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ARE 'VOICES FOR JUSTICE' HEARD?: A STAR-STUDDED RALLY  
ON BEHALF OF THE WEST MEMPHIS THREE PROMPTS THE  
DELICATE QUESTION

*Mara Leveritt*\*

For someone who's not a member of the legal profession, I felt honored to be invited to write an article for the *UALR Law Review* about the "Voices for Justice" concert held on behalf of the Arkansas prisoners known as the West Memphis Three. I was asked to focus particularly on how—or even if—an event featuring such well-known celebrities as Eddie Vedder, Natalie Maines, Patti Smith, and Johnny Depp might affect the men's legal appeals.

For the past six years or so, many, including myself, have expressed an opinion that those trials were not fair. I have said Arkansas should either try the men again or set them free, and I was heard saying so again in a short film about the case that was shown the night of the concert.<sup>1</sup> Given the scale of that event and its unusual purpose, it's fair to ask what advocates might hope to gain by assembling some of the world's biggest celebrities for a performance on behalf of prisoners? Can public support have any effect on a judicial system that, for good reason, is supposed to be insulated from the hue and cry of public fervor?

The stated goal of "Voices for Justice" was to "raise Arkansans' awareness" of the case. An unstated goal, which I suspect animated many of us, was that the increased citizen awareness would somehow translate into a change in the political climate around the men's appeals and that that change of atmosphere, however subtle, would be felt by the justices concerned. This article will examine whether such a hope was at all warranted.

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\* An Arkansas journalist who has won numerous awards for investigative reporting, and in 1994 was named Arkansas Journalist of the Year. She has written about the West Memphis Three since 1994, just after the two trials where they were convicted, including a book, *Devil's Knot*, in 2002. She has also authored the book, *The Boys on the Track*, another non-fiction book focusing on an Arkansas criminal case. Both of her books received the Central Arkansas Library System's Booker Worthen Prize.

1. On November 4, 2010, The Arkansas Supreme Court handed down an opinion which called for a new evidentiary hearing. See West Memphis 3 Cases Reversed and Remanded, <http://arkansasappeals.com/2010/11/04/arkansas-supreme-court-west-memphis-3-cases-reversed-and-remanded/> (last visited Jan. 25, 2011). The film is available at [http://www.youtube.com/watch?v=Y\\_1Ioyz7gdU](http://www.youtube.com/watch?v=Y_1Ioyz7gdU). Videos of individual performances are also available on YouTube by searching the name of the performer with "Voices for Justice."

## I. BACKGROUND

This concert was not the first media event to shed light on the case of the West Memphis Three. In 1996, the same year the Arkansas Supreme Court unanimously affirmed the convictions of all three boys, Home Box Office released a documentary called *Paradise Lost*<sup>2</sup> that showed extensive video footage that the trial judge, Second Judicial Circuit Judge David Burnett, had allowed to be recorded during the teenagers' two trials. The film, which premiered at New York's Metropolitan Museum of Modern Art, provoked a wave of concern, in the United States and abroad, centering on the prosecutors' sensational claim that the defendants had killed the children as part of a "satanic" or "occult" ritual. Despite the juries' findings of guilt, many who viewed the film came away thinking that the prosecution had failed to prove the "occult-ritual" theory of motive, and that they had offered no other evidence of guilt.

In the years that followed, three Californians dubbed the convicted men the West Memphis Three and formed a Website, [wm3.org](http://wm3.org), to archive documents about their cases. Two books were published about the case, including my own, *Devil's Knot*,<sup>3</sup> which appeared in 2002. Over time, thousands of people from the United States and several foreign countries held fundraisers for the convicted men, sent money to finance their appeals, and placed documents relating to their cases on what became voluminous online archives. But activism inside Arkansas remained muted. In 2007, Lorri Davis, a landscape architect who had moved from New York to Little Rock to marry Echols, together with Little Rock restaurateurs Capi Peck and Brent Peterson, founded Arkansas Take Action (ATA) to stir a response to the case in the state where the men are held. Just over a year after its formation, ATA orchestrated the "Voices for Justice" concert.

## II. THE CONCERT

The event was unprecedented in Arkansas. Few like it have occurred in the United States. On a Saturday night in late August, some 2,500 people poured into Little Rock's Robinson Auditorium for a one-time-only concert that its organizers called "Voices for Justice: A Rally in Support of the West Memphis Three." While some who bought the modestly priced \$25 tickets might have been hard-pressed to explain exactly who the West Memphis Three were, much less why a rally on their behalf might be needed, there

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2. PARADISE LOST (Home Box Office June 1996).

3. MARA LEVERITT, *DEVIL'S KNOT: THE TRUE STORY OF THE WEST MEMPHIS THREE* (Atria Books 2002).

was little doubt about the enthusiasm of the crowd or the stature of the celebrities headlining the event.<sup>4</sup>

Thompson Murray, pastor of Quapaw Quarter United Methodist Church in Little Rock, opened the show with the sobering reminder that the cruel murder of three children rested at the heart of the night and that the guilt of the three men convicted of those murders has not held up well under public scrutiny. Brief comments by leaders of ATA, the group sponsoring the event, and a short film commissioned by that group explained more about the evening's focus. The performers had assembled in Little Rock at the request of an Arkansas Death Row inmate and his wife to call public attention to the case of the three men convicted of killing three eight-year-old boys in the Mississippi River town of West Memphis in 1993. Damien Echols was eighteen at the time. He was sentenced to death. Jason Baldwin and Jessie Misskelley, Jr. were sixteen and seventeen years old, respectively, when they were charged with the murders. Both were sentenced to life in prison.

Though their reminders were subtle, none of the performers at the Voices for Justice concert let audience members forget that this was a show with a mission. When Depp appeared onstage to read from a journal entry by Echols, he was at first almost drowned out by cheers and shouts from the balcony of "We love you, Johnny." The actor stopped his reading momentarily, leaned closer to the microphone, and looking at the audience over his glasses said softly, "We all know why we're here, right?"<sup>5</sup> After that, the cheering was mostly kept to first appearances on stage and the closing strains of songs.

Other performers chose other ways to convey their reasons for appearing in Little Rock. Vedder and Maines sang,<sup>6</sup> while Patti Smith, who also sang, used an unexpected moment of silence in performing one of her songs

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4. Eddie Vedder, frontman for the rock band Pearl Jam, served as de facto emcee. During the course of the three-hour show he was joined onstage by Natalie Maines, lead vocalist of the alternative country band Dixie Chicks; Texas song-writer Bill Carter; actor Johnny Depp; Rock and Roll Hall of Fame singer Patti Smith; Arkansas actress and producer Lisa Blount; and the new band, Fistful of Mercy, made up of Ben Harper, Dhani Harrison (son of Beatle George Harrison) and Joseph Arthur.

