ReVisions

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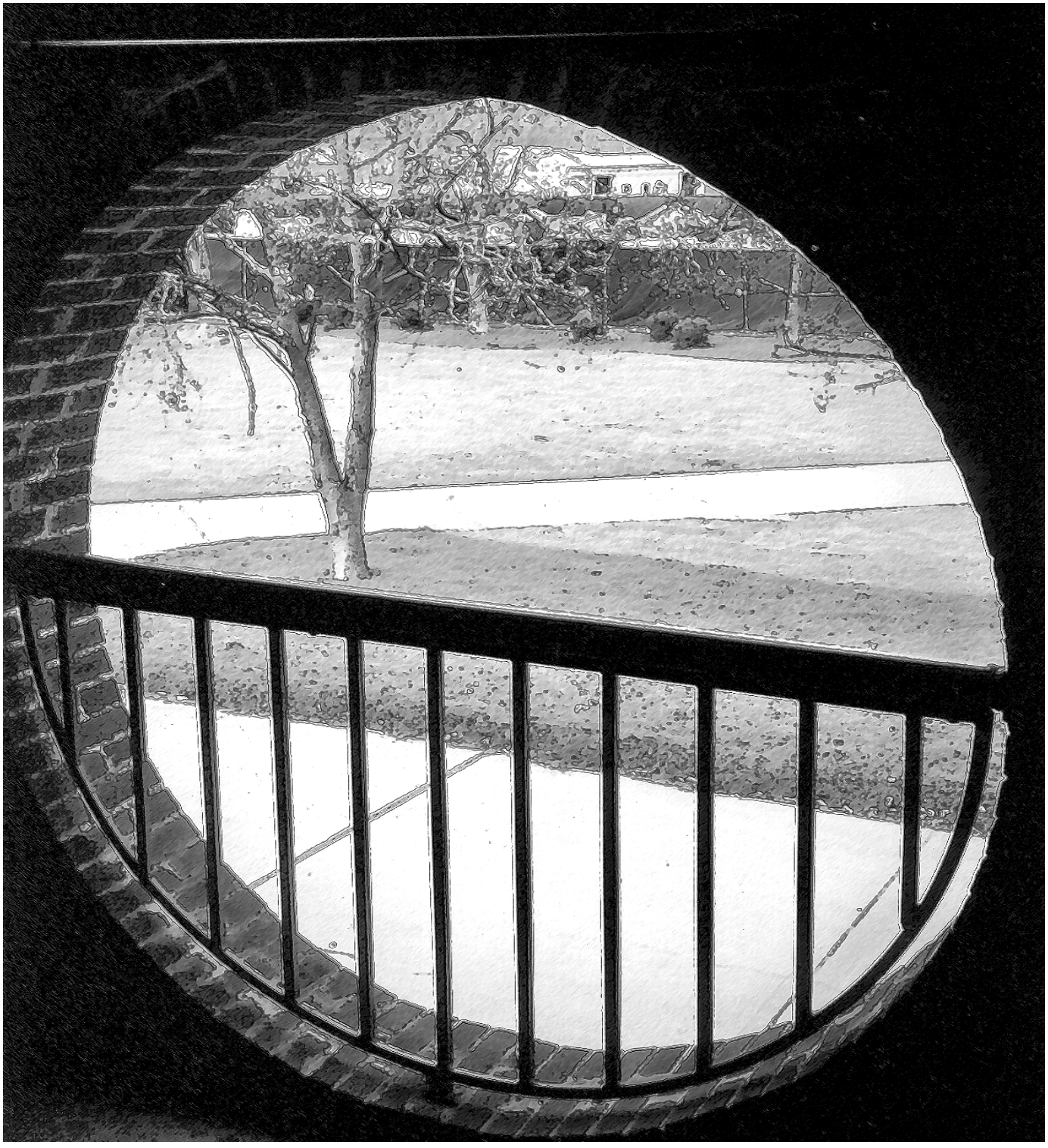

COTINA AMES

ReVisions: Best Student Essays is a publication designed to celebrate the finest nonfiction work composed by undergraduate students at The University of North Carolina at Pembroke. This issue was copyedited, designed, and produced by the students in PRE 345: Computer-Assisted Editing and Publication Design.

