

# MARGINALIZATION AND WRONGFUL CONVICTIONS

## The Social Reality of Wrongful Conviction

Looking at them, the casual observer would see nothing unusual about the men seated in front of an audience in the conference room of a downtown Toronto hotel in May 1995. They might have been business people, politicians, or academics. But David Milgaard, Donald Marshall, and Guy Paul Morin were in fact men who had been wrongfully convicted of serious crimes. Milgaard served twenty-three years behind bars, Marshall served eleven years. Milgaard, Marshall, and Morin have become public figures, symbols of a justice system gone wrong. We can now add more names to that list such as James Driskell and Bill Mullins-Johnson. After years of being ignored, their cases had been championed by the media. They had become household names. Many of them owed their freedom to the dedication of long-suffering family members who had pursued their cases for decades. Had they trusted in the justice system to identify and correct its own mistakes, they would still be in prison. Their presence at this national convention of the Association in Defence of the Wrongly Convicted, indeed the fact that such an organization is needed, raises troubling questions about the Canadian justice system. How many more innocent Canadians are locked behind prison bars? Can we blame their convictions on simple human error, or are there deeper problems in the Canadian justice system?

## How Many Are Wrongfully Convicted?

There are many guilty people in prisons who insist they are innocent, hoping their claim will earn them their freedom. Unfortunately, there is no simple method for separating legitimate claims of innocence from those of the guilty or for determining the actual number of wrongfully convicted. In Canada very little research has been done in this area. The answer to the question of how many people are wrongfully convicted is therefore unknown and unknowable. We know only of cases that go to trial. As we will discuss later, there may be thousands of cases of wrongful conviction in Canada because, for a variety of reasons, innocent people may plead guilty during plea bargaining. Although justice officials stress that wrongful convictions are rare occurrences, the available evidence indicates that the cases that do come to our attention are only the tip of the proverbial iceberg. Those who have been wrongfully convicted may apply for a Ministerial Review of their case under 696.1 of the *Criminal Code*.

## Manufacturing Guilt

These applications are received by the Criminal Conviction Review Group, a separate unit under the federal Department of Justice. In 2007 they received eighteen applications; in 2008 they received thirty-two applications for review (Department of Justice 2007; Department of Justice 2008).

A study conducted at Long Lartin maximum security prison for the National Association of Parole Officers in Britain revealed that as many as 6 percent of the inmates of that prison may be wrongfully convicted. The Association believed this figure was typical of British prisons (Carvel 1992). British inmates who proclaim their innocence all said they face enormous difficulties trying to get the judicial system to listen to their complaints. As in Canada, British prisoners who protest their innocence also find it much more difficult to gain parole. Harry Fletcher, who headed the study, noted that

many of the men have been trying to put together a case for up to ten years. All have experienced problems in getting adequate legal advice and some have been forced to draft their own appeal grounds, with no real hope of an adequate hearing. (Carvel 1992)

Only a few very committed lawyers were prepared to take on the tedious and time-consuming task of proving a miscarriage of justice with little prospect of any monetary reward.

A British Royal Commission report states that 700 to 800 cases of possible wrongful conviction are still waiting for review. The report also states that one-third of Britain's Police Departments are being investigated in connection with such cases. American criminologists Ronald Huff, Arye Rattner, and Edward Sagarin (1986) reported that top justice officials in the United States believed that between 1 percent and 5 percent of all felony convictions were wrongful. In numerical terms, 1 percent translates into 6,000 cases per year. Hugo Bedau and Michael Radelet (1987), in researching wrongful convictions, concluded that twenty-three innocent persons have been executed in the United States between 1905 and 1974. Edwin Borchard, in his classic 1932 book, *Convicting the Innocent*, discussed sixty known American cases of wrongful conviction. A Gannett News Service analysis found eighty-five instances over a twenty-year period in which American prosecutors used fabricated or questionable evidence to convict innocent people (*USA Today* 1994). Holmes (2001) estimates that as many as 20 percent of all convictions in the United States may be wrongful (as cited in Denov and Campbell, 2008).

Have Canadians bought the official message that there are too few wrongful convictions to be concerned about, that human error is bound to occur, and that in any event the justice system will self-correct? Do we naively assume that a democratic political system automatically guarantees us a fair and equitable system of justice, free of corruption and political intrigue? Has our search for truth and justice been allowed to regress into a vilification of the innocent?