5. Gerard Matthews, *Voices for Justice*, ARK. TIMES, Sept. 2, 2010.

6. Vedder sang Bob Dylan's song *The Times They Are A-Changin'*, and his own composition *Rise Up*. Maines started her set by offering a veiled reference to the criticism her band had endured after she had bad-mouthed then President George W. Bush while abroad on tour, saying "This song's for, well . . . don't want to get myself in trouble again, so it goes out to Whom It May Concern." Few veteran supporters of the West Memphis Three, many of whom had come from outside Arkansas, had little doubt that she meant Arkansas court officials when she strummed a chord and launched into a song that began, "I smell a rat, Baby." Matthews, *supra* note 5.

to most sharply express her feelings about the case that had brought the ensemble together—a statement which brought down the house.<sup>7</sup>

### III. THE QUESTION

The statewide daily newspaper, the *Arkansas Democrat-Gazette*, took scant notice of the event, reviewing it the next day as a concert with barely a mention of its unusual purpose.<sup>8</sup> *Arkansas Times* reporter Gerard Matthews better captured the mood of the night. He wrote, for example, that after finishing her set, Smith stayed onstage for “an incredible finale where every musician came back out onstage for a rousing, almost church-like rendition of her song ‘People Have the Power.’”<sup>9</sup> One Little Rock radio personality predicted that the concert will become legendary and that twenty-five years from now everyone will say, “I was there,” whether they were or not.

But as Depp’s jet took off and the bands busses rolled out of Little Rock, a question lingered behind: If people do have “the power,” as Smith proclaimed, does it, can it—should it—apply to the justice system?

Public activism on behalf of prisoners is rare. Most Americans believe that persons sentenced to prison are, in fact, guilty. Punishment is an accepted part of this culture. Ordinary citizens are usually busy caring for families, trying to earn a living, and maybe taking time to shop or watch a football game. In addition, they are bombarded with requests to devote money and time to causes. Work on behalf of prisoners rarely tops anyone’s list. In that regard, celebrities are no different. They have to field many requests, and partners in their careers—such as agents, publishers, recording companies or even fellow band members—may not see much sense in being identified with a convicted felon, much less convicted child-killers. So requests to take up a prisoner’s cause rarely results in action. And even if an effort is made, the chance that it will actually help the prisoner is modest at best. For all these reasons, the history of public activism on behalf of prisoners, while long, is narrow. There have always been wailers outside of jails, and sympathizers who’ve attempted to smuggle in implements of escape. But broad-based movements have been rare. The record of such public activism in the past fifty years in the United States suggests that only occa-

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7. While performing her song, *My Blakean Year*, she stumbled on her guitar fingering twice. When she hit the wrong chord a third time, she set the guitar aside and continued *a cappella*, after leaning into the microphone to say, “Well, I fucked up, but I haven’t fucked up as bad as the judicial system.” More cheers accompanied the lines from her closing song, *People Have the Power*, that went: “The people have the power/to redeem the work of fools.” Matthews, *supra* note 5.

8. See, Bobby Ampezzan, *Music Review: Pearl Jam, Depp, others elevate Voices for Justice*, ARK. DEMOCRAT-GAZETTE, Aug. 29, 2010.

9. Matthews, *supra* note 5.

sionally has it changed a prisoner's status. A look back on popular movements on behalf of prisoners—what they accomplished and failed to accomplish—might put the hopefulness and the audacity of the Voices for Justice rally in context.

#### A. Public Responses to Other Judicial Decisions

When I asked a group of Arkansas historians about instances when Arkansans had resorted to public action to challenge a judicial decision, only a handful were mentioned. Prof. Stephen A. Smith, of the University of Arkansas at Fayetteville, recalled that there had been an unsuccessful public campaign, in the 1930s, for Gov. Carl Edward Bailey to pardon Bubble Clayton and James X. Caruthers, two black men convicted by an all-white jury for the rape of a white woman in Mississippi County.<sup>10</sup> The two were tried in the aftermath of a similar, widely publicized—and much criticized—case in Alabama, which had prompted demonstrations around the country on behalf of the nine Alabama defendants known as the “Scottsboro Boys.” Thousands of people marched on Washington D.C. in May of 1933 in support of the Scottsboro Boys, and they were eventually freed. Though Clayton and Caruthers were dubbed “The Arkansas Scottsboro Boys,” they were executed on June 30, 1939.<sup>11</sup> Perhaps because of Arkansas's relative isolation and its extremely rural character at the time, public support for Clayton and Caruthers did not benefit from the larger, national movement.

The historians also remembered the more recent execution of Barry Lee Fairchild, another black man, on August 31, 1995. His case raised particular concern about the police conduct surrounding his confession. Fairchild was convicted of the rape and murder of a U.S. Air Force nurse, based on two conflicting confessions he gave to investigators at the Pulaski County Sheriff's Office.<sup>12</sup> During his trial, Fairchild, whose IQ was said to be in the low sixties, recanted his confession, testifying that when he denied any knowledge of the crime, then-Sheriff Tommy Robinson and Major Larry Dill beat him and threatened to kill him if he did not confess.<sup>13</sup> A former deputy in the sheriff's office testified: “Tommy Robinson and Larry Dill wouldn't come out and say, ‘go back out there and whup him,’ you know, ‘go back there and hit him in the head.’ He'd say, ‘You know what I mean.

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10. See, Marlin Shipman, *Forgotten Men and Media Celebrities: Arkansas Newspaper Coverage of Condemned Delta Defendants in the 1930s*, 31 *ARKANSAS REVIEW: A JOURNAL OF DELTA STUDIES* 110 (2000).

11. See *id.*

12. See, Fairchild, Barry Lee, <http://encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4586>.

13. See, MICHAEL KROLL, *KILLING JUSTICE: GOVERNMENT MISCONDUCT AND THE DEATH PENALTY* (Death Penalty Information Center 1992).

Go on and do what you need to do. I want a confession. You know what I mean.”<sup>14</sup>

Newspapers reported at length on the allegations of police abuse raised in his appeals. But there were no popular protests. Only a handful of members of Amnesty International in Arkansas and other opponents of the death penalty assembled on the steps of the state capitol to condemn his execution. Now, fifteen years after Fairchild’s execution, the entry on him in *The Encyclopedia of Arkansas History and Culture* lingers as a troubling epitaph:

No fingerprints in [the victim’s] car or on her belongings could be matched to his; a hat found near the crime scene and identified as Fairchild’s contained strands of hair, none of it belonging to him; and semen found on the victim’s body was consistent with blood type O, while Fairchild was blood type A.<sup>15</sup>

Like Clayton and Caruthers, Fairchild was a poor, black man. He was also mentally handicapped. While a few people voiced deep concern about the allegations of police abuse and lack of physical evidence against him, Fairchild, like most prisoners, had nothing going for him in terms of advocacy around which popular support might have coalesced.

### 1. *The Exception*

James Dean Walker was different. He was a white man charged with killing a North Little Rock policeman during a shootout that erupted after a traffic stop in 1963. Though evidence was presented early on that the fatal bullet had been fired by another police officer, Walker was convicted and sentenced to life in prison. A decade later, conditions in Arkansas’s prisons—rather than concerns about Walker’s possible innocence—made his case a *cause célèbre*.<sup>16</sup>

Walker had served barely five years of his life sentence when, in 1970, U.S. District Judge J. Smith Henley ruled Arkansas’s prisons unconstitutional, noting that imprisonment in the state constituted “banishment from civilized society into a dark and evil world.”<sup>17</sup> While a resident of that world, Walker had become an engaging, born-again Christian.<sup>18</sup> In that ca-

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14. *See id.*

15. *Fairchild, supra* note 12.

16. *See*, Josh Gerstein, *Hillary Clinton’s Left Hook: Jessica Mitford is Rebuffed by a Friend*, N.Y. Sun, Nov. 27, 2007.

17. *Holt v. Sarver* (Holt II), 309 F.Supp. 362 (1970).

18. *See*, Gerstein, *supra* note 16.

capacity, he was allowed out of prison occasionally to preach, but the prison's faith in him was not rewarded.