Cotina Ames
Lauren Bell
Doris Berrer
Tiffeny Fields
Diane Frech
Crystal Holston
Todd Luck
Sara Oswald, Instructor

Front: Lauren Bell, Cotina Ames, Crystal Holston; Back: Doris Berrer, Todd Luck, Diane Frech, Sara Oswald; Not Pictured: Tiffeny Fields

The cover photograph shows part of the construction site for the new pedestrian mall in front of the Jones Health and Physical Education Center, one of the many revisions in progress on the UNCP campus this year. It was shot through the circular window in the outer stairwell of the Chavis University Center by Cotina Ames, a student in PRE 345: Computer-Assisted Editing and Publication Design. Photoshop effects applied by Sara Oswald.

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Best Student Essays

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John Rawls's *A Theory of Justice*

as Indirect Utilitarianism

by Jason Bentley

Jason Bentley is a second semester junior at UNCP. He is majoring in philosophy and religion and has recently become specifically interested in ethical and political philosophy. Jason is originally from Oklahoma and, more recently, from Wake Forest, North Carolina.

In the preface to his text *A Theory of Justice*, John Rawls indicates his intention to present an alternative to the utilitarian theories that have dominated much of modern moral philosophy.[1] I intend to argue, however, that Rawls in fact presents his own system of indirect utilitarianism, based on a recognition that within any given social structure there exist certain commodities (the word is used in a broad sense) that aid its members in maximizing their own utility, whatever their individual preferences, goals or aims. I will proceed by first briefly summarizing the utilitarian position and outlining indirect consequentialism generally and indirect utilitarianism specifically, then by describing Rawls's main objections to the utilitarian position and his alternative moral system, and finally by showing how that alternative system in fact constitutes an indirect pursuit of the utilitarian aim.

The reader should know that my arguments refer only to *A Theory of Justice*, and not to *Political Liberalism*.

Utilitarian thinkers begin with the concept of utility and proceed according to the principle of utility. Jeremy Bentham, a central utilitarian thinker, defines utility as the tendency of an object "to produce benefit, advantage, pleasure, good or happiness… or… to prevent the happening of mischief, pain, evil, or unhappiness" and the principle of utility as "that principle which approves or disapproves of anything whatsoever, according to the tendency which it appears to have to augment or diminish… happiness."[2] At the community level, according to Bentham, actions, governments and laws can be said to conform to the principle of utility insofar as they tend to promote the happiness of the community.[3] Similarly, says John Rawls, for the utilitarian "the main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it."[4]

Utilitarianism is thus an example of what Rawls labels a teleological theory of morality, meaning that the Good is first defined (in the case of utilitarians as "the satisfaction of desire" or "the satisfaction of rational desire"), and the Right is subsequently defined as that which maximizes the Good.[5] The indirect consequentialist adheres to a teleological theory of morality, but holds that, for whatever reason, it is most effective to pursue the Good not directly, but through the promulgation of rules, principles or intuitions that in general promote that Good. Thus the indirect utilitarian specifically promulgates those rules, principles or intuitions that tend to maximize utility.

Rawls admits that there is "a way of thinking about society" according to which the utilitarian conception of justice seems the most rational.[6] To this way of thinking, just as the individual pursues his own satisfaction, weighing various possible pleasures and pains against one another, so should a society seek the greatest overall satisfaction of its members, weighing pleasures and pains for some individuals against pleasures and pains for others.[7] According to Rawls, however,

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this line of thinking is subject to a serious flaw: "Utilitarianism does not take seriously the distinction between persons."[8] This means that the distribution of satisfaction among the various members of society matters only indirectly, so long as overall satisfaction is maximized.[9]

The danger of balancing satisfaction among individuals just as the individual balances various pleasures and pains is, according to Rawls, that "there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many."[10] Moreover, in balancing the satisfaction of desires it matters only indirectly what the desires are for.[11] Thus, "if men take a certain pleasure in discriminating against one another, in subjecting others to a lesser liberty" then "these desires must be weighed in our deliberations… along with other desires."[12] Rawls objects, however, that justice should hold the members of society and their freedoms inviolable in a way that even the general welfare cannot override, and moreover, that the principles of justice specify boundaries to men's desires and aspirations.[13] Thus, "in a just society the basic liberties are taken for granted and the rights secured by justice are not subject to political bargaining or to the calculus of social interest."[14]

Guided by these convictions, Rawls proposes his two principles of justice. The principles are serially ordered, meaning that the first takes priority over the second.[15] Rawls's two principles of justice are as follows: first, that every person has a right to the maximum liberty compatible with equal liberty for all; second, that primary social goods are to be distributed equally unless inequalities are to the advantage of all.[16] Thus the individual's well-being, and especially his liberty, are protected from violations even for the sake of the general welfare.