Have we let down our guard and permitted race and class distinctions, political corruption, and professional self-interests to pervade our justice system? These are unpleasant questions for which there are no immediate answers. Yet, as we will see, questions like these must, in part, guide our investigation into the cause of wrongful convictions.

### The Official Explanation

When a wrongful conviction is exposed, police, judges, bureaucrats, and politicians who bear responsibility for the design and maintenance of the system are quick to offer a ready explanation for why the system failed. This explanation is frequently echoed by academics in contemporary criminological literature. Miscarriages of justice are said to result primarily from poor witness reporting or from “unintended” errors committed by justice officials. Huff, Rattner, and Sagarin (1996) note that most of the wrongful convictions they examined were the product of unintentional errors made by witnesses or by those who operate the American justice system. While Rattner (1983) indicates that many factors are involved in wrongful convictions, he notes that fully 52 percent of the cases he studied involved poor witness identification. Borchard (1932) emphasized the major role that witnesses can play in the wrongful conviction of the innocent. Jerome and Barbara Frank (1957) argue that a witness who gives false testimony frequently believes he or she is telling the truth. Philip Rosen (1992) noted the importance of bad eyewitness reporting as a causal factor in Canadian wrongful convictions. The true extent of the problems generated by eyewitness reporting can be seen in a *Globe and Mail* article, which reported that a review of 1000 American wrongful convictions found that half of these were due to eyewitness errors. The same report found that each year nearly 80,000 trials in the United States rely on eyewitness testimony (*Globe and Mail* January 21, 1995).

Eyewitness reporting is crucial to any comprehension of wrongful conviction. A key witness to a crime is sometimes the only evidence the prosecution has to make its case. Without the testimony of a witness to the event, the prosecution may be forced to rely on circumstantial evidence, which most juries would find insufficient for a guilty verdict. An eyewitness to an event is a powerful weapon in the hands of the prosecution. History has shown that juries are inclined to accept the testimonies of witnesses as fact because they find it difficult to believe that people lie under oath. The end result is that tenuous eyewitness evidence becomes socially transformed into “fact.”

Obviously, the official explanation that unavoidable human error is a prime cause of wrongful conviction cannot be discounted. Lawyers can be misinformed, witnesses may honestly believe they have seen something that they have not, judges may unconsciously give bad instructions to juries. People do make mistakes and that fact must be recognized. What we are suggesting

here is that many of the official explanations for wrongful conviction miss the mark. The cases that we examine in this book demonstrate a consistent pattern of who becomes the victim and how they have been victimized. The official explanations ignore the fact that the underprivileged are most frequently the victims of this “human error.”

At the most fundamental level, we must surely consider the possibility that those with wealth can retain the best of defence counsels who will ensure that such “human error” does not often happen to them. When David Milgaard, Thomas Sophonow, and Guy Paul Morin were finally able to attract high calibre lawyers to work on their cases, “human error” was “discovered” by the courts and their convictions were overturned. Furthermore, when a wrongful conviction is exposed and corrected, it is presented as evidence by the authorities that the system does work and is self-correcting. Ontario prosecutor Leo McGuigan put Guy Paul Morin behind bars for murder in 1993. When Morin was later proven innocent through DNA analysis, McGuigan told the press gathered outside the courthouse that “the justice system in this country is run by human beings. It does on occasion make mistakes. This was one of them” (Clayton 1995: 9). This audacious statement, from a man who only two years before had presented Morin to the jury as a sadistic mad killer, is typical of how those within the system rationalize wrongful convictions to the public. Overly-simplistic references to “unfortunate human error” do not capture the true nature of the unjust convictions studied in this book.

If we are to gain a comprehensive understanding of this phenomenon, we must subject our justice system to two levels of analysis. The first, “on-the-ground” level involves the “hands-on” work of the professionals and bureaucrats who run the legal and justice systems. Their actions are the immediate cause of all convictions, wrongful and otherwise. The second and higher level of analysis involves an understanding of how the systemic political, economic, and social inequality endemic to Canadian society leads to the marginalization of large groups of Canadians, some of whom become wrongfully convicted. The two levels are interdependent, because bureaucratic and professional malfeasance generally occurs within the overarching context of social inequality and its commensurate marginalization of certain groups of peoples.

