty must be unanimous. It takes only one juror in twelve to prevent a recommendation for death.

But under current law in state and federal courts, any potential juror who states that he or she opposes the death penalty under all circumstances will almost surely be “excused,” that is, excluded, from jury service in a capital case.

In contrast, a juror who indicates support for the death penalty is asked another question, namely, Would you follow the instructions of the judge about the law? If the juror answers, Yes, then that juror may be seated even though he or she may favor the death penalty just as strongly as opponents of the death penalty oppose it.

The following extracts show the doctrine of the “death qualified jury” at work during the “voir dire” (jury selection process) in the case of George Skatzes.

Juror #1

THE COURT: . . . I have a question I want to ask you. . . . [I]n a proper case where the facts warrant it and the law permits it, could you join in with others in signing a verdict form which might recommend to the Court the imposition of the death penalty?

A: No, sir.

THE COURT: You don’t believe you could do so?

A: I don’t believe so.

THE COURT: Under any circumstances?

A: No.

THE COURT: Could you tell me why?

A: I had a brother who was murdered and I found it in my heart to forgive that man. I would not have found him guilty to the extent that his life would be taken.

THE COURT: In other words, you feel that if you didn't do it in your brother's case, you wouldn't do it in any other case, right?

A: Right. . . .

[DEFENSE ATTORNEY]: . . . Do you feel that this is a teaching of your church?

A: Not so much a teaching of my church as it is an understanding of mine that I do not create life. I am not giver of life, so I feel that it's not my responsibility or within reason to expect me to take a life. . . .

THE COURT: You may step down.

Juror #8

THE COURT: . . . In a proper case, where the facts warrant it and the law permits it, could you join in with the other jurors in signing a verdict form which would recommend to the Court the death penalty?

A: Yes, your Honor.

[PROSECUTING ATTORNEY]: . . . We brought you here because we want to discuss with you your views on capital punishment. Can you share them with us, please?

A: I strongly believe in them. I wish they were enforced more often.

[PROSECUTING ATTORNEY]: . . . Do you believe the death penalty is the only appropriate penalty in all cases of an intentional killing?

A: Pretty much.

[PROSECUTING ATTORNEY]: Does that mean?

A: Yes.

[PROSECUTING ATTORNEY]: . . . You can think of the wors[t] crime that comes to your mind and if you find that person guilty at the first phase, we don't go straight to death. We have the second hearing at which point you would get additional evidence to consider in making your decision as to what punishment is appropriate. . . .

What we need to know is whether you could set aside your thoughts as to what you think the law should be and follow the law that the Judge gives you?

A: Yes.

[PROSECUTING ATTORNEY]: If you found someone guilty of a horrible, horrible crime, as bad as you can think of, would you be willing to keep an open mind and listen to the evidence at the second phase before making a decision as to which penalty is appropriate?

A: Yes.

[PROSECUTING ATTORNEY]: No matter how bad the crime?

A: Yes.

THE COURT: . . . We want you back [to serve as a juror in the case].

With the doctrine of the death-qualified jury before us, there should be no difficulty in understanding why, in such a high percentage of cases, Lucasville prosecutors either won a favorable jury decision or entered into a favorable plea agreement. At one public forum concerning George Skatzes, known to fellow prisoners as "Big George," an attender who had heard the dialogue between the judge and potential jurors commented: "Big George is in Big Trouble."

Studies cited by the American Bar Association and the American Law Institute indicate that the process of selecting a death-qualified jury produces juries that are more likely to convict the defendant during the guilt phase of the trial, and more likely to impose the death penalty during the sentencing phase. John Paul Stevens, retired Justice of the United States Supreme Court, stated when he was on the bench that this rule

“deprive[s] the defendant of a trial by jurors representing a fair cross-section of the community.” He is convinced that “the process of obtaining a ‘death qualified jury’ is really a procedure that has the purpose and effect of obtaining a jury that is biased in favor of conviction.” *Baze v. Rees*, 553 U.S. 35, 84 (2008) (Stevens, J., concurring in the judgment).

The Doctrine of Complicity

Under Ohio law, ORC 2923.03(F), whoever is guilty of complicity in the commission of an offense can be punished as if he were a principal offender. This means that men who were **not the actual or “hands on” killers** but who allegedly were associated with the murders that occurred during the Lucasville uprising **could be sentenced to death**.

A familiar hypothetical presents the problem of a group of bank robbers. Robber A is the driver of the getaway car. While his companions enter the bank, he stays at the wheel of their vehicle, perhaps listening to the car radio or reading the newspaper. Meantime, the men actually in the bank encounter difficulties, there is a scuffle, robber B uses his gun, and a bank teller falls to the floor, dead.

What should be the punishment of robber A? Under Ohio law he can be found to be “complicit” in the entire criminal course of conduct, and presumed to be just as guilty as the man who pulled the trigger. Moreover, whereas under Ohio law someone guilty of “conspiracy” to rob the bank would not be eligible for the death penalty, under the Ohio law of “complicity” everyone who participated in the crime would be exposed to the possibility of execution.

After Aaron Jefferson was convicted of striking the same fatal blow for which

George Skatzes had been convicted, an Ohio Court of Appeals considered the case. The court began its explanation by stating: “Skatzes contends that his due process rights were violated because the state charged and convicted two inmates—Skatzes and Aaron Jefferson—with the murder of David Sommers, when the evidence suggested only one fatal blow. He argues that these [were] ‘inherently factually contradictory theories’.”

Not so, the court continued. “The state’s theory was that both Skatzes and Jefferson were complicit in the crime; there was no way to prove who had inflicted the fatal head injury. . . . A defendant charged with an offense may be convicted of that offense upon proof that he was complicit in its commission.”

Jason Robb was the victim of a prosecution theory about Sommers’ murder that was equally bizarre. According to prosecution witnesses, Sommers chased Robb from L-2 to L-7, where Sommers was beaten to death by prisoners other than Robb. Yet Robb was convicted and sentenced to death for the Sommers murder!

In Summary

The Lucasville capital defendants were faced with an excruciating dilemma. If guilty, they could take a plea and get charges dropped and sentences reduced. But if they had not killed anyone during the eleven days, they did not want to plead guilty to something they did not do! They went to trial and tried to convince a jury of their innocence. But their juries were made up of men and women who were willing to recommend the death penalty; their trials were governed by the doctrine of complicity; and their trial court judges had no way to assure defendants of the good faith and credibility of prosecution witnesses.

6. THE MURDER OF OFFICER VALLANDINGHAM

We come now to what for most Ohioans, and certainly for folks living in Southern Ohio near the Southern Ohio Correctional Facility, is the heart of the matter: the murder of hostage officer Robert Vallandingham. Many will remember the grim faces of Officer Vallandingham's parents as they went from trial to trial of prisoners alleged to have been complicit in what happened to their son.

It is a key fact that prisoners unanimously considered Officer Vallandingham to have been one of the more decent guards, a man "just doing his job" at a time when jobs were hard to come by in that part of the United States. One prisoner remembers Officer Vallandingham helping him to make a telephone call to his home when a relative close to him passed on.

So, how did this tragic and unnecessary death happen? Because the facts are complex we will summarize the opposing positions, then lay out the evidence in detail. Citations for all asserted facts and quotations will be found in my article entitled "*Napue Nightmares*," published in the *Capital University Law Review*, v. 36, no. 3 (Spring 2008), and in my book *Lucasville*, 2nd edition (PM Press, 2011).

