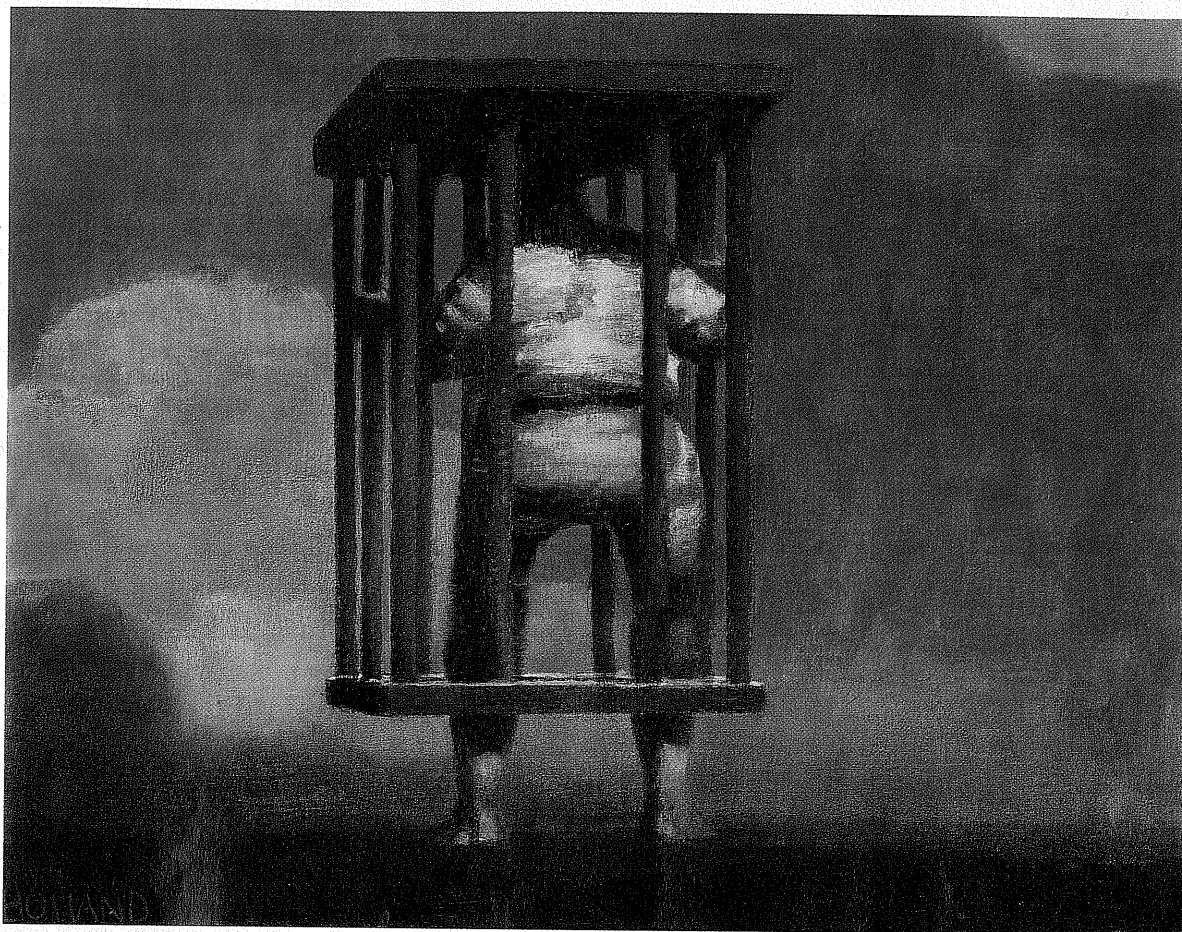


By Ellen Liberman



Guilty, Even While Innocent

In Rhode Island, those charged with committing a crime while on probation go straight back to the ACI, and stay there—even if acquitted of the later charges.

THE CAMERAMAN SQUINTS into the viewfinder and brings Lisa Richmond and her daughter, Nikki Bishop, into focus. They are but minor characters in this film about injustice. But when your stars are ex-cons, character development cannot be ignored. And Richmond and Bishop are staunch advocates for their next-door neighbor, Phillip Jackson.

"A gentle giant," says Bishop.

The documentarians and their interview subjects crowd the island in Richmond's tiny Charlestown kitchen. Bishop rocks five-month-old Emma on her hip. Richmond fiddles with the mike cord. Then, bathed in honeyed light, they boil the plot down to its essence.

"I think it was really unfair. It isn't right," declares Richmond. "I just think it's rotten that Phil got the s--t end of the stick."

Phillip Jackson's story has lots of twists and turns—mostly downturns. His forty-three years have been beset by family dysfunction, violent outbursts and four prison terms. But his residence on Skaggerak Road represented a repudiation of

his former life. He returned home from the Adult Correctional Institutions in August 2005 to his wife, Tina. He started a sheetrock business. Together, they were raising four children.