In 1975, Walker failed to return from one of his ministerial furloughs and fled to California. Walker remained there, free, for four years, until he was arrested on drug charges in 1979 near his home at Lake Tahoe. Walker vigorously fought extradition to Arkansas, claiming that conditions in the state's prisons were unconstitutional and that a warden there, A.L. Lockhart, had threatened to kill him.<sup>19</sup> While his extradition fight wore on, Twentieth Century Fox released the movie *Brubaker*,<sup>20</sup> starring Robert Redford as a semi-fictional Arkansas warden who was trying to clean up the state's corrupt prison system. The film was loosely based on the 1969 nonfiction book *Accomplices to the Crime: The Arkansas Prison Scandal*<sup>21</sup> by Joe Hyams and Thomas O. Murton. Murton had been hired as a prison warden in the late 1960s to modernize Cummins and Tucker state prison farms. The controversial book and movie brought national attention to issues such as prisoner abuse, inhumane conditions, and the need for modernization.

Jessica Mitford, a journalist best known for her 1963 expose of the funeral industry, *American Way of Death*,<sup>22</sup> became an outspoken critic of conditions in southern prisons and one of Walker's most outspoken advocates. In 2007, while reviewing Mitford's papers, now housed at Ohio State University, *New York Sun* reporter Josh Gerstein found among them a letter from Blytheville lawyer Oscar Fendler, who had represented Walker. Fendler told Mitford in the letter that, when he urged Gov. Bill Clinton to drop Walker's extradition proceedings, the governor had responded by asking, "how the public would react to him favoring a cop killer."<sup>23</sup>

For her part, Mitford wrote several letters to First Lady Hillary Clinton, with whom she had had a brief acquaintance. Mitford wrote: "Tom Murton, former head of the Arkansas prison system, is prepared to testify that Walker would be in mortal danger if returned to Arkansas."<sup>24</sup> Because of the publicity, the California Supreme Court, on April 9, 1980, halted Walker's extradition until a California judge could conduct a hearing on the conditions of Arkansas prisons.<sup>25</sup> According to press clippings in the Mitford collection, Clinton was incensed. "I am so angry," he reportedly said. "Who do they think they are—are we under their jurisdiction? It's just out-

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19. *See id.*

20. BRUBAKER (Twentieth Century Fox Film Corporation 1980).

21. TOM MURTON & JOE HYAMS, ACCOMPLICES TO THE CRIME: THE ARKANSAS PRISON SCANDAL (Grove Press 1969).

22. JESSICA MITFORD, THE AMERICAN WAY OF DEATH (Buccaneer Books 1963).

23. Gerstein, *supra* note 16.

24. *Id.*

25. *See id.*



rageous. We're going to fight this action until the last dog is hung."<sup>26</sup> On July 24, 1980, Clinton appeared on NBC's "Today" show to defend Arkansas's handling of Walker's case, as well as conditions in his state's prisons, which he said had greatly improved.<sup>27</sup>

In August, Mitford came to Little Rock to interview Clinton for an article in *New West* magazine. According to her notes, the governor insisted that Walker would be safe if returned to Arkansas.<sup>28</sup> Asked why Lockhart was still running a prison despite repeated allegations against him of brutality, Clinton reportedly told Mitford: "Lockhart is seen by a majority of the Board of Corrections—who are in charge of everything—in charge of the hiring and firing—as a link of stability running through the prison. He has strong support by numerous legislators, they think he's held the prison together."<sup>29</sup> By the time of that meeting with Clinton, Arkansas had appealed Walker's extradition case to the U.S. Supreme Court.<sup>30</sup> According to Mitford's notes, Clinton told her: "If the [California] claim is upheld in the U.S. Supreme Court—think of the consequences! Escapers would flock to California."<sup>31</sup> But the high court sided with Clinton. Blocking the California court's attempt to assert jurisdiction over Arkansas jails, Justice William Rehnquist wrote: "The proper forum for respondent's challenge to Arkansas prison conditions is in the Arkansas courts."<sup>32</sup> Later in 1980, the Supreme Court ratified Rehnquist's action.

Walker was returned to Arkansas, where a federal court hearing was held on his petition to be housed out of state. His lawyer at the time, Bill Bristow of Jonesboro, told Gerstein that he remembered Mitford attending the hearing, along with actor Mike Farrell, who is best known for his role as B.J. Hunnicutt on *M\*A\*S\*H*. "All I knew," Bristow told Gerstein, "was these famous people were coming into Arkansas and supporting Mr. Walker."<sup>33</sup> Walker was ultimately ordered jailed outside Arkansas, at a prison in El Reno, Oklahoma. However, he continued his campaign to assert his innocence, and in 1985, following publicity about new evidence in his case, the U.S. Eighth Circuit Court of Appeals overturned his conviction.<sup>34</sup> Walker ultimately pleaded guilty to manslaughter and was released based on time served. He retired to Boise, Idaho.

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26. *Id.*

27. *See id.*

28. *See id.*

29. Gerstein, *supra* note 16. (Lockhart was later indicted on federal fraud charges related to prison contracting.) *Id.*

30. *See id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *See id.*

Here we have an example of the sheer luck that, while eluding the vast majority of even deserving appellants, can bring an incredible amount of attention to a few. Walker's escape, coupled with a federal ruling against Arkansas's prisons, combined with Mitford's fame and zeal to keep him out of Arkansas, led ultimately to his conviction being overturned.

## 2. *The Media*

Americans have protested court decisions since the country's beginnings, but, as the Walker case demonstrated, celebrity involvement could enhance media attention, and vice versa. By the middle of the past century, cases outside of Arkansas began to demonstrate the emerging power of the electronic media. Caryl Chessman was sentenced to death in California in July 1948 for robbery, kidnapping, and rape.<sup>35</sup> The kidnapping charge, which triggered the death penalty, was based on California's 1933 "Little Lindbergh" law because prosecutors argued that during the rape, Chessman had dragged his victim a short distance from her car.<sup>36</sup> During his twelve years on Death Row, his case attracted support among leading criminologists, liberal intellectuals and ordinary citizens, many of whom engaged in protests to halt Chessman's execution. He wrote four books while on Death Row, including a memoir, *Cell 2455, Death Row*,<sup>37</sup> published in 1954. Chessman's books became bestsellers and ignited a worldwide movement to spare his life, while focusing attention on the politics of the death penalty in the United States at a time when most Western countries had already abandoned it, or were in the process of doing so. Among the many notables who supported Chessman's fight against execution were First Lady Eleanor Roosevelt; writers Aldous Huxley, Ray Bradbury, William Inge, Norman Mailer, Dwight MacDonald, Christopher Isherwood, and Carey McWilliams; and evangelist Billy Graham. Despite that support, and eight stays of execution, Chessman died on May 2, 1960 in California's gas chamber.<sup>38</sup>

Chessman's story offers no encouragement for celebrity support of prisoners. He had plenty of that. What he did not have was broad-based public support. He was suspected of being the "Red Light Bandit," respon-

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35. See Peter R. Brooke & Art Seidenbaum, *Blunt Talk of Convict and Accusers*, LIFE, Feb. 22, 1960.