The State's Case: Robb, Skatzes, Sanders (Hasan), and Were (Namir) Were All Complicit in the Murder of Officer Vallandingham

According to the State:

1. On the morning of Thursday, April 15, between 8 and 9 a.m., there took place a meeting of representatives from the three main prisoner "gangs" present during the

uprising. Robb, Skatzes, and Were took part in the discussion. The meeting decided to kill a guard.

2. Skatzes then went on the phone and threatened that a guard would be killed unless water and electricity were turned back on.

3. Vallandingham was strangled, and prisoners placed a bar on his neck and rocked back and forth to make sure that he died. (See above: the autopsy revealed evidence of strangulation, but no evidence to support the allegation that anyone rocked back and forth injuring the voice box.) The killers acted under orders from Hasan and Were.

The Prisoners' Case: The Murder of Officer Vallandingham Was Masterminded by Prisoner Anthony Lavelle

On the contrary:

1. On April 14, Public Information Officer Tessa Unwin had angered prisoners in L-block by referring to their threats to kill a hostage officer as no more than the language of negotiations. Thereafter Anthony Lavelle, leader of the Black Gangster Disciples, began to recruit a group of men to kill a hostage.

2. The tape and transcript of the meeting on the morning of April 15 shows that killing a guard was discussed but no decision was reached.

3. At the end of the meeting, Skatzes agreed to go on the phone in a desperate effort to persuade prison authorities to restore water and/or electricity immediately.

4. After the April 15 meeting ended inconclusively, Lavelle went to L-1. Then he went to L-6 with two other prisoners and killed Officer Vallandingham. A number of prisoners who were in the L-block corridor testified that they saw the three men enter and

leave L-6. Were, who was present in L-6, assumed that Lavelle acted with permission from leaders of the uprising.

5. Lavelle told prisoners Leroy Elmore and Roy Donald that he had ordered the killing of the guard. Upon learning that leaders of the uprising had not authorized the murder, Were went to L-1 and knocked Lavelle to the ground.

6. Kenneth Law, upon whose testimony the prosecution relied to establish the participation of Hasan and Were in Officer Vallandingham's murder, recanted his testimony.

The Evidence

1. What Happened at the Morning Meeting on April 15? The meeting was taped by the FBI, using a microphone thrust into the ceiling of a tunnel underneath L-block. The transcript was imperfect and was edited with the help of informants Anthony Lavelle and Rodger Snodgrass. There is no reason to assume that it is completely accurate. Indeed, in the second trial of James Were defense counsel questioned its accuracy and Judge Cartolano ordered the court reporter to listen to the tape over a weekend and transcribe it, so that her transcription might be used. When she reported on Monday morning that what she heard was quite different from the transcript offered by the prosecution, the Judge changed his mind and used the prosecution's transcript.

The reader can make an independent judgment because the transcript offered by the prosecution and made part of the record at the trials of the Lucasville Five is Appendix 1 in both editions of my book *Lucasville*.

2. The Meeting Was Chaired by Stanley Cummings. The first point established was that someone should go back on the phone and demand "lights, water, people out

from in that tunnel.” Then the discussion turned to what should happen if the authorities refused to take the requested actions. It was agreed that if the state stonewalled, the prisoners would say that they were “turning it over to the hardliners.” But they would meet again before finally deciding to kill a hostage.

Lavelle, the prosecution’s main witness in the trials, made it clear in his testimony there was to be another meeting before a hostage was killed. In *State v. Were I*, Tr. at 1238, Lavelle was asked whether the understanding at the end of the meeting was that a guard was going to be killed. He responded: “No. When I left the meeting, the understanding was that we was going to meet up later on that afternoon and give them our final ultimatum.” Similarly in Hasan’s trial, *State v. Sanders*, Tr. at 3649, Lavelle testified that at the end of the morning meeting: “We hadn’t made a clear decision.” There was general agreement that nobody was to be killed without another meeting.

3. What Was George Skatzes Trying to Accomplish in Speaking with the Authorities Before and After the Morning Meeting? A criminal conviction requires proof of criminal intent. Unfortunately, and mysteriously, all tape recordings of the dialogue between Skatzes and prison negotiators between 9 and 11 a.m. on April 15 have disappeared. Notes made by Sergeant Hudson as he sat in the prison command center and listened to what was said were introduced into evidence. In addition, there are fragmentary notes made by officers listening in the tunnel under L-block.

We think the best way to understand what Skatzes was trying to accomplish during this anguished conversation is to consider what he did and said during the previous three and a half days, and what he did and said on April 15 during the afternoon and evening after Officer Vallandingham’s murder.

During the first hectic hours of the occupation of L-block, George Skatzes helped to save the lives of both correctional officers and prisoners.

On the afternoon of Monday, April 12, Skatzes, together with Muslim Cecil Allen, left the occupied cellblock and went out on the yard with a bullhorn to initiate the prisoners' first effort to try to end the occupation and save the lives of the officers taken hostage.

On Tuesday, April 13, Skatzes became the primary negotiator for the prisoners on the telephone.

On Wednesday, April 14, the day when Ms. Unwin spoke to the press and the day before Officer Vallandingham was murdered, Skatzes spent hour after hour talking with the state's negotiator, Dave Burchett. That evening they agreed that two hostages would be released in return for an opportunity for the prisoners to make live radio and television broadcasts of their negotiating demands. The next morning, over Skatzes' protests, the prisoner representatives rejected this arrangement, insisting instead that the authorities, as a first step, must restore water and electricity in L-block.

At the morning meeting on April 15, the other prisoners asked Skatzes to go back on the telephone and convey their demands for water and electricity.

Does it make sense to suppose that he did so as part of a plan to kill a guard? Officer Vallandingham was killed at some point before 11 a.m. According to notes on the negotiations made by officers in the tunnel under L-block:

- Skatzes was still on the telephone at 10:50 a.m., "talking about last night[']s deal."

· At 10:53 a.m., “a background voice was heard saying something about a dead body.”

· At 10:54 and 10:55 a.m., Skatzes was still talking on the phone, apparently negotiating.

· At 11:02 a.m., “Skatzes was still talking on the phone, content unclear, seems to be dealing with demands and how to work them out. (Seems to be talking about turning power on.) **Wasting valuable time.**” (Emphasis added.)

· At 11:05 a.m., Skatzes said something about 5 minutes or 35 minutes, the same minute at which four prisoners were seen coming out of the M2 gym door, dragging a sheet containing what turned out to be the body of Officer Vallandingham.

· At 11:06 a.m., no more of Skatzes voice was heard, and by 11:09 a.m. the prisoners who dragged the body onto the yard had gone back inside the M2 gym door.

Hostage officers Darrold Clark and Jeff Ratcliff had been held by Muslim prisoners in L-6. The two hostages sought Skatzes’ protection. Skatzes arranged to have them moved to L-2, where he slept in the doorway of their cell so that Clark would feel secure. When he learned of Officer Vallandingham’s murder, both officers testified, at Skatzes’ suggestion all three of them dropped to their knees and prayed together. Later, Skatzes went out on the yard to make a live radio broadcast and released Officer Clark to the authorities.