Then, on August 28, 2006, a summer-long dispute between the Jacksons and some neighborhood teenagers erupted into a confrontation—on that, everyone agrees. After that, accounts diverge. The teenagers claimed that Jackson slapped and pushed one of them. Jackson, and two neighbors who witnessed the event, denied it. The simple assault charge was dismissed. But not before a judge had already sentenced Jackson to serve seven years. And that is the end of the stick most people find hard to fathom. Why are you doing time, if you haven't been convicted of a crime?

In Rhode Island, an offender who is free on probation pledges to "preserve the peace and be of good behavior" as a condition of release. Even the accusation of a new crime is enough for a judge to conclude that the inmate has violated the terms of his probation and to order him or her to serve the remainder of

Enjoy multi-million
dollar FDIC insurance.
(And a good night's sleep.)

One Bank,
One Rate,
One
Statement.®



At Washington Trust, now you can protect your deposits up to \$50 million.

The Certificate of Deposit Account Registry Service®, or CDARS®, provides access to security and peace of mind beyond \$250,000. Deposit up to \$50 million and be eligible for FDIC insurance on every dollar. Enjoy one competitive CD rate and one monthly statement. No more managing multiple bank relationships, administering various interest rates, organizing interest disbursements from various sources, or manually consolidating monthly statements. To learn more, stop by any Washington Trust branch, call 401-348-1200, or visit www.washttrust.com. *Member FDIC.*

Minimum opening balance of \$10,000 required. Funds may be submitted for placement only after a depositor enters into a CDARS Deposit Placement Agreement describing the placement of funds by us with other FDIC-insured institutions in amounts under \$250,000. This agreement contains important terms and conditions. Certificate of Deposit Account Registry Service, CDARS, and One Bank, One Rate, One Statement are registered service marks of Promontory Interfinancial Network, LLC.

Name brand and designer shoes at
30-60% off retail everyday!



I. Marcel

Discount Shoe Boutique

808 Hope St. Providence
401.383.9777

Exceptional shoes, exceptional service, exceptional prices!

BCBG Max Azria
Betsey Johnson
Bettye Muller
Charles David
Donald J Pliner
Enzo Angiolini
Juicy Couture
Kenneth Cole
Loeffler Randall
Marc Jacobs
Michael Kors
Nanette Lepore
Stuart Weitzman
Via Spiga
& MORE!

the probationary period in jail.

"This is a really complex issue," acknowledges Sol Rodriguez, executive director of the Family Life Center, an organization that offers services to and advocates for ex-offenders transitioning to life on the outside. About a year ago, it decided to make a documentary challenging the current law. Entitled *Guilty Until Proven Innocent*, the film features those the Center says were unfairly penalized by the state's probation laws—former inmates returned to prison as probation violators on new charges that were either dropped or later disproven at a criminal trial.

No one knows how many offenders may later have been acquitted of the crimes for which they were violated.

"Unless you understand our criminal justice system, it's hard to believe. But this is something that our clients have been talking about since we opened our doors," Rodriguez says. "At first I really didn't believe it. But when we looked into it, it was, in fact, true."

The Center has lobbied for an amendment that would immediately terminate a probation violator's sentence if he is acquitted, or if the grand jury declines to indict, or if the charges that formed the basis of the violation are never filed. The General Assembly passed the bill last session, but Governor Carcieri vetoed it. Attorney General Patrick Lynch is also a strong opponent.

As of May 2008, more than 27,000 Rhode Islanders were living in the community under probation or parole. (Parole is a tiny fraction.) Of those, about 12,000 are under active supervision. In the first five months of this year, 182 returned to the ACI as probation violators. No one knows how many offenders may later have been acquitted of the crimes for which they were violated. Most agree that there are only a small number of cases.

Probation violation hearings on new charges precede the criminal trial. They are heard by a judge, not a jury, and they are considered civil proceedings. In most states, the standard of proof—the amount of evidence needed at trial to win the case—at the violation hearing is lower than

at a criminal trial. Criminal trials demand the highest standard of proof, evidence that proves the crime was committed “beyond a reasonable doubt.” In Rhode Island, the judge must only be “reasonably satisfied” that a probation violation occurred.

The “reasonably satisfied” standard, says Alan Rosenthal, a defense and civil rights lawyer from the New York based Center for Community Alternatives, is considerably lower than the “preponderance of the evidence” standard used by most states at a probation hearing. A preponderance of the evidence—the standard in most civil cases—means that the majority of the evidence shows that it is more likely than not that the accused violated his or her probation.

“Your gut reaction is this can’t be right. And when you parse out the legal analysis, it strains your intellectual capacity to make sense out of it.”

“A lot of these things are driven by the outcomes the judge wants to accomplish rather than any well-thought-out policy. If a violation hearing is called a civil case they don’t have to worry about double jeopardy; you don’t have to worry about criminal due process; you don’t have to apply the eighth amendment against cruel and unusual punishment,” Rosenthal adds. “Your gut reaction is: This isn’t fair. This can’t be right. And when you parse out the legal analysis, it strains your intellectual capacity to make sense out of it.”