### Bureaucratic and Professional Wrong-doing

This on-the-ground level of analysis examines the targeting practices of the police, the suppression of evidence, police coercion and intimidation, falsified forensic evidence, judicial malpractice, jury tampering, and prosecution and defence misconduct. Clayton (1995) contends that the most frequent causes of wrongful convictions in Britain include confessions obtained under pressure in the absence of a lawyer, fabrication of evidence, lack of forensic corroboration, untested alibis, unreliable prosecution witness, poor representation by defence

lawyers, and biased direction to the jury by judges.

Some American studies, while acknowledging the importance of Clayton's findings, emphasize the role of eyewitness identification as a factor in wrongful convictions. Rattner (1983, 1988) found that 52 percent of all wrongful convictions studied involved eyewitness misidentification; 11 percent, perjury by witnesses; 10 percent, the negligence of criminal justice officials; 8 percent, confessions coerced by the police; 4 percent, a "frame-up"; and 3 percent, perjury on the part of criminal justice officials. Other factors involved identification by police due to prior criminal record, forensic errors, and "pure error" (Rattner 1983, 1988). Rattner (1983) also discovered that organizational and societal factors play a major role in wrongful conviction and that all levels of the criminal justice system tend to ratify earlier errors. Indeed, Rattner (1983) noted that the higher a case moved in the system, the less chance there was for an error to be recognized and corrected. This would seem to suggest that those at the highest level of judicial review close ranks and act as gatekeepers to sustain public perception of the system's integrity.

Because they are particularly sensitive to public pressure, it is in the police's interest to solve a case quickly. Under these circumstances the police may target for arrest the first individual who has even the remotest chance of being involved in the crime. Convinced of the suspect's guilt, they feel justified in using any legal as well as illegal means, such as threats, brutality, perjury, and suppression of evidence, to build a case against this person (Huff et al. 1996). If this unfortunate individual has a previous criminal record, comes from a visible minority, and is already living on the fringes of society, he or she will have few resources with which to defend him- or herself against police power and public indifference. Many of the wrongfully convicted have been the victims of "tunnel vision." Tunnel vision occurs when the police or prosecution's focus on one particular individual taints the interpretation and evaluation of any information received and results in the "unconscious filtering in of evidence that will 'build a case' against a particular suspect, while ignoring or suppressing evidence respecting the same suspect that tends to point away from guilt" (MacFarlane nd: 34).

Exacerbating the problem is the fact that the police feel that they do society's "dirty work" but receive no recognition for a job well done. This culminates in an "us against them" mentality and a tendency for the police to be secretive in their actions and suspicious of the public. Directed primarily against those of the lower class, this suspicion is one of the key factors leading to police coercion and brutality and the targeting of the poor that is endemic to wrongful convictions. Also, because promotion within police ranks is determined in part by an officer's clean record and the number of high profile arrests and cases completed, an officer may be tempted into wrongdoing in order to secure a conviction. In such an organizational culture and structure, winnable (and won) cases are a priority and become a self-maintaining process.

## Manufacturing Guilt

We will see later how Donald Marshall Jr., a Nova Scotia Mi'kmaw, was quickly singled out by the Sydney police as a prime murder suspect. Guy Paul Morin was targeted as a prime murder suspect because he was considered “weird” by an Ontario regional police department. David Milgaard, a sixteen-year-old high-school drop-out and self-professed hippie, became the prime suspect of a conservative Saskatoon police force headed by a chief who made it known that he had no use for hippies. All of these men, and others to be discussed in the case chapters, were marginalized in one way or another from mainstream middle-class society.

In this book we demonstrate that the police, in building their case against a prime suspect, may suppress, lose, misinterpret, or overlook evidence that supports the defendant's claim of innocence. Once the police have convinced themselves that they have apprehended the guilty person, they proceed on the assumption that the accused and any witnesses whose evidence supports the accused's claims of innocence are lying. On the other hand, any evidence that appears to point to the defendant's guilt may be exaggerated out of all proportion. Furthermore, evidence or testimony that points to alternative suspects may be repressed or totally ignored. This form of police misconduct is much less likely to be detected or challenged if it is perpetrated against the powerless members of society rather than those in the middle and upper classes.

Another aspect of professional wrong-doing involves what is frequently referred to as “jailhouse testimony.” Jailhouse confessions involve an alleged confession of guilt by an accused to a fellow inmate who has been planted in a cell by the prosecution or police. The “plant” later testifies in court that the accused confessed to the crime. In exchange for this testimony, the witness may be given special consideration by the police or the prosecution. The fact that the accused in this instance may have been “set up” and that a deal was made with the planted inmate may not be known by the judge, the jury, the accused's lawyer, or the public.