Officer Ratcliff, also unharmed, was one of the remaining hostages released at the time of the negotiated end of the occupation on April 21. If Skatzes “wouldn’t have come and got me,” Ratcliff told Skatzes’ jury during the mitigation phase of Skatzes’ trial, “I would probably be dead.” *State v. Skatzes*, Tr. at 6000A. The jury found Skatzes guilty of

Vallandingham's murder but, very likely because of Ratcliff's testimony, did not recommend the death penalty.

4. What Did Anthony Lavelle Do After the Morning Meeting on April 15?

Lavelle testified in the trials of his former colleagues that after the April 15 meeting ended, he went back to L-1 where he stayed during the occupation, and went to sleep. Only after the death of the officer, he stated, did he awake and discover what had occurred. *State v. Robb*, Tr. at 2972, 3304.

However, in the course of his decision to turn state's evidence and before becoming a witness at trial, Lavelle was interviewed by Trooper Dave Shepard of the Ohio State Highway Patrol. Lavelle told Shepard that he had been in L-6 when Officer Vallandingham was murdered. He said that he knew who the victim was because the officer's shoulder was bandaged. There was a scuffle between the officer and his captors that went on for two or three minutes, Lavelle said. Officer Vallandingham was choked with some sort of cord. He kicked up his legs, and kept twisting and turning before he died.

Later, as a witness, Lavelle stated that he said these things only because they were what Trooper Shepard wanted to hear. But the trial testimony and sworn statements of numerous other prisoners show that what Lavelle told Shepard was closer to the truth.

To begin with, three former members of the gang that Lavelle headed, the Black Gangster Disciples (BGD), have stated under oath that on the day before the killing Lavelle was incensed by Ms. Unwin's statement at her press conference and tried to recruit them as members of a death squad. Brian Eskridge says that Lavelle came to him and said, "We got to kill this C.O. We got to show them that we serious." Another

member of the BGD, Wayne “Prince” Flannigan, likewise stated: “After the DRC rep made her statement about not taking the inmates’ threats seriously, Lavelle said that if we didn’t send them a CO, the authorities wouldn’t think we were serious.” A third member, Aaron Jefferson, also stated under oath that Lavelle had tried to recruit him for a BGD death squad.

Prisoner Sean Davis testified that when he awoke in L-1 the next morning, April 15, he heard Lavelle talking with the Muslim in charge of security in L-6, Stacey Gordon. According to Davis, Lavelle said that “he was going to take care of that business,” and Gordon replied, “You go ahead, take care of it I will come clean it up afterward.” *State v. Were I*, Tr. at 1644.

At the meeting shortly afterward, according to James Bell a.k.a. Nuruddin:

It was clearly understood at the end of the April 15 meeting that there was to be another meeting, later that day, before a guard was to be killed. No final decision about killing a guard had been made when the meeting ended. . . . Lavelle was mad. He said the Muslims and the Aryans were cowards because they did not want to kill a guard. Lavelle said: “Come on, do it now.” He and other BGD members left the meeting angry. They were the “hardliners.”

Prisoners who were in L-1 that morning confirm that Lavelle was angry when he came back from the meeting. Willie Johnson testified that Lavelle said that unless the authorities turned the water and electricity back on, “I’m going to send one of these honkies up out of here.” *State v. Robb*, Tr. at 4651. Lavelle then told BGD member Johnny Long, “to put his mask on,” and they left the pod together with a third man already wearing a mask. *State v. Were I*, Tr. at 1764.

Further, several prisoners who were in the L-6 corridor that morning stated under oath that they saw the three men come down the corridor, enter L-6, and leave not long afterwards. Eddie Moss saw Lavelle knock on the L-6 door and go in with two masked

men. Sterling “Death Row” Barnes said that he saw Lavelle and two masked men come from the direction of L-1, go into L-6, and return in the direction of L-1. Tyree Parker said that he met Lavelle and two other prisoners “masked up from head to toe” coming out of L-6. *State v. Were I*, Tr. at 1688.

Finally, there are three pieces of additional evidence as to what Lavelle really did after he left the April 15 meeting.

James Were, who witnessed the murder of Officer Vallandingham, inquired of senior Muslims whether they had approved the homicide, and when he was told “No” went to L-1 and, according to several witnesses, knocked Lavelle to the ground.

Leroy Elmore awoke late that morning and went about his duty during the occupation of taking a cart with food and water to the different pods. When he arrived at L-1, Elmore states in an affidavit, he encountered Lavelle. Lavelle told Elmore that he was frightened and that Namir (Were) had knocked him down. “What did you do?” Elmore inquired, and Lavelle answered, “I killed the guard.”

Lastly, the late Roy “Buster” Donald had seen Lavelle and two other African Americans enter and leave L-6. That evening Lavelle came to the cellblock where Donald slept, looking for clothes. According to Donald: “I asked him what was going on. Lavelle told me that Gordon had given him the OK to kill a guard and that he took care of his business.”

5. How Did the Man Who Masterminded the Murder Become the Lead Witness for the Prosecution? There is no question that Anthony Lavelle was the prosecution’s key witness concerning the Vallandingham murder. Reginald Wilkinson, ODRC director, and

his associate Thomas Stickrath, have written that according to Special Prosecutor Piepmeier,

the key to winning convictions was eroding the loyalty and fear inmates felt toward their gangs. To do that, his staff targeted a few gang leaders and convinced them to accept plea bargains. Thirteen months into the investigation, a primary riot provocateur agreed to talk about Officer Vallandingham's death. . . . His testimony led to death sentences for riot leaders [Robb, Were and Hasan].

The "primary riot provocateur" was Anthony Lavelle.

Lavelle became an informant after he was manipulated into believing that Skatzes had decided to become a snitch. Here is what happened.

During the winter of 1993-1994, three of the targeted leaders of the uprising—Hasan, Lavelle and Skatzes—were housed in adjacent cells at the Chillicothe Correctional Institution. The authorities were particularly anxious to induce Skatzes to turn state's evidence. They offered him a plea agreement three times, in October 1993, and in March and April 1994.

On the third occasion, April 6, 1994, Skatzes was taken to a room where he found Sergeant Hudson, chief investigator for the prosecution; Trooper Randy McGough of the Ohio State Highway Patrol; and two prosecutors. Skatzes once again stated that "he did not wish to continue with any interviews."

Deputy Warden Ralph Coyle entered the room and told Skatzes that Central Office had decided he could not go back to his cell in the North Hole. Skatzes protested vehemently that this would make him look like a snitch, but to no avail. On April 8th or 9th, 1994, Skatzes was returned to his cell in the North Hole only to discover that Lavelle had been moved.

Meantime Lavelle, concluding that Skatzes had “rolled,” wrote a letter to Jason Robb on April 7th that read in part as follows:

Jason:

I am forced to write you and relate a few things that have happen down here lately.

With much sadness I will give you the raw deal, your brother George has done a vanishing act on us

On Wednesday, April 6, 1994 George said about 8 a.m. that he had a lawyer visit coming and before they were here the C.O. wanted to move him to the room, now to be short and simple, he failed to return that day and today they came and packed up his property which leads me to the conclusion that he has chose to be a cop

Lavelle

Later, George was returned to his cell. He went up to the bars that separated his cell from Hasan’s and, as he remembers it, said: “I don’t know you. You don’t know me. I didn’t tell them anything.” After a pause, Hasan replied “I believe you.” Hasan wrote a short letter to other prisoners telling them as much.