36. See CARYL CHESSMAN, *CELL 2455, DEATH ROW: A CONDEMNED MAN'S OWN STORY* (De Capo Press 1953).

37. See *id.*

38. See EDMUND GERALD BROWN & DICK ADLER, *PUBLIC JUSTICE, PRIVATE MERCY: A GOVERNOR'S EDUCATION ON DEATH ROW* (Grove Press 1989).

sible for a series of robberies and sexual crimes, and the public at large did not join in the calls to spare his life.<sup>39</sup>

By contrast, Mumia Abu-Jamal, who was also sentenced to die, remains alive and continues to attract international attention. Before his arrest, Abu-Jamal was a member of the Black Panther Party, a radio journalist, news commentator, and part-time cab driver. He was sentenced to death in Pennsylvania on September 8, 1981 for the murder of a Philadelphia police officer.<sup>40</sup> His memoir, *Live from Death Row*, was published in May 1995.<sup>41</sup>

In 1999, after Abu-Jamal had spent eighteen years on Death Row, a man claimed in an affidavit that he and another man had shot the officer as part of a contract killing because the officer was interfering with payoffs to corrupt police.<sup>42</sup> Because of that statement and discrepancies in the case that were apparent earlier, labor unions, educators, and organizations such as Human Rights Watch and Amnesty International have expressed concern about his case. Abu-Jamal has been made an honorary citizen of several cities around the world, including Paris, Montreal, Palermo, and Copenhagen.<sup>43</sup> Despite such support, Abu-Jamal remains in prison. Perhaps because of it, he has not been executed. In 2008, a federal court ordered a new sentencing hearing for Abu-Jamal.<sup>44</sup> State officials vowed to fight it. In 2009, the U.S. Supreme Court denied Abu-Jamal's separate petition for a new trial, and in January 2010, the high court tossed out the lower court ruling that nullified Abu-Jamal's death sentence.<sup>45</sup>

This case sees the coming together of public support on a national scale, particularly among African Americans, and high-level international support. But Abu-Jamal's supporters have also drawn powerful opposition. The National Fraternal Order of Police (FOP) organized a boycott "of persons, products and companies associated with the supporting of convicted cop killer Mumia Abu-Jamal."<sup>46</sup> In 2010, *The Barrel of a Gun*, a film about

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39. See, Brooke & Seidenbaum, *supra* note 35.

40. MUMIA: A CASE FOR REASONABLE DOUBT (Otmoor Prods. Ltd. 1997).

41. MUMIA ABU-JAMAL, *LIVE FROM DEATH ROW* (Harper Perennial 1996).

42. See Malik Russell, *New Strategy in Abu-Jamal Case*, THE CRISIS, Jul-Aug 2001.

43. See Cathy Ceibe, *Dans le couloirs de la mort, Mumia dérange [USA Sues Paris: From Death Row, Mumia Stirs Up More Controversy]*, L'HUMANITÉ, Nov. 23, 2006, available at <http://www.humaniteinenglish.com/article423.html>.

44. See Bill Mears, *No Death Sentence for Mumia Abu-Jamal Without New Hearing* (Mar. 27, 2008), [http://articles.cnn.com/2008-03-27/justice/mumia.appeal\\_1\\_mumia-abu-jamal-officer-daniel-faulkner-appeals-court?\\_s=PM:CRIME](http://articles.cnn.com/2008-03-27/justice/mumia.appeal_1_mumia-abu-jamal-officer-daniel-faulkner-appeals-court?_s=PM:CRIME).

45. See Bill Mears, *High Court Dismisses Ruling on Abu-Jamal Death Sentence* (Jan. 19, 2010), [http://articles.cnn.com/2010-01-19/justice/scotus.abu.jamal\\_1\\_black-panther-mumia-abu-jamal-death-sentence-capital-sentencing?\\_s=PM:CRIME](http://articles.cnn.com/2010-01-19/justice/scotus.abu.jamal_1_black-panther-mumia-abu-jamal-death-sentence-capital-sentencing?_s=PM:CRIME).

46. Convicted Cop Killer Mumia Abu-Jamal, [http://www.guazabara.com/Convicted\\_Cop\\_Killer.htm](http://www.guazabara.com/Convicted_Cop_Killer.htm).

the case, was released. Its tag line read: "A Philadelphia cop is murdered. A convicted killer is praised. And the controversy continues."<sup>47</sup>

Remarkably, another of America's most passionately supported prisoners is also held in Pennsylvania. Leonard Peltier was sentenced to two consecutive life terms for the killing of two FBI agents on the Pine Ridge Indian Reservation in South Dakota on June 26, 1975.<sup>48</sup> Two years later, Peltier, who was an activist for Native rights and a member of the American Indian Movement at the time of the shootout, was convicted in federal court of the murders.<sup>49</sup> Since then, former United States Attorney General, Ramsey Clark has served pro bono as one of Peltier's lawyers and has aided in filing a series of appeals on his behalf. The Eighth Circuit Court of Appeals, however, has repeatedly affirmed Peltier's conviction and sentence.

Yet concern about the fairness of Peltier's trial persists. And so does FBI opposition to Peltier's parole. In 1993, the Pennsylvania Parole Commission, which presides over the federal prison in Lewisburg, Pennsylvania, where Peltier is held, denied him parole based on its finding that he "participated in the premeditated and cold blooded execution of those two officers."<sup>50</sup> However, the Parole Commission has since stated that it "recognizes that the prosecution has conceded the lack of any direct evidence that [Peltier] personally participated in the executions of the two FBI agents."<sup>51</sup>

Peltier is considered by the American Indian Movement to be a political prisoner and he has received support from many well-known individuals and groups. They include: Nelson Mandela, Rigoberta Menchú, Amnesty International, the United Nations High Commission for Human Rights, the Zapatista Army of National Liberation, Tenzin Gyatso (the fourteenth Dalai Lama), the European Parliament, the Belgian Parliament, the Italian Parliament, the Kennedy Memorial Center for Human Rights, Archbishop Desmond Tutu, and Rev. Jesse Jackson. Libel lawsuits brought by an FBI agent and the governor of South Dakota blocked the book, *In the Spirit of Crazy Horse*<sup>52</sup> by Peter Matthiessen for eight years before the lawsuit failed.<sup>53</sup> The book was finally published in 1983.

In 1989, U.S. Court of Appeals Judge Gerald Heaney, who'd written the Eighth Circuit's most recent opinion on Peltier's case, appeared on the CBS show *West 57<sup>th</sup>*. He told an interviewer that the Peltier case was "the

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47. THE BARREL OF A GUN (Dacua C's 2010).

48. See Scott Anderson, *The Martyrdom of Leonard Peltier*, OUTSIDE, July 1995.

49. See *id.*

50. Parole Hearing to be Held Tuesday for Imprisoned Native American Activist Leonard Peltier (July 27, 2009) [http://www.democracynow.org/2009/7/27/parole\\_hearing\\_to\\_be\\_held\\_tuesday](http://www.democracynow.org/2009/7/27/parole_hearing_to_be_held_tuesday).