Coerced eyewitness testimony may also result from professional misconduct on the part of the judicial authorities. Testimony gained through coercion may be presented by a variety of people, including the friends and family of both the accused and the victim. These people will swear in court that they saw the accused at the scene of the crime or even committing the criminal act. Unfortunately, the process of coercion is made relatively simple if the witness already harbours racial or class-based attitudes concerning the accused that blur the distinction between truth and falsification. The police may also easily coerce a witness into giving false testimony against an accused if the witness expects to gain some favour by cooperating with the police. This is frequently the motivation of the typical “jailbird” confessor. Many witnesses to a violent crime may have gotten only a fleeting look at their attacker and be reluctant, initially, to identify a possible suspect from a police line-up or mug book. These witnesses may be encouraged or coached by the police to identify a person as

the one they saw at the scene of the crime.

Expert witnesses for the prosecution, such as forensic scientists, may step over the boundary separating science from advocacy. Some forensic scientists see themselves as part of the prosecution team rather than as standing at arm's-length from the state, in search of the truth. We will see later how forensic scientists have misrepresented the results of laboratory findings in a manner prejudicial to the accused but favourable to the prosecution's case. It is also possible for forensic scientists to repress forensic evidence that would be beneficial to the accused.

We must also consider the possibility of biased judges. These individuals are at the pinnacle of the judicial system and their job is to oversee the trial process and determine the sentence for those convicted of a crime. It is the responsibility of the judge to guarantee that all parties involved in a trial act according to the proscribed rules, ensuring a fair and impartial hearing for the accused. Judges therefore have a tremendous responsibility to maintain justice. However, they also have the very important task of maintaining public confidence in the judicial system. To this end, lawyer Alastair Logan (1995) asserts, the judiciary will act to preserve the reputations of police officers, prosecutors, expert witnesses, or others acting on behalf of the Crown when their reputation or the legitimacy of the system is called into question. The possibility therefore exists that a judge may unintentionally or maliciously conduct a trial or instruct the jury in a way that is prejudicial to the accused, if he or she perceives that to do otherwise would somehow jeopardize the integrity of the judicial system.

We must recognize that prosecution and defence misconduct may lead to a wrongful conviction. The Canadian system of justice is based on an adversarial process that pits the formidable forces of the state against a lone individual. In theory, the power of the state should be nullified by the skill of the defence lawyer as he or she does courtroom battle with the prosecutor. This adversarial system demands a winner and a loser but, unfortunately, the reasons for winning go beyond simply seeing justice done. For lawyers, winning becomes a means of building a reputation, of earning more money, of living a good life. Those lawyers who have mastered the techniques of examination, cross-examination, and other courtroom mysteries will naturally be rewarded with a higher income and the respect of their peers. Unfortunately, the desire to win has caused many lawyers to engage in questionable, even unscrupulous, tactics, which are frequently condoned by the legal profession as a whole. Lawyers learn quickly what works well in the courtroom and what does not. What works are techniques that may distort the truth, confuse the jury, and make apparent liars out of honest witnesses. Members of the highly structured legal system share a culture that emphasizes winning cases rather than doing justice. For too many lawyers, the courtroom has become a place for building reputations rather than a forum for discovering truth and serving justice. When

the need to win takes precedence over truth, the seeds of wrongful conviction have been sown in the fertile soil of legal indifference, personal greed, and public apathy.

The antithesis to the overly combative lawyers for whom winning is the ultimate goal is the defence counsel who does not defend. Forty-four-year-old Wilbert Coffin was hanged in 1956 for the murder of three American bear hunters. Many people now believe he did not commit the crime. In a book on the case, the late Jacques Hebert argued that the incompetent performance of Coffin's lawyer contributed to Coffin's conviction and subsequent execution. Similarly, the legal counsel for Donald Marshall Jr. is regarded by many as having been ineffective. While most lawyers are skilled and responsible professionals dedicated to insuring the propriety of the legal system in all its ramifications, that even a few should deviate from this ideal and lead to convicting the innocent casts a dark shadow over the entire system. The causes of such problems may be more mundane than malevolent. The legal aid lawyer asked to defend a client who is not guilty may not have the financial and human resources needed to provide the appropriate defence for the accused against an aggressive and determined prosecutor with the resources of the state at hand.