In discussing social inequalities in his principles, Rawls refers to what he labels "the primary social goods," which include "rights and liberties, opportunities and powers, income and wealth… [and] a sense of one's own worth."[17] Rawls states that his accounting for the importance of the primary social goods is not inconsistent with utilitarianism.[18] It appears, in fact, to be a thoroughly utilitarian conception and the pivotal point in showing that Rawls, in spite of his claims to the contrary, is himself an indirect utilitarian.

Rawls's main idea in emphasizing the primary social goods and their distribution begins with the individual who crafts a rational plan, the goal of which is the satisfaction of rational desire, and proceeds with the assumption that "though men's rational plans do have different ends they nevertheless all require for their execution certain primary goods."[19] So *the rational individual must pursue his own utility*, and whatever his plan for doing so, the primary social goods are essential to his success. Thus, for Rawls, the social goods function as a probabilistic index of utility. The greater the individual's liberties, opportunities, wealth and so on, the greater his chance of achieving satisfaction through his rational plan. This allows us to see that Rawls's second principle is in fact an injunction to maximize utility; only this is accomplished *indirectly*, through the primary social goods.

However, while it may be true that various of the primary social goods function for Rawls as an index of utility, it would also seem that Rawls's first principle makes liberty inviolable to any restrictions, save for those liberty itself necessitates. Thus inequalities in liberty cannot be justified even by an advantage to all. Liberty, at least, would then seem to be valued in itself, and not as an index of utility.

The simple fact, however, is that Rawls does NOT consider liberty inviolable. As H. L. A. Hart points out in "Rawls on Lib-

Jason's essay is as well-thought and well-written as many graduate level papers.
—Carolyn Thompson

erty and its Priority," Rawls's first principle and the priority of liberty over other values apply only in societies sufficiently developed as to be able to supply men's basic wants.[20] If these conditions do not obtain, liberty may, in fact, be denied if it is to the advantage of all.[21] Moreover, insofar as the first principle does apply when sufficient conditions obtain, only certain specific liberties are actually made inviolable (the liberties identified by Hart include political liberty, freedom of speech and assembly, liberty of conscience, freedom of thought, freedom of person, the right to personal property, and freedom from arbitrary arrest and seizure), and those because they are identified by individuals "as essential for the pursuit of their ends, whatever those ends turn out to be."[22] In other words, certain liberties are, under the correct conditions, held to be superior to the other primary social goods simply because they are, under those conditions, the most essential social goods to individuals as they pursue the satisfaction of their rational desires. This is because, according to Rawls, "as the conditions of civilization improve, the marginal significance for our good of further economic and social advantages diminishes relative to the interests of liberty, which become stronger… it becomes and then remains irrational… to acknowledge a lesser liberty for the sake of greater material means and amenities of office."[23] Thus for Rawls, liberty, like the other primary social goods, functions as an index of utility, only a particularly essential one, as indicated by his first principle.

Moreover, if, as Rawls claims, increases in those primary social goods relating to economic and social advantages become less significant as the total degree of economic and social advantage rises, overall utility will be most efficiently pursued by increasing the level of such primary social goods for the least advantaged, for whom such an increase will have the most impact, rather than for the most advantaged, for whom such an increase will have the least impact. In this way distribution of the primary social goods would tend toward equality. The sole exception would naturally be the case in which some inequality would be to the advantage of all, when allowing such an inequality would increase the level of primary social goods for each member of society. This is expressed in the demand of Rawls's second principle for equal distribution of the primary goods except in those cases where a given inequality would be to the advantage of all.