51. *Id.*

52. PETER MATTHIESSEN, *IN THE SPIRIT OF CRAZY HORSE* (Viking Press 1983).

53. See Anderson, *supra* note 48.

toughest decision I ever had to make in 22 years on the bench.”<sup>54</sup> Heaney made this statement three years after he noted the “possibility that the jury would have acquitted Leonard Peltier had the records and data improperly withheld been available to him in order to better exploit and reinforce the inconsistencies casting strong doubts upon the government’s case” in his Eighth Circuit Opinion.<sup>55</sup> Heaney also wrote an extraordinary letter, in 1991, to Hawaii senator Daniel Inouye, chairman of the Senate Committee on Indian Affairs. In that letter, Heaney noted that “the FBI used improper tactics in securing Peltier’s extradition from Canada and in otherwise investigating and trying the Peltier case. Although our court decided these were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency.”<sup>56</sup> Inouye made an overture to then-President George Bush for a commutation. Fifty Congressmen signed an amicus brief on Peltier’s behalf. The president ignored the request. Meanwhile, Amnesty International, year after year, has kept Peltier on its political prisoners list, citing not just Peltier’s case but “FBI misconduct” in the trials of other AIM members.

Peltier’s indictment is the subject of the 1992 documentary *Incident at Oglala*,<sup>57</sup> a film by Robert Redford and Michael Apted. On June 26, 1994, a crowd estimated at three thousand demonstrated peacefully in Washington, D.C., for Peltier’s freedom. Many supporters hoped that then-President Bill Clinton would pardon Peltier before leaving office, but he did not. In 2007, when billionaire David Geffen detached his financial support from Hillary Clinton’s presidential campaign and backed Barack Obama instead, Geffen explained that he was disillusioned by Bill Clinton’s decision to pardon commodities trader Marc Rich, while refusing to pardon Peltier.<sup>58</sup> Songs about Peltier have been written by U2, Rage Against the Machine, Toad the Wet Sprocket, Renaud, and Buffy Sainte Marie. Other songs have been recorded and sung on Peltier’s behalf by the Indigo Girls, Bonnie Raitt, and Sarah McLachlan. So far, none of that has affected Peltier’s sentence.

Peltier’s case may exceed even Abu-Jamal’s in its breadth of popular support and level of celebrity involvement. But like Abu-Jamal, Peltier stands convicted of killing agents of the state, and government officials have vigorously opposed his release. As Thomas J. Harrington, an assistant director of the FBI, told a federal parole commission in 2009: “We in the Federal Bureau of Investigation vehemently oppose granting Mr. Peltier

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54. Peter Matthiessen, *Mean Spirit: Are Peltier’s Supporters—or His Attackers—the True “Merchants of Myth”?*, OUTSIDE, Oct. 1995.

55. *US v. Peltier*, 800 F.2d 772 (1986).

56. Matthiessen, *supra* note 54.

57. INCIDENT AT OGLALA (Spanish Folk Motion Picture 1992).

58. See David Schoetz, *Why David Geffen Dislikes the Clintons—Meet Leonard Peltier* (Feb. 22, 2007), <http://abcnews.go.com/US/story?id=2899764&page=1>

parole. The intentional and vicious attack by Mr. Peltier was not simply a blatant attack on two FBI special agents; it was an attack on law enforcement as a whole—an attack on the rule of law.”<sup>59</sup>

### 3. *Another Exception*

On the other hand, the saga of Rubin “Hurricane” Carter may offer the best case of public support helping to free someone from prison. Carter was arrested in 1966 for the murder of two men at a New Jersey bar.<sup>60</sup> At the time, he was a top contender for the world middle-weight boxing title.<sup>61</sup> A jury sentenced him to three life terms in prison.<sup>62</sup> In 1974, the only two witnesses to place Carter at the scene of the murders separately recanted their statements.<sup>63</sup> The men claimed they were pressured by police to give false testimony, and that they were offered financial inducements and promises of lenient treatment in criminal charges they faced in exchange for lying.<sup>64</sup>

The following year, Bob Dylan announced a benefit concert, *Night of the Hurricane*, for Carter at Madison Square Garden.<sup>65</sup> The concert sold out in five hours and was presented again, twice, at the Houston Astrodome. It was at these events that audiences first heard Dylan’s song that began:

“Here comes the story of the Hurricane  
The man the authorities came to blame  
For somethin’ that he never done  
Put in a prison cell, but one time he coulda been  
*The champion of the world.*”<sup>66</sup>

The next year, in 1976, the New Jersey Supreme Court unanimously overturned Carter’s convictions, ruling that the prosecution had withheld evidence favorable to the defense.<sup>67</sup> The state put Carter on trial again, and this time, the prosecution argued that the murders were motivated by racial revenge, a theory of the crime that had never been suggested before. Amid the highly charged racial climate of the Boston busing riots of the mid-1970s, Carter was reconvicted and the same life sentences were imposed.<sup>68</sup>

59. Thomas J. Harrington, Executive Assistant Dir., Criminal, Cyber, Response & Servs. Branch, FBI, Statement Before the United States Parole Commission Re: United States v. Leonard Peltier (July 28, 2009).

60. See SAM CHAITON & TERRY SWINTON, *LAZARUS AND THE HURRICANE* (St. Martin’s Griffin 2000).

61. See *id.*

62. See *id.*

63. See *id.*

64. See *id.*

65. See *id.*

66. BOB DYLAN, *HURRICANE* (Columbia 1975).

67. See CHAITON & SWINTON, *supra* note 60.

68. See *id.*

As Carter appealed his convictions, he was supported with rallies, marches, and other events by a stunning lineup of musicians, poets, actors, writers, politicians, and political activists. They included: Joan Baez, Muhammad Ali, Coretta Scott King, Ramblin' Jack Elliott, Ronee Blakely, Allen Ginsberg, Joni Mitchell, Robbie Robertson, Ellen Burstyn, Dyan Cannon, The Who, Richie Havens, Stevie Wonder, Johnny Cash, Stephen Stills, Isaac Hayes, Ringo Starr, Nelson Algren, Norman Mailer, Gay Talese, George Plimpton, Jimmy Breslin, Pete Hamill, Edward I. Koch, Ramsey Clark, Andrew Young, Jesse Jackson, Julian Bond, Benjamin Hooks, Dick Gregory, Harry Belafonte, Melba Moore, Cleavon Little, Hank Aaron, Walt "Clyde" Frazier, and Earl "The Pearl" Monroe.

Still, another eight years would pass before, in 1985, a U.S. circuit court judge overturned Carter's second convictions, finding that the prosecution had committed "grave constitutional violations" and that the convictions were based on "racism rather than reason, and concealment rather than disclosure."<sup>69</sup> The judge advised the state, "in the interests of justice and compassion," against seeking a third trial.<sup>70</sup> He ordered Carter freed without bail, noting that, "Human decency mandates his immediate release."<sup>71</sup> Carter had been imprisoned for nineteen years. His years as a boxing contender were over. Though Carter was not tried a third time, the state of New Jersey continued to fight the ruling overturning his convictions for the next two and a half years. In January 1988, the United States Supreme Court denied the state's final appeal.<sup>72</sup> A decade later, in 1999, actor Denzel Washington played Carter in the film, *The Hurricane*.<sup>73</sup>

Carter would seem to have had it all: personal fame, evidence of police and prosecutorial misconduct, huge popular and celebrity support. He even won a second trial. But none of that could prevail against the storm of racism in which his arrest and convictions were set. For nineteen years, Carter's story demonstrated in a stark, negative way how porous courthouses can be to the climate outside. It is almost certain that, without the public support he received, which began with a group of Canadians, he would still be in prison today.