The bureaucratic and professional wrong-doing described above does not happen in isolation from the mainstream of society. Such behaviour has its source in the systemic social inequality endemic in the Canadian social structure. The analysis of wrongful conviction must therefore focus on the social structure itself — on Canadian society — and it is here that we now turn our attention.

### Social Inequality, Crime and Wrongful Conviction

Canada, like other western industrialized nations, is a country characterized by systematic social inequality. Vast differences in life chances between classes and racial groups are clearly evident. Most telling is the high level and persistence of poverty in Canada. From the 1970s to the 1990s, between 15 percent and 18 percent of Canadians were classified as poor by the federal government. In fact, by Statistics Canada's estimation, which many argue seriously understates the problem, over five million Canadians, 17.8 percent of our population, were poor in 1995 (Ross and Shillington 1989: 40; Battle 1998). In 2004, 3.5 million Canadians, representing more than 11 percent of the population, were still living in poverty (Canadian Council on Social Development nd). Moreover, it seems that the rich are getting richer. Between the 1970s and 1990s, the share of national income going to the bottom 50 percent of the population dropped from almost 28 percent to under 23 percent, while the top 10 percent saw their income increase by almost 14 percent (Yalnizyan 1994: 22). More recently, Yalnizyan (2007) found that "In 2004, the average earnings of the richest 10

percent of Canadian families raising children was 82 times that earned by the poorest 10 percent. That is approaching triple the ratio of 1976, which was around 31 times” (3). Aboriginal people in Canada are particularly likely to live in poverty: in 1991, for example, the average income for Aboriginal people was \$14,561 compared to \$24,001 for all Canadians. That gap continued in 2000, when the average income for the Aboriginal population was \$22,332, compared to \$38,011 for the non-Aboriginal population (Statistics Canada 2004). Similarly, in 1991, almost half of the Aboriginal population had incomes of under \$10,000, more than twice that for all Canadians (Battle 1997). That gap remains: in 2000, over one-quarter of the Aboriginal population (26 percent) had incomes under \$10,000 compared to 11 percent of the non-Aboriginal population (Statistics Canada 2004). It is in this context that we must view the operation of our criminal justice system.

Justice is essentially an abstract concept based on the rather vague ideas that people share about law and society, crime and punishment, good and bad. Justice will change as society itself changes. However, as our laws become institutionalized and regarded as natural truths — the very foundation of society itself — they become a powerful tool for maintaining the legitimacy of the social order by deflecting public attention away from state agencies and institutions and towards individual wrongdoers, emphasizing the fact that the activities of such people are detrimental to the stability of social order itself. Unfortunately, the majority of those singled out by the judicial system as being the most undesirable and dangerous wrong-doers are the poor, the unemployed, and the visible minorities living on the fringes of society. These unfortunate people, frequently underprivileged since birth, thus become our criminals. Structured as it is, the judicial system permits select people with authority to pass judgment on others in a process that will officially certify them as criminal. In practice, the legal system becomes not only an extension of the social values and attitudes of a society at any particular point in time but also a powerful weapon used by the state to control the dispossessed groups, particularly during times of political and social upheaval (Bonger 1967; Scott and Skull 1978).

Scholars in both critical and mainstream criminology have extensively documented the fact that criminal law is not applied equally to all classes in society. This leads to the lower class being identified as the criminal class (Hogarth 1971; Mandel 1991; Myers 1991; MacLean 1986; Tepperman 1977; Bell-Rowbotham and Boydell 1972; Reiman 2004; Comack and Balfour 2004; Stern 2006; Brooks 2008). These researchers tell us that the lower class is convicted more frequently than the upper class because the ideology as well as the actions of the police and others in the justice system weeds out and protects higher status offenders from prosecution for the types of crimes that most frequently draw the attention of the police. It is the poor, the unemployed, the visible minorities, the powerless, and those ostracized for their

sexual orientation who are most frequently criminalized by the system. It is members of these groups we most often mean when we speak of marginalized peoples. However, under some circumstances, the category expands. Guy Paul Morin was middle-class, but the police questioning him considered him “weird.” He was also marginalized because his lifestyle was not acceptable to his community.