At this point, Rawls's two principles of justice form a position that is superficially not so different from the utilitarian John Stuart Mill's *On Liberty*, which promotes a similar concern for the individual and a variety of individual liberties.[24] Additionally, Rawls's concern with the primary social goods as indexes of utility is in accord with Mill's position that the instruments of obtaining satisfaction, such as money or power, are themselves to be desired.[25] Rawls himself admits to this, but claims that this superficial resemblance between his theory of justice and the utilitarian conception of justice conceal a deeper, more fundamental difference: Rawls claims to value these principles in themselves, whereas the utilitarian seeks to explain their value by reference to their social usefulness.[26] However, while Rawls's claim that the principles of justice are not justified by their underlying utility directly contradicts my claim that his is a theory of indirect utility, I contend that such a position in fact only makes Rawls's brand of indirect utilitarianism more coherent.

Larry Alexander points out in his paper, "Pursuing the Good – Indirectly," that indirect utilitarianism, like all forms of indirect consequentialism, suffers from an inherent paradox. Recall that the indirect consequentialist seeks to promulgate rules, principles or intuitions that tend to maximize the Good. The paradox is as follows: "can [our indirect consequentialist agent]

faithfully adhere to rules or possess the dispositions [and] commitments… required by consequentialism if she sees that ultimately consequences justify them all?"[27] This paradox is illustrated in the following scenario, which is a modification of the scenario presented by Alexander: suppose a given principle which tends to promote the Good, and suppose an agent faced with a specific situation in which the Good is in fact best promoted by violating that principle. Now, if the agent is truly committed to said principle, she will apply it to this situation, but in so doing acts against the Good by which the principle is justified; yet if the agent acts to maximize the Good by violating the principle, then clearly she is not in fact committed to that principle, thereby rendering the principle impotent, incapable of promoting the Good.[28]

Alexander explores various possible resolutions of the paradox of indirect consequentialism, one of which is "discarding the publicity principle."[29] This refers simply to what Rawls himself is doing: using certain rules to maximize some Good, without publicly advocating the justification of those principles by the Good.[30] In this way there is no paradox between application of the rules and pursuit of the Good that justifies them, for the simple reason that, the foundation of the rules, principles or intuitions on some conception of the Good being generally unknown, agents can be fully committed to those rules for their own sake. In Rawls's case, this means pursuing satisfaction of the individuals in society through his two principles of justice and an attention to the primary social goods as probabilistic indices of utility, while denying that those principles are justified by utility, or even that they need justification.

Interestingly, while discussing the publicity principle, Alexander lists Rawls as one of its "foremost exponents", reporting his contention that moral principles are valid only if they can be publicly advocated.[31] This is all for the better for an indirect consequentialist, however: Rawls not only publicly frees his two principles of justice from their foundations in utilitarian considerations, he also publicly bars the way for later interpretation of his two principles in a utilitarian light.

Of course, that is in fact what I am attempting to do. I should make clear in all of this that I do not believe that Rawls purposefully created a theory of indirect utility and then attempted to conceal it. What I do hold is that, in spite of his original intentions, Rawls has presented a system of indirect utilitarianism oriented on the distribution of primary social goods as the means to the end of satisfaction for the individuals comprising society and that all his claims to the contrary only make his indirect consequentialism more coherent. As we have seen, Rawls himself gives a thoroughly utilitarian accounting for his second principles' emphasis on distribution of the primary social goods, which function in his system as an index of utility; that his first principle, which seems at first to hold maximum equal liberty inviolate, in fact only protects certain liberties, and only when conditions obtain in which those liberties are essential to men's pursuit of satisfaction; and that his claims that his two principles are not justified by utility serve to resolve the paradox of his indirect consequentialism. Despite his claims and intentions to the contrary, John Rawls has, in *A Theory of Justice*, presented not an alternative to utilitarianism, but rather a new indirect form of the same.❖

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11. Rawls, John. Pg. 30.
12. Rawls, John. Pgs. 30-31.
13. Rawls, John. Pgs. 28, 31.
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15. Rawls, John. Pg. 61.
16. Rawls John. Pgs. 60, 62.
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Baby

by Tammie Tanner Britt

While reading an assignment by Nancy Mairs for English composition, I began to think about my Aunt Helen. She was born the "youngest of six," three boys and three girls, to southern North Carolina farmers. Her father nicknamed her Baby because she was his baby. Until just a few years ago, I had always called her Aunt Baby. She was only seventeen when she came to live with Mom (her sister), Dad and me after we moved to Jacksonville, Florida. I was about a year old when she began to care for me while my parents were at work. This tall, thin, redhead was special to me in a lot of ways, but one thing remained unique, she had an artificial leg.