#### B. Public Response to the West Memphis Arrests

Supporters of the West Memphis Three want nothing less than what Carter's supporters won for him. They are confident that if the men's convictions are overturned, even if retrials are ordered, they will not be recon-

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69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *THE HURRICANE* (Universal Pictures 1999).

victed. That sentiment is a far cry from what confronted Echols, Baldwin and Misskelley in 1994, at their trials. Public activism then was all against them. It amounted mainly to jeering and spitting at the teenagers, who wore shackles and bullet-proof vests as they entered and left the courthouse. When support for the men began to form, after the release of the HBO documentary, it appeared mainly as a large archive of case documents that critics of the case began to assemble on the Internet. Availability of those records sparked further concern about the convictions, and that concern led to financial contributions for the men's appeals.

But in Arkansas, confidence in the convictions remained strong, strengthened by police and other officials who dismissed the developing support as coming from sympathizers outside Arkansas who didn't know what they were talking about. During the first decade the men were in prison, only a handful of Arkansans organized events on their behalf, and most of those were simply attempts to raise awareness about the case. Several modest events featuring local bands were held at Vino's restaurant in Little Rock, an instructor at the University of Central Arkansas organized a student speakers' bureau about the case, and once, on an anniversary of the arrests, a rally was held on the grounds of the Crittenden County Courthouse. In general, though, Arkansas remained an island of silence on the case, while people from other states and many other countries were deluging state offices with letters decrying it.

The quiet in Arkansas began to seriously change in October 2007, with the formation of Arkansas Take Action. One of the group's first public activities was a large rally on the steps of the state capitol, at which Natalie Maines spoke. The events that followed her appearance illustrate one potential benefit of local publicity for the defense. In her remarks at the capitol, Maines mentioned that new DNA testing had been conducted on items collected with the victims' bodies.<sup>74</sup> The singer stated that, while none of the tests produced a match with any of the three men in prison, a hair found in the ligatures was identified as probably having come from Terry Hobbs, the stepfather of one of the victims.<sup>75</sup> Hobbs sued Maines for defamation. When her lawyers deposed Hobbs in preparing to defend her, he told them that he had not seen the victims at all on the day they died.<sup>76</sup> When news of that statement was made public, two women who lived near Hobbs at the time of the killings came forward.<sup>77</sup> The women subsequently signed affidavits say-

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74. Edecio Martinez, *Dixie Chicks' Natalie Maines Wins "West Memphis Three" Defamation Suit* (Apr. 19, 2010), [http://www.cbsnews.com/8301-504083\\_162-20002775-504083.html](http://www.cbsnews.com/8301-504083_162-20002775-504083.html).

75. *See id.*

76. *See* Lonnie Soury, *Dixie Chicks' Natalie Maines is a Hero*, FREE WEST MEMPHIS 3 BLOG (Dec. 22, 2009).

77. *See id.*



ing that they, in fact, had seen Hobbs with the children a short time before the boys disappeared.<sup>78</sup> When asked why they had not reported the fact before, the women said that police had never questioned them and that, until the recent news report, they had not known that Hobbs had denied having seen the children that day. In December 2009, U.S. District Judge Brian Miller dismissed Hobbs's lawsuit against Maines, but by then, the new witnesses against Hobbs had come forth.<sup>79</sup>

Nor was that the last discovery to result from an ATA initiative. In early 2008, a few months after the rally at the capitol, ATA's leaders invited a group of Arkansas lawyers to a dinner at Trio's restaurant, where the attorneys were given a brief introduction to the West Memphis case. During that event, one of the lawyers mentioned knowing another Little Rock lawyer whom she said had "talked about this case a lot." That attorney turned out to be Lloyd Warford, a former prosecuting attorney who has since also signed an affidavit for the defense. In it, Warford outlined contacts he had with the jury foreman during the trial of Echols and Baldwin. Warford's affidavit and associated evidence have now become part of an appeal alleging serious juror misconduct.<sup>80</sup>

By 2010, as Echols's final appeal was approaching a hearing before the Arkansas Supreme Court, ATA had a core group of about a dozen members, including myself. Echols's wife, Lorri Davis, contacted some of the entertainers who had been most active in supporting the West Memphis Three and broached the idea of staging a big event in Little Rock shortly before the date set for oral arguments. Vedder, Depp, and Maines readily agreed. Henry Rollins, who could not break away from an engagement in Scotland, offered to participate via a video recording. Smith, Carter, and the band Fistful of Mercy signed on after learning of the event from the other performers. At first, Davis imagined holding it in a church. The pastor and governing body of Quapaw Quarter United Methodist Church agreed to offer their sanctuary. But as plans developed, it became obvious that the church was too small for the audience that such a lineup of talent would attract. The date for the event had been established, and the performers were locked into it. With that date fast approaching, ATA learned that no one had booked Robinson Auditorium, with its 2,500 seats, for that last Saturday night in August. ATA reserved the auditorium and, because the performers were all donating their time, set a ticket price of \$25. Within days, the event was sold out.

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78. *See id.*

79. Soury, *supra* note 76.

80. *See* Beth Warren, *Jury Foreman in West Memphis Three Trial of Damien Echols Accused of Misconduct*, COM. APPEAL, Oct. 13, 2010, available at <http://www.commercialappeal.com/news/2010/oct/13/echols-trial-juror-accused-of-misconduct/>.

Capi Peck, a key organizer of the event, said she felt it was necessary, “because so many in the state have chosen to avoid looking at this important case.”<sup>81</sup> Singling out the *Arkansas Democrat-Gazette* in particular, Peck noted that seventeen years after the arrests, and despite international attention to the case, “the largest newspaper in the state of Arkansas has all but remained mute about it.”<sup>82</sup> Another volunteer, John Hardin, observed: “We needed to make clear to our governmental and judicial officials that support for justice in this case is now more widespread than ever. We have local faith and business leaders, everyday Arkansans, and international celebrities that want those officials to know that the eyes of the state and world are demanding they bring an end to this injustice.”<sup>83</sup>

Did it work? Peck believes the event surpassed ATA’s goal of focusing attention on the case. She noted that an hour-long interview with Davis, Vedder, Maines, and Echols’s attorney, Dennis Riordan, on *Larry King Live* the night after the concert had developed “at the last minute,” as news of the event spread nationally.<sup>84</sup> “And broadcast of the concert over Sirius XM radio essentially fell into our laps,” she said.<sup>85</sup> Poe noted that several segments of the concert, as well as his film, have now been placed on YouTube, where they are reaching what he called the case’s “future audience.”<sup>86</sup>

### 1. *The Parallels*

Support for the West Memphis Three was only possible because of some remarkable luck that the state unwittingly embedded in their prosecution and trials. Without it, they would have been nothing more than three poor white kids blending in for the rest of their lives with all the other anonymous men in Arkansas’s prison complex. The luck was, in fact, multi-layered. First, officials leaked a transcript of Jessie Misskelley’s confession, with its allusions to the occult activities. News reports of that unusual aspect reached New York, prompting the HBO filmmakers to ask permission to film the trials. In another unlikely turn of events, that permission was granted, leading to release of *Paradise Lost*. Finally, in another improbable twist, Davis saw the film at its premier in New York, contacted Echols, and eventually married him. She has emerged as a tireless and articulate advocate, one who was able to form and sustain friendships with the celebrities who appeared at the Robinson concert.

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81. Interview with Capi Peck (Aug.–Sept. 2010) (on file with author).