To complicate the problem, many marginalized people are sensitive to the fact that what does and does not become defined as “criminal” may work against them. Understanding that the law and its application are frequently biased, insulting, and injurious towards them, the marginalized may behave in ways that bring them into direct conflict with the law. This is a classic example of the self-fulfilling prophecy.

In the United States, the corrections system handles about 1.3 million offenders per day. Eighty percent of the people in this group come from the lowest 15 percent income group. Looked at another way, of the approximately 1.2 million people in state prisons in 1998, 30 percent were not employed at all and nearly half were without full-time employment prior to their arrest (Myers 1991; Reiman 2004). Beverley Bell-Rowbotham and Craig Boydell (1972) found that the highest rates of conviction in Canada were for people with little or no schooling and low-status occupations, with labourers having the highest rate. Lorne Tepperman (1977) noted that the police, prosecutors, judges, and probation officers working within the Canadian justice system have been given a great deal of discretion in carrying out their duties towards the accused. Whenever this discretion is available it will be used in ways detrimental to the poor. William Chambliss and Robert Siedman (1971) agree with Tepperman, arguing that this discretion will be utilized by the legal and judicial authorities to bring the poor and powerless into the purview of the law. As a result, the laws prohibiting certain types of behaviour popular among the lower class are the most likely to be enforced.

Lower-status offenders are also less likely to be granted bail or recommendations for leniency from probation officers and others within the system. Accused persons who are not granted bail face severe problems. First of all, they are kept in jail, as if they had already been convicted. While in jail an accused person cannot seek out witnesses and evidence that could help in their defence. Studies have shown that those released on bail while awaiting trial are more likely to be acquitted or receive lighter sentences than those who are incarcerated while awaiting trial (Ares et al. 1963; Friedland 1965).

Even where crimes are identical, the courts will frequently give a middle- or upper-class offender a lighter sentence than that given a lower-class offender. It is assumed and sometimes stated by the court that since the upper-class offender has already “suffered enough” through loss of status brought about by the arrest and trial, incarceration would be socially and psychologically destructive. There is no empirical evidence to support this prejudicial notion

that the poor suffer less than the rich from the humiliation and degradation of prison. Michael Mandel suggests, “[T]he tender attitude displayed to high status offenders by sentencing judges merely betrays their sympathy for the problems associated with their own class and their insensitivity to those of the working and marginal classes” (1991: 152).

Jeffrey Reiman (1990) notes that weeding out the wealthy from the criminal certification process starts with the police deciding who to investigate, arrest, and charge. The decision is not made simply on the basis of the offense committed, but also through a systematic class bias that works against the poor. This weeding-out process on the part of the police, combined with the class sympathies of the judiciary, causes our jails and penitentiaries to be populated predominantly by those from the fringes of society.

Afro-Canadian and Aboriginal people in particular seem to be targeted by the system for arrest, conviction, and punishment. When a member of a visible minority is murdered the criminal justice system does not give the case high priority, but the killing of a white person by a member of a visible minority will cause the justice system to act with the greatest urgency (Radelet et al. 1986). Although Canada’s Aboriginal people represented only about 4 percent of the total population in 2006, they constituted 18 percent of the population admitted to Canada’s federal prisons and 20 percent admitted to provincial/territorial institutions in 2006/07 (Babooram 2008). In the prairies, where the Aboriginal population is higher, the over-representation of Aboriginal peoples in prison is higher. Specifically, in Saskatchewan and Manitoba, Aboriginal people represent 15 percent and 16 percent of the total population but 79 percent and 71 percent of the admissions to provincial/territorial sentenced custody (Landry and Sinha 2008).

Crime is also an economic engine for society. It generates employment for the police, lawyers, judges, court officials, prison guards, and all the ancillary agencies that work within and support the system. Even the state-funded legal-defence systems, designed to close the obvious gap in the quality of justice between the classes, have met with only limited success. The poor still get young, overworked and inexperienced lawyers who have little time to prepare an adequate defence for their clients. These systems seem to benefit the legal profession by creating a new source of guaranteed income while legitimizing the state (Snider 1985). In the same vein, Friedenberg, commenting on the legal industry, notes:

it all rests on the backs of about 25,000 poor — mostly very poor — souls in jail. Most of them are less than thirty years old and have never finished school; a disproportionate number of them are Native people. In what other way could these few — these gallant if not happy few — impoverished in body and mind and often in spirit, contribute so much to their country? (1980: 283)