Thereafter the State moved quickly to finalize a plea agreement with Lavelle. Prisoner Antoine Odom celled near Lavelle and testified in Robb’s trial as to what Lavelle told him in June 1994. “He said the prosecutor was sweating him and he had to do what he had to do. . . . He said he was going to tell them what they wanted to hear.” *State v. Robb*, Tr. at 4854.

6. *How Did the State Contrive to Convict Hasan and Were?* Hasan hardly spoke at the morning meeting of April 15, if he was there at all. In Were’s first trial, Sergeant Hudson testified as to which prisoners’ voices could be heard on the tape of the meeting. He did not mention Hasan.

Yet from the standpoint of the authorities, if they were to use the post-surrender trials to convict the men who the authorities believed to have been the leaders of the uprising, Hasan, who they thought had planned the rebellion, could not be left out.

In an attempt to be released from prison in return for snitching, Kenneth Law, Stacey Gordon, and Sherman Sims had concocted a story. The three men told the Highway Patrol that on the morning of April 15, in L-6, Hasan had instructed Were that if he did not hear from Hasan within the next few minutes, Were was to “take care of his business” by directing prisoners Darnell Alexander and Alvin Jones to kill an officer.

The state did not believe this story and indicted Law as one of Officer Vallandingham’s hands-on killers. However, the jury, while convicting Law of kidnapping, were unable to agree about the murder charge.

Law maintains that the authorities then brought tremendous prosecution on him to tell the Were and Hasan juries the false story that he, Gordon, and Sims had originally concocted, so that the prosecution could obtain death sentences against Were and Hasan. Although prosecutors had previously concluded that the story contrived by Gordon, Sims and Law was false, the prosecution threatened Law that if he did not repeat as a witness the story he had originally told the Highway Patrol, the original charge could be reinstated with the death specifications.

Accordingly, prisoner Kenneth Law was put on the stand at the trials of both Were and Hasan. Law lied as instructed.

Law recanted his testimony in affidavits of March 9, 2000 and September 19, 2003. He then confirmed what so many other prisoners had testified about Anthony Lavelle’s role in killing Vallandingham.

On the morning of April 15, 1993, I was in L-1 and heard Anthony Lavelle, Aaron Jefferson, and Tim Williams talking about killing a guard. Lavelle left L-1, along with two others whom I recognized to be Gangster Disciples, despite their masks.

A few minutes later, I also left L-1 and went toward L-6. As I approached the door of L-6, the two masked Disciples came out. I entered L-6 and saw Lavelle inside. I looked into the shower and saw Officer Vallandingham dead.

Conclusion

No jury, judge, or group of judges has ever had the opportunity to consider this entire array of evidence pointing to Anthony Lavelle's responsibility for the death of Officer Robert Vallandingham.

At the very least, this evidence undermines the convictions of the four prisoners found guilty of killing Vallandingham: Robb, Skatzes, Hasan and Were.

Robb has never been shown to have done anything more than take part in a discussion that did **not** decide to kill a guard.

Skatzes went on the phone after the April 15 meeting in a futile effort to **prevent** a guard's murder.

Were and Hasan were convicted only by the prosecution's invention of a wholly separate sub-plot alleged to have occurred in the area where Officer Vallandingham was being held, a sequence of events entirely based on the testimony of a single witness **who has since recanted**.

7. THE DEATH SQUAD

All the murders during the eleven days were horrific, inasmuch as they were to some degree premeditated, and were carried out against unarmed and helpless victims. But the murders in the very first hours of the disturbance on the afternoon of Sunday, April 11, are among the most troubling. A group of prisoners that came to be known as the “death squad” went from cell to cell in L-6, dragged individual prisoners from their cells, injured some of them, and killed five: Darrell Depina, Franklin Farrell, Albert Staiano, William Svette, and Bruce Vitale.

These homicides are also among the most puzzling. L-6 was a block in which many Sunni Muslims were confined at the time of the rebellion. During the rebellion it was used to house hostage officers, who were blindfolded and initially placed in one of the L-6 showers. Prisoners guarded the officers to make sure they were not harmed.

L-6 was also used to house a number of individual prisoners who were suspected of being “snitches” for the SOCF administration. Amid the chaos of the first moments of the uprising, Muslim leaders directed that several of these potential victims should be locked in individual cells for their own protection.

Under the circumstances, these arrangements were relatively farsighted and humane. The puzzle is how a situation that appears to have been initially intended to protect life came to be transformed into a situation that made the vulnerable suspects easy targets for their killers.

A prisoner named James Edinburgh (or, in some records, Edinbaugh) celled in L-3, directly across the corridor from L-6. He described to the Highway Patrol how some of the eventual victims of the death squad were chosen. He said that after the uprising began, he and other prisoners were ordered by insurgents to move out of their cells into the L-corridor. He sat there, with Depina and Vitale nearby. Three prisoners, whom he named (and who did not include LaMar), came out of L-6 into the corridor of L-block and ordered Depina and Vitale inside. Interview #1105, Tape #A-168, conducted by Trooper Fleming on December 2, 1993.

The next question, of course, is who did what in L-6 after the men were locked up there?

Keith LaMar (Bomani Shakur)

The prosecution decided that the death squad had been coordinated by Keith LaMar. LaMar was indicted for several aggravated murders in the summer of 1994, went on trial in June 1995, was found guilty, and sentenced to death. As he went through this ordeal, he decided to adopt the name Bomani Shakur, Swahili for “thankful, mighty warrior.”

LaMar has written a booklet about his experience entitled *Condemned*. In it he tells us that on April 11, 1993, he “was 23 years old, serving my fourth year on an 18 year-life sentence for murder.” When he woke up that morning in his cell in L-6, LaMar continues, he had no idea that the Muslims were having problems with the administration about the proposed method of testing for TB, and were planning a protest. Around 12:30 p.m., LaMar joined three or four hundred other prisoners in the recreation yard. He spent the next couple of hours jogging.

About 2:45 p.m., “the warning alarm sounded to alert us that it was time to start lining up to reenter the building.” As LaMar waited in line, a correctional officer came running out of the building with blood streaming down his face, followed by a masked prisoner screaming, “We taking over!” A few minutes later, several more masked prisoners appeared on the yard and announced that L-block was now under their control.

Like many other prisoners on the recreation yard, LaMar was worried whether his personal property was secure. He decided to go back into L-block and check on it. When he reached his cell he found that it was being used to hold an “inmate hostage.”

Impulsively, he says,

I ran up to the control panel with intentions of releasing this individual from my cell, and not really understanding how to operate the panel, inadvertently opened several of the adjoining cells which were also being used as holding cells. Seeing this, the individual previously operating the panel screamed to me to leave the pod, and I was escorted out to speak with one of the leaders who very briefly explained what was going on. I was then given two options, to leave or to stay and join the rebellion. I chose to leave. I was back on the yard by 3:30 p.m. . . .

For all of the above, see LaMar’s book, *Condemned*, pp. 15-20.

LaMar writes that he was indicted for leading the death squad only after the prosecution had begun to determine which prisoners were prepared to become informants and had assembled many of them at the Oakwood Correctional Institution, otherwise known as the Snitch Academy.