Lynch says that there are plenty of cases in which it makes perfect sense to send an individual back to prison on a probation violation, even if those charges wouldn’t stick in a criminal trial. Suppose a convicted child molester on probation approaches a ten-year-old child on a playground. Maybe no prosecutable crime occurs, but certainly the child molester’s actions are questionable and could be appropriately adjudicated at a probation violation hearing to protect the public.

The proposed amendment, he says, “would turn on its head decades of decisions. To cast aside a system that has



Happy Holidays from our kitchen to yours!

**CABINET
& GALLERY LTD**
Since 1984

895 CUMBERLAND HILL RD • WOONSOCKET, RI
401 765 2020 • CABINETGALLERYLTD.COM

**Transform your looks.
Change your life.**



Marcellene S. Doctor, MD

Specializing in a full range of cosmetic and reconstructive services.

- Breast Surgery
- Body Contouring
- Liposuction
- Facial Rejuvenation
- Botox-fillers
- Meso Therapy

For a confidential consultation, call a woman who understands.

Marcellene S. Doctor, MD

Plastic and Reconstructive Surgery

300 Hanover Street, Fall River, MA 02720 • 508-679-7734

been tried and tested and upheld by the Supreme Court—that's my concern. I applaud those interested in evaluating the person in prison, but I will not stand silent when more are threatened to save a few that can be addressed in other ways."

Burglary charges were dismissed, but Beverly served three years before being paroled in 2003.

If there is another way, Richard Beverly couldn't find it. In 2000, he was an ex-offender living in Pawtucket, working as a house painter. One summer morning, while waiting in a Dunkin Donuts drive-thru lane, he was arrested and charged with committing sixteen burglaries in one night. A former acquaintance also arrested for breaking and entering had told police that Beverly was his partner in the crimes. Beverly protested his innocence and refused to take a plea.

"Shock, anger, hatred, resentment. I was a lunatic," Beverly recalls. "But I couldn't get myself to take the five years they were offering when I was home in bed."

At his probation violation hearing, he was ordered to serve the remaining seven and a half years of his original sentence. Eighteen months later, the burglary charges were dismissed, but Beverly served three years before being paroled in 2003.

With the new charges dismissed, Beverly went back to court to petition for a sentence reduction to the time he had served so that he would no longer be on parole.

"The judge told me: 'Mr. Beverly, that's a matter for the legislature,' Beverly says. "And he denied my post-conviction release."

The Family Life Center is hoping that *Guilty Until Proven Innocent*—with its limited release at small community venues—will at least educate the public. For half an hour, Bishop and Richmond enumerate Jackson's good qualities as a neighbor before the cameras. Nick Horton, a Center policy researcher who is producing the documentary, has exhausted his questions, so the crew packs up to leave. Phillip Jackson is only one of five stories he will tell in the film. But maybe more, Horton adds. People keep calling. **R**



Charles J. McDonald, M.D. Dermatologist-in-Chief

Lionel G. Bercovitch, M.D.
John J. DiGiovanna, M.D.
Raymond G. Dufresne, Jr. M.D.
David S. Farrell, M.D.
Louis A. Fragola, M.D.
Lynn E. Iler, M.D.
Nathaniel J. Jellinek, M.D.
Thomas P. Long, M.D.
Paula F. Moskowitz, M.D., Ph.D.

Jennie J. Muglia, M.D.
Catherine M. Quirk, M.D.
Leslie Robinson-Bostom, M.D.
Richard Salzman, M.D.
Gladys Hines Telang, M.D.
Martin A. Weinstock, M.D., Ph.D.
Peter Reilly, N.P.
Brian Theroux, P.A.
Tami Menard, P.A.

Specializing in adult and pediatric dermatology, cosmetic surgery, Mohs Surgery, and Dermatopathology.

Service Sites

Rhode Island Hospital
Ambulatory Patient Center
593 Eddy Street
Providence, RI 02903
(401) 444-7959

Warwick Medical Building
400 Bald Hill Road
Suite 526
Warwick, RI 02886
(401) 738-4323

450 Veterans Memorial Parkway
East Providence, RI
(401) 438-9150

300 Tollgate Road
Suite 201
Warwick, RI 02886
(401) 739-2301

Warwick Medical Building
400 Bald Hill Road
First Floor
Warwick, RI 02886
(401) 738-1120

The Miriam Hospital
Fain Center, Suite B
164 Summit Avenue
Providence, RI 02906
(401) 793-3376



BROWN
Alpert Medical School

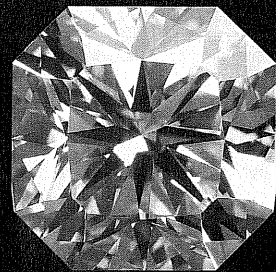
A Department of Dermatology at Brown Medical School and Lifespan Academic Medical Center.



Jewelers
SINCE 1918

Rhode Island's Largest Diamond Inventory

Tues, Wed, Fri 9am-5:30pm
Sat 9am-4:30pm
Thursday til 8pm



927 Warren Ave. ■ East Providence, RI ■ 401.435.3500 ■ mrtjewelers.com