82. *Id.*

83. Interview with John Hardin (Aug. –Sept. 2010) (on file with author).

84. Interview with Capi Peck (Aug. –Sept. 2010) (on file with author).

85. *Id.*

86. *Id.*

With financial help from supporters, Davis was also able to hire a publicist to further spread the word. In 2008, Lonnie Soury, of Soury Communications, Inc., a New York-based media relations firm, signed on as a public relations consultant to the Echols defense team. Just months earlier, in December 2007, Soury had been present when a former client, Marty Tankleff, was freed from prison, after serving nineteen years of a fifty-years-to-life sentence for the murders of his parents in their home on Long Island, New York.

Soury saw a number of parallels between Tankleff's case and that of the West Memphis Three. Tankleff had just turned seventeen when he was arrested in 1988 and charged with murdering his parents;<sup>87</sup> all the defendants in the West Memphis case were teenagers when they were arrested. Tankleff's prosecution rested heavily on an unsigned "confession" extracted from him following hours of interrogation;<sup>88</sup> the West Memphis arrests were based entirely on the "confession" of then-seventeen-year-old Jessie Misskelley, Jr. As with the West Memphis case, there were other obvious suspects who were never investigated by police. Tankleff's father's business partner owed Mr. Tankleff half a million dollars, and as Mr. Tankleff lay unconscious in the hospital before dying, the partner faked his own death, changed his appearance and fled to California.<sup>89</sup> In 2003, a private investigator, Jay Salpeter, tracked down the getaway driver for the actual murderers. But the county prosecuting attorney refused to investigate the new evidence.<sup>90</sup> Soury helped arrange a press conference and gave advance notice of it to the *New York Times*, which ran an article on the morning of the press conference about the new evidence to be presented. Television news organizations covered the press conference, and that led to a program about the case on CBS's *48 Hours*.

One aspect of Tankleff's ordeal, however, stood in marked contrast to that of the West Memphis Three. As information became available about the severity of the errors in his case, several members of the New York bar joined the effort to have his conviction vacated. According to Soury, thirty-six former U.S. attorneys, federal judges, Supreme Court justices, local New York prosecutors, and the district attorney of Queens County signed an amicus brief supporting Tankleff.<sup>91</sup> In contrast, members of the Arkansas bar, with the exception of the convicted men's lawyers, so far have taken no

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87. See Bruce Lambert, *No Retrial in '88 Double Killing on Long Island*, N.Y. TIMES, July 1, 2008.

88. See *id.*

89. See Bruce Lambert, *New York is Said to Have Inquiry in Tankleff Case*, N.Y. TIMES, Dec. 29, 2007.

90. *Id.* (West Memphis police and Arkansas Attorney General Dustin McDaniel have said they see no need to investigate new DNA evidence in the West Memphis case.)

91. Interview with Lonnie Soury (Aug.–Sept. 2010) (on file with author).

public stance with regard to the West Memphis case. When I have asked attorneys why this is, I have received three general answers. One suggestion is that attorneys here are afraid to speak out, lest their comments be viewed as weakening public confidence in the state's judicial system, an offense that is in violation of the Supreme Court's Rules of Professional Conduct and which could lead to censure or disbarment. Another response is that lawyers who practice in the district where the cases were heard, and who might conceivably have the greatest insight on events, could be viewed as possibly harming their future clients' cases if they made public comments critical of a judge, for instance, and the judge's possible resentment were to color his rulings. The third, and perhaps grimmest response I've heard was that the kinds of abuses that the public is decrying in the West Memphis case are not too different from what many defense attorneys encounter routinely in their own practices, and they have their hands quite full enough dealing with those issues.

By 2006, the mounting attention on the case prompted the New York Investigation Commission to begin quietly gathering legal documents for review. That year, Tankleff celebrated his thirty-fifth birthday in prison. James Gandolfini, star of the HBO series *The Sopranos*, drove four hours to share the day with him. The actor also attended Tankleff's oral arguments and offered him other support. Finally, in December of 2007, an appeals court vacated Tankleff's convictions, ruling that extensive new evidence pointing to other suspects probably would have changed the jury's verdict.<sup>92</sup> Following Tankleff's release from prison, New York authorities launched an official inquiry into law enforcement's handling of the investigation that led to his conviction. The state investigators concluded that police and prosecutors had done nothing illegal or improper in Tankleff's case.<sup>93</sup> Soury called the report "a shocking whitewash."<sup>94</sup>

Not surprisingly, Soury believes that the role of public advocacy in cases of wrongful conviction "cannot be overstated."<sup>95</sup> As he put it, "The challenge of overturning convictions and obtaining post-conviction justice is almost insurmountable and necessitates a combination of legal, evidentiary and public advocacy efforts to succeed. Only a handful of cases benefit from this combination of resources and, even with them, it often takes years—even decades—to free the innocent."<sup>96</sup> Indeed, a review of the cases outlined above suggests that a winning combination, however long that might take, is almost miraculous.

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92. See Lambert, *supra* note 89.

93. See *id.*

94. Interview with Lonnie Soury (Aug. – Sept. 2010) (on file with author).

95. *Id.*

96. *Id.*

## 2. *The Effects*

But the real question facing supporters of the West Memphis Three is whether members of the legal establishment, especially in Arkansas, think rallying popular support is a helpful—or harmful—tactic. Ken Gallant, a professor at UALR's Bowen School of Law, recognized both possibilities. "There are times when it can raise money for a defense fund," Gallant said. "There are also times when it can make it politically impossible for the relevant authorities to grant clemency; that's the downside." With regard to courts, he added:

I have to admit that, if it creates a backlash, I would not want judges to feel shut-down because they think they're receiving political pressure. Political pressure sometimes, humanly, creates a negative impression. And in the case of a populist state like Arkansas, if there is, say, public support for an inmate, that could also give rise to political pressure coming from, for instance, the anti-crime faction.<sup>97</sup>

Steven A. Drizin teaches at Northwestern University School of Law in Chicago, where he also directs the Bluhm Legal Clinic's Center on Wrongful Convictions. Drizin and Laura H. Nirider, a staff attorney at the center, co-authored an *amici curiae* brief filed on behalf of Echols that was filed with the Arkansas Supreme Court in September 2009. Both attended the concert. Drizin said,

What was special about the event was the fact that so many folks from Arkansas were present. It was important that the Supreme Court realize that this effort to free the WM3 enjoys tremendous local support. Supreme Court justices do not live in a bubble. They read the newspapers. They watch television. They shop at grocery stores and eat at restaurants. They are aware of public perception and have some sense of the pulse of the community in which they serve.<sup>98</sup>

Drizin said that during the twelve years he's been involved in the West Memphis case, he has seen "the perception among folks in Arkansas shift tremendously."<sup>99</sup> He credited the availability of public records plus celebrity involvement for part of that. "But most of it," he said,

has to do with the new evidence of innocence and new understandings about the causes of wrongful convictions. Twelve years ago, it was simply unfathomable that members of the victims' families would ever

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97. Interview with Ken Gallant (Aug.–Sept. 2010) (on file with author).

98. Interview with Steven A. Drizin (Aug.–Sept. 2010) (on file with author).

99. *Id.*

voice support for the WM3. The fact that many are now calling for a new trial for Damien, Jessie and Jason is the most palpable evidence of the sea change in public opinion.<sup>100</sup>

The central irony of the Voices for Justice concert is that the men on whom the event was focused could not attend. Echols, Baldwin, and Misskelley could not watch the many video recordings that members of the audience shot with their cell phones and loaded onto YouTube. They could not see the video in which they themselves appeared. Nonetheless, I wrote to each of them, asking what they thought of the event.

Misskelley responded in the short, declarative sentences that are his style.