However, the prisoner informants at the Snitch Academy did not include the two most important prosecution witnesses against Keith LaMar: Louis Jones and Stacey Gordon. Jones and Gordon, like key prosecution witnesses in other Lucasville trials, were “prepared” for trial individually. As we will see, Jones appears to have invented the

bizarre theory used by prosecutors to explain LaMar's alleged behavior. As for Gordon, he may have been the actual foreman of the death squad.

Louis Jones

On July 27, 1993, Troopers Long and McLemore, as well as Lieutenant James Root of the Highway Patrol Investigative Team, interviewed prisoner Louis Jones at the Lorain Correctional Institution. Jones' wife, Kim Jones, and his lawyer, Joel Feld, were also present.

Jones claimed that, after the disruption began, he was one of a group of prisoners in the L-block corridor who wanted to go out to the rec yard, but were prevented from doing so by Muslims guarding the door. According to Jones, the group came up with the idea that if they killed several of the prisoners who had been locked up in L-6 as possible snitches, they would then be permitted to leave L-block.

This theory is hard to take seriously. Homicide, even if "only" killing another prisoner in the midst of a prison rebellion, is very likely to extend a perpetrator's time behind bars, and to cause the perpetrator to be segregated from general population for years. Most of the prisoners who stayed in L-block when the uprising began did not become active participants in the insurgency. Their aim was simply to survive it. Often they sat and slept in the corridor near one or two particular friends, eating and drinking what was available, and coping as best they could with the absence of electric light and water. Why would such a person jeopardize hard-earned prison time by indiscriminate murder?

Besides propounding this unlikely explanation for the genesis of the death squad, Jones was one of a very few Lucasville prisoners who confessed to having been a death squad member.

Here is Jones' own account on the stand in LaMar's trial, *State v. LaMar*, Tr. at 406-407.

Q. How did it come to be that you ended up in L6?

A. Well, group of inmates that I were with were talking amongst Muslims with the bullhorn and questions were asked as if we going to L6 and kill all the snitches, can we be let out to the yard

Q. All right. And so what's the next thing that happened or the next thing that took place?

A. Well, authorization was given to the guy with the bullhorn and it was transferred back to the guy that was with us who asked the question . . . to the guy.

Q. And what resulted as a result of those verbal exchanges, what took place, where did you go, what took place next?

A. Proceeded into L-2 block.

Q. All right. What did you do in L-2?

A. This was particularly where guys were masked up, grabbed weapons and different things of that nature.

Q. What kind of weapons were grabbed?

A. Shovels, bats, weight bars.

Q. What did you have?

A. Weight bar.

In the trial of another alleged member of the death squad, Derek Cannon, Jones testified that he had struck Bruce Vitale six or seven times with the weight bar.

Louis Jones agreed to be a prosecution witness and he was never indicted for any offense that occurred during the Lucasville uprising.

Stacey Gordon

Stacey Gordon was a tall African American and, like Keith LaMar, a boxer. He had been convicted of Aggravated Burglary in the Summit County Court of Common Pleas in October 1989. After the April 1993 uprising, he was indicted in March 1994 for Attempted Murder of prisoner Johnny Fryman, and Felonious Assault on Correctional Officers Conrad Nagel and Kenneth Daniels. By his own admission he was also involved in the murder of prisoner Bruce Harris on the last day of the uprising.

About three months before the Lucasville disturbance, Gordon had become a Muslim. Not long after the disturbance, in the context of plea negotiations with the State and supposedly for religious reasons, Gordon abandoned the Islamic faith.

Once immunized by his plea agreement, Gordon made some extraordinary admissions:

- Gordon was one of three Muslims who planned the takeover of L-block. *State v. Grinnell*, Tr. at 328.
- Gordon was one of three “security amirs”—that is, security commanders or officers—for the Muslims involved in the April 1993 uprising, with special responsibility for security in L-6. (Gordon could have been convicted for complicity in the kidnapping of every officer held in L-6.) He claimed to be the right hand man of Imam Carlos Sanders (Hasan). *Id.* at 327, 330-331, 343.
- Sanders directed Gordon to make sure that prisoners did not assault other prisoners. Sanders didn’t want anyone harmed. *Id.* at 357-358, 361, 378,

· Gordon was inside L-6 at the time of the death squad murders. *Id.* at 318, 365.

He saw and heard the homicides. *Id.* at 321-324, 367.

· As Gordon understood it, the L-6 cells in which “snitches” were confined were not to be opened to let other prisoners come in and kill those people. *Id.* at 372.

· Gordon did nothing to prevent the killing of supposed snitches in L-6 as the murders were being carried out. *Id.* at 370, 374.

In addition to his own admissions, the statements of several other prisoners point to Gordon as the man who may have engineered the death-squad massacre. In the habeas appeal of the related case of *State v. Farocq a.k.a. Grinnell v. Russell*, Case No. C-2-97-838, to the United States District Court, Southern District of Ohio, Judge Algenon Marbley summarized as follows the relevant testimony of prisoners Prentice Jackson and Leroy Elmore. Both men testified that Stacey Gordon entered L-6 with the death squad and directed the prisoners operating the L-6 console to open the doors of the cells where inmate hostages were confined.

Prentice Jackson . . . was housed in L-3. Approximately one and one-half hours after the riot began, he was ordered by unidentified inmates to go to L-6 to get food. . . . Shortly after he entered L-6, a group of men, including Gordon, came to the door and Jackson observed [Grinnell] tell the group they could not come in. Jackson testified that [Grinnell] was then threatened by Gordon who ordered [Grinnell] to man the console. . . .

Leroy Elmore, who was . . . not housed in the L-Block, entered L-6 out of curiosity approximately twenty minutes after the riot began. When he looked into L-6, he saw Gordon ordering everybody out of the block and Girby at the control panel. He also saw Gordon threaten [Grinnell] and tell him to work the control panel. He also observed masked people with weapons go to the top of the range.

Opinion and Order, *Farocq v. Russell* at 23-24, summarizing testimony at the trial of

Timothy Grinnell in the Court of Common Pleas, Tr. at 476-478 (Jackson), 521-523

(Elmore). Significant testimony from other prisoners corroborated the trial testimony of

Jackson and Elmore.

Reginald Williams, a Muslim prisoner who testified for the prosecution, told Troopers Brink and McGough of the Highway Patrol in Interview #867 on July 15, 1993, that he had seen Stacey Gordon sitting at the L-6 console “letting these guys out” of the cells.

In Interview #871 on July 20, 1993, Tony Taylor, one of the prisoners suspected of snitching and locked up for his own protection, told the Highway Patrol that Stacey Gordon had “come down the range” with the rest of the death squad. Taylor recognized him because Taylor celled in L-6-16 on the bottom range and Gordon celled in L-6-57 on the bottom range, directly across from Taylor. Moreover, Taylor stated that Gordon was not wearing a mask. Gordon, according to Taylor, “helped kill Vitale and Depina.” (Taylor also stated that Gordon was in L-6 on the morning of April 15 when Officer Vallandingham was killed and, in fact, was one of two men who went to the cell on the upper range where Vallandingham was being held and brought him down to the shower, where he was murdered.)

Prisoner Edward Julious produced an affidavit that was later filed by Grinnell in an effort to obtain a new trial. Julious stated (Affidavit of Edward Julious, April 17, 2008):

A prisoner named Stacey Gordon was assistant in charge of security for the Sunni Muslim community on L side. A prisoner named Timothy Grinnell for a time operated the console in L-6.

I heard the imam or prayer leader for the Muslim community, Siddique Abdullah Hasan also known as Carlos Sanders, instruct Mr. Grinnell that certain prisoners were to be locked up in L-6 for their own protection and were not to be harmed.

I witnessed Mr. Gordon enter L-6 with a group of prisoners. Mr. Gordon ordered Mr. Grinnell to open the doors of the cells in which various prisoners were confined whom Mr. Gordon described as “snitches.”

Mr. Grinnell refused. Mr. Gordon and his associates left L-6. While he was absent, a prisoner named Eric Girby replaced Mr. Grinnell at the console.

Mr. Gordon returned and ordered Mr. Girby to open cell doors. Mr. Girby did so. A group that became known as the “death squad” went from cell to cell, beating and killing the prisoners confined there.

There were additional problems with the theory that Keith LaMar coordinated the death squad. Aaron Jefferson sent a message to prosecutors admitting that it was he who had killed Darrell Depina, and that no other person told him to do it. When he made this confession, he was not even a suspect nor was he a friend of LaMar. He was doing three-to-fifteen years and had no reason to lie. Yet the State failed to indict him. Perhaps this was because Jefferson was a member of a group called the Black Gangster Disciples, headed by Anthony Lavelle, and Lavelle had become a key prosecution witness.

Furthermore, there were conflicting accounts of the murder of another supposed victim of the death squad, William Svette. Svette was said to have been carried out to the L-corridor while he was still alive. There, according to witness testimony, prisoner Freddie Frakes beat Svette to death. And the State indicted Frakes for murder.

What Did the Prosecution Do?

In summary, a good deal of evidence points to prisoners other than Keith LaMar, and especially to Stacey Gordon as the figure at the center of the death squad massacre. Based on his own admissions and the testimony of other prisoners, even if Gordon did not lead the death squad from cell to cell, he was a principal planner of the uprising and it was he who was responsible for safeguarding hostage prisoners as well as hostage

officers. At a minimum, the evidence suggests that Gordon led the death squad to L-6; that after an initial rebuff he returned with the death squad and was admitted; that he angrily told the men operating the console to open the doors of the cells; and that he then looked on as the members of the death squad did their bloody work.

Gordon was not investigated and prosecuted. Instead, the following occurred.

First, on September 8, 1994, the State dropped the most serious charges against Gordon, reducing his sentence for conduct during the rebellion to three to five years.

Next, that same day Assistant Prosecutor Steve Tolbert took a statement from Gordon in the Court of Common Pleas of Scioto County, transcribed by Court Reporter Deborah S. Adkins. Tolbert asked Gordon if he knew Keith LaMar. Gordon answered, “No.” Then Tolbert asked: “Did you see Keith LaMar in the L-6 block in the early hours of the riot at Lucasville?” Gordon again answered, “No.”

Less than a year later, Gordon testified against LaMar and against the defendants in the other major Lucasville trials.

Lastly, Gordon was released from prison in 2007.

Why Didn't Counsel for LaMar Use This Information at Trial?

They didn't use this information because they didn't have it. LaMar's prosecutor, Seth Tieger, declined to give defense counsel the transcripts or summaries of interviews conducted by the State with more than forty men who had been in L-6 during the afternoon of April 11. Instead, Tieger proffered very brief summaries to the judge in the trial court. The judge ordered merely that the prosecutor send LaMar's defense counsel a list of the names of forty-three prisoners who had been interviewed but not what they had said. It was left to LaMar's lawyers to guess which prisoner had said what. And the

prosecutor did not provide the names of several other crucial witnesses who had been interviewed.

Whether such withholding of information denied LaMar a fair trial is the leading issue in LaMar's appeal to the Sixth Circuit Court of Appeals in Cincinnati.

8. CONVICTIONS AND SENTENCES

Five men have been sentenced to death for murdering ten victims during the occupation of L-block, but the authorities (the State of Ohio, the Lucasville Special Prosecutor, the several Assistant Prosecutors, and the Ohio State Highway Patrol) **do not know who actually committed the homicides**, or if they know, needed the actual killer as a witness and so blamed someone else.

Instead, the authorities have gone after the men who they believe were “leaders” of the eleven-day occupation of L-block. They have been able to get away with their claims because of the Ohio doctrine of “complicity,” which allows courts to sentence people to death if they were present at the scene of criminal conduct or were otherwise involved. As the trial judge repeatedly explained to the jury in Hasan’s case, they could link Hasan with the misconduct of other prisoners by means of what he called “the Saran Wrap of complicity.” *State v. Hasan*, Tr. at 5225, 5227-28, 5232.

Keith LaMar

Keith LaMar was sentenced to death for the aggravated murders of Darrell Depina, William Svette, Bruce Vitale, and Dennis Weaver, and to life in prison for the aggravated murder of Albert Staiano.

The fatalities on the first day of the uprising, April 11, were among prisoners who had been placed in cells in L-block for their own protection because they might be thought to be “snitches.” How permission to carry out these killings was obtained from

Muslims in positions of authority remains a mystery. As explained earlier, there is good reason to believe that Stacey Gordon rather than Keith LaMar actually supervised the “death squad.”

Dennis Weaver was killed two days later on April 13. Prisoners who stayed on the yard after the uprising began, or who returned to the yard after briefly entering L-block to check on their property, were ordered into K-block. There they were stripped naked and confined ten men to a cell. Under these conditions, someone in one of the K-block cells strangled prisoner Dennis Weaver.

According to the Ohio Supreme Court, witness statements either identified Lamar as one of the assailants or did not exculpate Lamar because each victim had been attacked by multiple assailants. But the prosecution withheld from LaMar’s defense counsel the summaries of interviews with other men in the cell that the interviewing officers entered into the prosecution’s computer database. The defense had no opportunity to examine how agents of the State may have induced prisoners to shape their trial testimony. There is a strong possibility that LaMar was singled out because he tried to persuade everyone in the cell not to cooperate with Highway Patrol interviewers.

Siddique Abdullah Hasan (formerly Carlos Sanders)

Hasan was sentenced to death for the aggravated murder of Officer Robert Vallandingham on April 15. He was found not guilty of the aggravated murder of prisoner Bruce Harris on April 21.

Bruce Harris was apparently a somewhat mentally challenged individual who had been locked in a cell on the upper tier of L-6. On April 21, the last day of the occupation, the Muslims conducted religious services on the corridor of the pod. Harris screamed

obscenities from above. He was told to be quiet several times. He persisted in interrupting the others. Finally, several men climbed up to his cell and killed him. Stacey Gordon admitted that he took part in murdering prisoner Bruce Harris but was not indicted for that murder. No one was found guilty of the murder of Bruce Harris.

It is true that Hasan took part in planning what he hoped would be a brief and peaceful occupation of L-6 to protest Warden Tate's intention of injecting prisoners with a substance containing phenol, a form of alcohol. His counsel unsuccessfully sought to call as a witness at his trial a prisoner who, at a different Ohio prison, had been tested for TB by a different method.

Moreover, after the disturbance began, Hasan took pains to cause a number of prisoners who he thought might be suspected "snitches" to be locked in cells for their own protection.

Finally, Hasan was one of three men who negotiated a peaceful surrender of the approximately 400 prisoners in L-block, as well as the release of the hostages still being held.