What did I hope Voices for Justice might accomplish? I hope it will open people's eyes. Do I think it might somehow affect my appeals? This shouldn't affect any of my appeals. This is just people trying to do the right thing. What effect, if any, do I think publicity had on my arrest and trial? To me, back then, the public made us out to be something we're not. We wasn't going to get a fair trial no matter what. Since then, what has public support meant for me, or my case or both? Well, things have changed a lot since then. More people each day is trying to help. They know it's wrong. They just want justice done to the right people, that's all. It's sorry that it went this long.<sup>101</sup>

Baldwin's responses were more philosophical. He wrote:

Mohandas Ghandi once said, 'A nation's culture resides in the hearts and souls of its people.' Every time there is a rally or someone stands to speak up in defense of an innocent, that tells me that America and the world has a growing culture of heroes. In society, especially America's, wherever innocents suffer injustice, it is the people who come first to the rescue. It is only later that the government does so. This case is no different in that regard.<sup>102</sup>

Baldwin also noted a more personal effect of the support he's received. "I've done the math," he wrote,

and at this point in my life, I've lived 55 percent of it in prison. Sometimes the pain of all that I lost, all that I've not been able to experience, nearly overwhelms me. Each year that passes makes it more and more difficult to battle the bitterness that threatens to sweep me away into one

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100. *Id.*

101. E-mail from Jessie Misskelley, Jr., to Mara Leveritt (Sept. 2010) (on file with author).

102. E-mail from Jason Baldwin, to Mara Leveritt (Sept. 2010) (on file with author).

of those dark isolation cells. As difficult as it is, I never give up. Each day letters arrive from all over the world carrying to me a message of hope. It is that message that I cling to for dear life.<sup>103</sup>

Echols's responses were to the point, perhaps befitting a man on death row. "You had some of the most famous people in the entertainment world doing this concert, with nothing to gain by it," he wrote.<sup>104</sup>

They didn't make a pile of money or boost their careers in any way. Hopefully, people will want to know *why* they would put so much work and energy into this concert, and spend a few minutes doing some research. If the event affects our appeals, it will be due to two things. One is the level of transparency that will be encouraged by it. The second would, hopefully, be to have those within the system realize that these people wouldn't put their reputations on the line for no reason, and be encouraged to take a hard, close look at the case.<sup>105</sup>

Echols sees both a negative and positive effect of public perceptions regarding his case. "The local media had a *tremendous* amount to do with our initial convictions," he wrote.<sup>106</sup>

They focused on making the story as sensational as possible while paying little to no attention to the actual evidence. It made it impossible for us to receive a fair trial. The only exception was the *Arkansas Times*. Since then, it is public support that has prevented the state from murdering me. If not for that support, the state would have killed me and swept this case under the rug long ago.<sup>107</sup>

Obviously, this is not a scientific—nor even a scholarly—review of cases that have attracted public concern. But I believe it does suggest that Lady Justice, while blindfolded, is not also deaf. The number of persons freed from prison on appeal is infinitesimally small. There are many cases, such as those of the "Arkansas Scottsboro Boys," Barry Lee Fairchild, and California's Caryl Chessman, that failed, even with widespread publicity, to stave off execution or result in an inmate's freedom. On the other hand, there is no doubt that James Dean Walker, Rubin "Hurricane" Carter, and Marty Tankleff would be either dead or still in prison were it not for supporters' efforts. Yet it is the cases of Leonard Peltier and Mumia Abu-Jamal, both of whom were convicted of killing law enforcement officers, that may

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103. *Id.*

104. E-mail from Damien Echols, to Mara Leveritt (Sept. 2010) (on file with author).

105. *Id.*

106. *Id.*

107. *Id.*

best illustrate the judiciary's sensitivity to the political climate. Both men remain in prison despite long-term, widespread, high-profile and even international activism on their behalves. Both have also experienced intense public opposition to their release—from police organizations in Abu-Jamal's case and from the FBI in Peltier's.

The legal fate of the West Memphis Three remains to be decided. I see several effects—some certain, some possible—of the support that has developed for them so far.

The certain effects are that:

- The support has buoyed their spirits.
- It has generated money for their appeals.
- It has funded new investigations and DNA testing.
- It has led to the development of new witnesses (relating to Hobbs) and to new information (regarding juror misconduct).
- It has reached a critical mass, with high-level celebrity involvement and a professional publicist, that can keep attention focused on the case.

The possible effects are that:

- As Echols noted, it may have prevented, so far, his execution.
- It may have contributed to the defeat of Circuit Judge John Fogleman, in his bid for a seat on the Arkansas Supreme Court.
- It may have reversed, by 180 degrees, the climate surrounding the case in Arkansas, from certainty of the men's guilt in 1994 to widespread doubt about it today.
- By changing the political atmosphere outside the courthouse, it may—may—affect the deliberations of elected judges inside.
- It may be subtly reshaping the debate about Arkansas's death penalty.

There is one other consequence of which I am certain. The case of the West Memphis Three has generated skepticism about the quality of justice in this state. Confidence in our appellate courts has been weakened. Young people who never did so before have read police files, trial transcripts, and entire Supreme Court opinions. They watched Echols's oral arguments before the Supreme Court on the Internet. People who once never would have dreamed of doing so have now stood in opposition to judicial decisions. They have come to believe that public opinion matters—and that, however indirectly, it might affect the opinions handed down by appellate courts.



## IV. CONCLUSION

It will never be easy for men and women convicted of crimes to muster public support. To the extent that the public has confidence in the many levels of its judicial system, it is willing to accept juries' verdicts and courts' orders. Ordinary people can spare little time in their busy, complex lives to champion the cause of a convicted criminal, even when a small number of people publicly question the processes that led to that conviction. However, if the questions raised by that small group gain traction, and the issues begin to appear egregious to enough other people, and genuine concern is aroused about the quality of justice in a particular situation—especially if what transpired has been endorsed by a supreme court—then public activism gets some muscle. Where one or two voices on the street cannot be heard inside courtroom walls, the voices of thousands, perhaps, can be.

When citizens become so concerned about decisions of their courts that great numbers of them devote time, effort, and money to raise a cry, seeking court review, I believe their cry should be heard. Not because any court is obliged to listen to public dissent. And certainly not because courts should be guided by public passion, for they could as easily be misguided by it. No, I believe that in those rare instances when large numbers of citizens go to the trouble to confront their courts respectfully, reasonably, and insistently, courts should heed the message, and its inherent warning that confidence in them has been shaken.

At such times, courts might remember the words of former U.S. Supreme Court Chief Justice William H. Rehnquist and former U.S. Supreme Court Associate Justice Sandra Day O'Connor, when they addressed the National Conference on Public Trust and Confidence in the Justice System in Washington, D.C., in May 1999. In his keynote address, Rehnquist said: "Next to doing right, the great object in the administration of justice should be to give public satisfaction."<sup>108</sup> O'Connor supported that idea in her concluding address. "Sometimes, in the pressure of doing what judges have to do and running a tight ship in the courtroom and deciding tough issues," she said, "we forget that, in the last analysis, it is, after all, the public we serve and that we do care about how the courts are perceived generally."<sup>109</sup>

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108. William H. Rehnquist, Address at the National Conference on Public Trust and Confidence in the Justice System (May 13–15, 1999).

109. Sandra Day O'Connor, Address at the National Conference on Public Trust and Confidence in the Judicial System (May 13–15, 1999).