Namir Abdul Mateen (James Were)

Namir was found not guilty of the aggravated murder of prisoner Bruce Harris, but he was tried twice (the Supreme Court of Ohio having found that Namir had not had a mental competency hearing during his first trial), and sentenced to death for the aggravated murder of Officer Robert Vallandingham.

Prior to his first trial, Namir put his life at risk by testifying on behalf of a fellow prisoner. Derek Cannon was indicted for being a member of the "death squad" that killed supposed snitches during the early hours of the uprising. Namir was in L-6 and he

believed that Cannon was not in L-6 when those prisoners were killed. Namir insisted on testifying at Cannon's trial, thereby exposing himself to damaging cross-examination, and providing testimony that was used by the prosecution against Namir in his second trial.

Jason Robb

Jason Robb was sentenced to death for the aggravated murders of Officer Robert Vallandingham on April 15 and prisoner David Sommers on April 21.

Robb was found guilty of the aggravated murder of Officer Vallandingham on the basis of a taped transcript of the prisoners' meeting on the morning of April 15 which, in fact, did not decide to kill a guard.

As to the death of David Sommers, the prosecution's story was that a group of Aryans including Robb intended to kill three men who were being held by the Muslims in L-6 for their protection. Robb was allegedly dispatched to bring the three to L-7 so that they could be killed. However, according to a prosecution witness, two of the men had converted to the Muslim faith and their co-religionists would not release them.

Accordingly, when Robb returned to L-7 after speaking to the Muslims, someone—perhaps Snodgrass, perhaps Jesse Bocook—supposedly said, “What about that bitch Sommers?” David Sommers had monitored operation of the telephone by means of which Skatzes and others had conducted their negotiations with the authorities. The prosecution's theory was that Sommers had to be killed because he knew too much.

Robb, it was said, was given the task of luring Sommers to L-7 so that he could be killed. But the evidence at trial was that Sommers had chased Robb to pod L-7! And

Robb was **never alleged to have touched Sommers or to have been anywhere nearby when Sommers was killed.**

Nor was there any solid evidence as to a specific intent on Jason Robb's part to harm or murder David Sommers. In its totality, the evidence of Robb's intent was a statement from the ever-present Stacey Gordon to the effect that he heard Robb and Sanders discussing the need to silence Sommers as the two left a meeting. Gordon could not remember the day or date of the meeting. Gordon said that the meeting involved only Lavelle, Sanders and Robb although no other witness testified that there had ever been such a meeting. Nonetheless, the trial court concluded: "On the last day of the riot . . . Carlos Sanders and Robb ordered the killing of David Sommers." *State v. Robb*, Opinion of the Court of Common Pleas, at 3.

Robb, like Hasan, was one of the three men who negotiated a peaceful surrender. Attorney Niki Schwartz testified at Robb's trial about the significant contribution Robb had made to averting a bloodbath like that which ended the Attica uprising. Schwartz told Robb's jury, *State v. Robb*, Tr. at 5605, that Jason

deserved a large part of the credit for the peaceful resolution of . . . the riot, that he had stuck his neck out as a lead negotiator, that he had been selfless in negotiating, not trying to . . . feather his own nest, but generally negotiated on behalf of the inmates, that his concerns were legitimate ones, that he was reasonable in . . . accepting things that couldn't be changed or negotiated or wouldn't be agreed to by the other side.

George Skatzes

George Skatzes was sentenced to death for the aggravated murder of Earl Elder on the first night of the uprising, and for the aggravated murder of David Sommers during the surrender on April 21. He was sentenced to life in prison, not death, for the

aggravated murder of Officer Robert Vallandingham, presumably because of testimony that he saved the lives of one or more correctional officers.

In the early hours of the rebellion, Skatzes made sure that a severely wounded prisoner (John Fryman) and three severely wounded correctional officers (Harold Fraley, John Kemper, and Robert Schroeder) were placed where they could be retrieved by the authorities so as to receive medical attention.

On Monday, April 12, Skatzes was one of two men who went out on the yard to attempt to begin settlement negotiations.

From Tuesday, April 13 through Thursday, April 15, Skatzes communicated with representatives of the authorities by telephone in an effort to arrange a peaceful resolution. On the evening of April 14, Skatzes and prison negotiator Dave Burchett thought they had arrived at a basis for settlement. After that understanding was rejected by a committee of prisoner representatives the next morning, Skatzes again went on the telephone, pleading with the authorities to turn water and electricity back on in L-block so as to avert the murder of a hostage officer.

On the evening of April 15, Skatzes accompanied correctional Officer Darrold Clark to the yard, where Clark was released. Skatzes then made a radio address in which he sought to explain the prisoners' concerns and stressed a desire to avoid more "unnecessary murders."

At Skatzes' trial, Officer Jeff Ratcliff testified that Skatzes had saved his life.

The Death of Earl Elder. Skatzes was sentenced to death for allegedly ordering prisoner Rodger Snodgrass to murder Earl Elder. But Snodgrass, a prosecution witness, testified that Elder was still alive when he left Elder's cell.

The medical examiner testified that Elder's fatal wounds were caused by a broad blade. However, Snodgrass himself as well as another prosecution witness, Tim Williams, testified that the weapon supposedly carried by Snodgrass was a thin, icepick-like shank that made small, round holes.

Tim Williams was himself named by two other prisoners as one of the three men who actually killed Elder. Williams is now on the street.

Another prisoner, Eric Girdy, confessed to being another of those three men. Girdy testified that the weapon he used was a piece of broken glass from an officers' restroom. The medical examiner testified that he found a shard of glass in one of the potentially lethal wounds made by a broad blade.

Girdy has repeatedly stated under oath that Skatzes was nowhere around at the time and had nothing to do with what happened.

Girdy's belated confession was accepted as true by the special prosecutor and Girdy was duly sentenced in the Scioto County Court of Common Pleas.

Prosecutors have made no attempt to vacate this portion of Skatzes' sentence.

The Death of David Sommers. George Skatzes was also sentenced to death for the murder of prisoner David Sommers. The prosecutor argued that a number of prisoners including Skatzes had stabbed, strangled, and battered the victim. But the medical examiner (Dr. Leopold Buerger) testified that Sommers had been killed by a single, massive blow to the head, struck by a blunt instrument such as a baseball bat. (A bloody baseball bat, found across the corridor from the area where Sommers was murdered, was later destroyed by order of the chief Lucasville prosecutor.)

Several weeks after Skatzes was convicted and sentenced to death for Sommers' homicide, prisoner Aaron Jefferson, in a separate trial, was found guilty of committing the same murder. Once more, Dr. Buerger testified. Again he insisted that the cause of death was one single massive blow to the head. Asked whether the fatal injuries could have been the result of multiple blows, the doctor pointed to a picture of the head and told the jury that all the underlying skull fractures were the result of "just that one blow." *State v. Jefferson*, Tr. at 267-68, 275, 283. Thus two men were found guilty of striking the one single lethal blow.

In closing argument in the trial of George Skatzes, Prosecutor Daniel Hogan asked the jury to think "about David Sommers, . . . the one where [Skatzes] wielded a bat and literally beat the brains out of this man's head." *State v. Skatzes*, Tr. at 6108.

And in the Jefferson trial, Prosecutor Crowe told the jury, *State v. Jefferson*, Tr. at 656-57 :

If there was only one blow to the head of David Sommers, the strongest evidence you have [is that] this is the individual—I won't call him a human—this is the individual that administered that blow. . . . If there was only one blow, he's the one that gave it. He's the one that hit him like a steer going through the stockyard, the executioner with the pick axe, trying to put the pick through the brain.

The testimony of prosecution witness Snodgrass, as to where Skatzes was and what he did when, was inconsistent with the testimony of the medical examiner. Snodgrass testified that as Sommers lay face down on the floor, Skatzes stood behind him and hit him with a baseball bat. Dr. Buerger testified that the fatal blow had been struck from the front, apparently when Sommers was in a sitting position.

Snodgrass also testified that Skatzes had struck the first in a series of blows that killed Sommers. Dr. Buerger's expert medical opinion was that the massive blow that crushed Sommers' skull and caused his death was the last and final act of aggression.

An Ohio Court of Appeals determined that there was no way to prove which man had struck the fatal blow, but Skatzes was guilty anyway because of his "complicity" in the murder. Jefferson was sentenced to life behind bars; Skatzes is sentenced to death.

Summary and Conclusions

The essence of the State's approach to what happened at Lucasville is 1) not knowing who really committed the murders, and so 2) singling out "leaders" as responsible for everything done by anyone. This is guilt by association. It is scapegoating. In reality, **both sides, the prisoners and the authorities, share responsibility for what happened.**

Warden Tate took the unnecessarily rigid position that Muslim prisoners should be injected for TB in the manner he had decided, even though there were other methods equally acceptable from a medical point of view, one of which had been used in another Ohio prison.

The Warden left SOCF undermanned for the Easter weekend even though he had been warned of a possible disturbance, and failed adequately to inform those in charge of predictable trouble.

It took an inexplicably long time for forces of the State to mobilize a response when the prisoners took over L-block. There is reason to believe that the uprising could have been ended quickly, without bloodshed, had the authorities acted promptly.

The so-called “safewells” in each pod of L-block in which several officers took refuge proved not to be safe from assault by prisoners.

Proceeding under a mistaken theory that the longer the siege, the less likelihood there would be that hostages would be harmed, the authorities deliberately stalled.

Following an equally erroneous strategy of making life in L-block as difficult as possible, the authorities turned off electric power and water for that part of the prison.

Finally, Ms. Unwin’s unfortunate remark on April 14 that the prisoners’ threat to kill a guard, written on a bedsheet, was a “standard threat” and “nothing new,” was perceived in retrospect by both prisoners and hostage officers in L-block to have been the incident that triggered Officer Vallandingham’s murder. Indeed, the union’s written report on the uprising stated that Ms. Unwin’s comment “practically guaranteed the hostage death [because] the inmates were almost forced to kill or maim a hostage.”

This is not to deny or de-emphasize the fact that several prisoners, most of them presently unknown, carried out ten brutal improvised executions of defenseless human beings. Whatever entrance to this maze is chosen by an investigator, one comes in the end to a tangle of shared responsibilities.

The trials were unfair. Any potential juror who stated that he or she could not in good conscience recommend the death penalty was excluded from the trial juries. The evidence supporting the convictions consisted almost entirely of testimony by other prisoners, sometimes contrary to the testimony of the coroners, with no objective corroborating evidence linking any defendant to any of the murders.

To say, in the face of the evidence, that the present sentences should be carried out, that five men should be executed and a dozen others serve what may amount to the

rest of their lives behind bars, when in truth the State does not know who did the killings, or is concealing their identities, is unjust and unjustified.

Representation on behalf of the five Lucasville defendants condemned to death has been frustrated by the prosecution's unwillingness to turn over to lawyers for the defense the records of its own interviews with potential witnesses. Finally, during the winter of 2011-2012, lawyers for four of the five capital defendants won the right to see summaries and transcripts of investigators' interviews (for the most part conducted by officers of the Ohio State Highway Patrol) with Lucasville prisoners. The labor of collecting and evaluating this material has barely begun.

APPENDIX

CHRONOLOGY BASED ON TESTIMONY AND EXHIBITS

Sunday, April 11, 1993

3:00 p.m. As prisoners returned from the yard at the end of recreation period, disturbance began in L-block.

4:45 p.m. Prisoners released Officer Harold Fraley through the end of L-8 stairwell with severe head injuries.

6:46 p.m. Johnny Fryman, a prisoner, was put on the yard, severely beaten.

8:05 p.m. Prisoners placed Officer John Kemper on the yard, severely beaten.

9:17 and 9:27 p.m. The dead bodies of prisoners William **Svette**, Bruce **Vitale**, Franklin **Farrell**, Albert **Staiano**, and Darrold **Depina** were placed on the yard. Prisoners "Itchy" Walker and Andre Stockton were placed on the yard with severe injuries.

11:02 p.m. Officer Robert Schroeder was placed on the yard with severe injuries.

First night, time unknown. Prisoner Earl **Elder** died of stab wounds in L-6-60.

Monday, April 12, 1993

1:30-3:21 a.m. Prisoners on the yard surrendered and were locked ten to a cell in K complex, stripped naked.

8:05 a.m. Water and electricity in L complex were cut off.

10:15 a.m. Earl Elder's body was placed on the yard.

Tuesday, April 13, 1993

5:56 a.m. Authorities began to tape record negotiations. Hostage officers Clark and Ratcliff spoke on phone.

Prisoner Dennis **Weaver** was strangled in a cell in K-2.

Wednesday, April 14, 1993

3:45 a.m. State Highway Patrol helicopter crashed in front of A Building.

10:45 a.m. Tessa Unwin, ODRC public information officer, stated at press conference that threats against officers were part of “language of negotiations.” Prisoners in L-block interpreted this statement to mean that the State was not taking them seriously.

3:30-3:40 p.m. First delivery of food and water, and medications for officers.

Thursday, April 15, 1993

11:05 a.m. According to Critical Incident Report from Tower 5, Officer Robert **Vallandingham**’s body was placed on the yard by four prisoners.

7:30 p.m. Officer Darrold Clark was released in exchange for a live radio broadcast by George Skatzes.

Friday, April 16, 1993

1:35 p.m. Officer Anthony Demons was released in exchange for a live television broadcast by Stanley Cummings.

Saturday, April 17, 1993

Robb took Skatzes’ place as negotiator.

4:55 p.m., second delivery of food and water.

Sunday, April 18, 1993

Negotiations. Warden Arthur Tate signed 21-point agreement.

Monday, April 19, 1993

Negotiations.

Tuesday, April 20, 1993

11:59 a.m. Meeting of Attorney Niki Schwartz with prisoner negotiators Anthony Lavelle (Black Gangster Disciples), Jason Robb (Aryan Brotherhood), and Siddique Abdullah Hasan f.k.a. Carlos Sanders (Muslims).

7:08 p.m. Third delivery of food and water.

Wednesday, April 21, 1993

11:00 a.m.-12:37 p.m. Schwartz met with Sanders, Lavelle, and Robb.

3:56 p.m. Prisoners began to surrender in groups of twenty. 129 prisoners were immediately transported to Mansfield Correctional Institution. Remaining prisoners were locked on K-side.

10:40 p.m. Five remaining hostages were released.

11:20 p.m. Last prisoner surrendered.

Thursday, April 22, 1993

Body of prisoner David **Sommers** was found by State Highway Patrol in L-7-41.
Body of prisoner Bruce **Harris** was found in cell L-6-31.