I grew up with this woman and did not realize that she had a wooden leg until I was about three or four. I walked into her bedroom and saw her, with the leg off, sitting on the side of the bed. I asked her why she could take her leg off and I couldn't. She told me that her leg was cut off in an accident when she was a little girl. My mom and aunt sat down with me a few years later, about the age of five, and told me the story of how Aunt Baby came home from school, dropped her books and headed out to the field. She went to meet her youngest brother, Jimmy. The year was 1953, she was eleven, and my grandparents were still using mules to pull the farm equipment such as the harrow (plow) that they used that day. While they were plowing, the mule was spooked by something and began to run, causing Baby to loose her balance. She fell off, becoming entangled under the plow, which cut into her legs. Uncle Jimmy scooped her up carrying her quickly from the field to the farmhouse. Blood was flowing from both legs, which were mangled. The doctors worked for several hours but were only able to save her right leg. What remained of her left leg was about 5 inches below the knee. Her right leg was repaired but unfortunately was left with huge scars. At no time while telling this story to me did she show any resentment or bitterness for what happened to her.

I don't know what her first artificial leg looked or felt like. However, the first leg I do remember was hard, smooth, and stiff, with no flexibility and was the color of light pine. As a small child I thought the nub, as she called it, would be squared off. It was not thick or squared off, it didn't have any part of the calf muscle, and it was shaped more like a cone.

I would watch her sometimes as she went through the process of putting on her leg in the morning. She would put lotion on her nub first, and then two special socks would follow. The first was thin, cushy, cotton. She would use both hands, with her thumbs inside and fingers on the outside, to scrunch it up until she reached the toe area. Then she would slide it over the nub and above her knee, smoothing it as she went. The second sock was bigger, thicker and made of wool, which was itchy to me. I understood why she had to put the other one on first. Then it was time for the leg. She would slide the sock covered nub into the hollow top of the leg that was fitted to the shape of the nub. I watched as she would stand up,

Tammie Tanner Britt is a non-traditional college student pursuing a bachelor's degree with a double major in Birth-Kindergarten Education and Business. She owns a child care center and lives in Lumberton with her husband and children, one in college, one about to graduate from high school, and another a sophomore in high school.

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putting her weight on that side, to make sure it fit snug. The wooden leg had leather straps that were pulled up over the knee and crossing behind the leg then coming back around to Velcro on top, above the knee. I was watching every move but was surprised that once it was on that she was able to walk like any other person I knew. I would watch her as she would walk up stairs, and, if I did not know about her leg, the little hop occasionally would be the only thing that might give it away. She moved very well and was able to learn all the new dances that were being introduced at that time.

She taught me how to dance. We would listen to music from the 50's and 60's and she taught me how to do dances from each era, like the twist, mashed potato, and the swim. She would take me by the hands and move me back and forth as she would move her own body to the beat. When she did the twist she would put her weight on her good leg, lifting her wooden one slightly off the floor as she swiveled at the hip. We would dance at least once a week, especially when American Bandstand would come on television.

My aunt lived in apartments during most of my youth. I was about nine when she taught me to float and swim in the pool. Baby would sit on a lounge chair slip her leg off, place it on the chair, put a towel over it to keep it dry, and then hop over to the side of the pool. She would sit on the edge of the pool and ease herself into the water. As she balanced on her good leg, she would have me lay across her arms. She would hold me there until I would relax, then slowly she would move her arms away and let the water take over. I was speechless as I watched her swim the whole length of the pool, both legs kicking as the right leg would make up for the short comings of the left. I would watch her every move and try to imitate her until I was able to finally swim. Just like swimming she would not give up on anything, including trying to get a job.

I have seen this woman go through job rejections. It was tough because she had to care for her daughter by herself. She finally got a job working at a bar as a waitress at night while going to cosmetology school during the day to become a beautician. This is a career she has developed for almost thirty years. Although most of her clients never realize she had an artificial leg, one of them found out and thought she had an amazing story that needed to be told. Somehow a local Jacksonville newspaper reporter heard about her story, interviewed her, and published the story about "her handicap and the prejudice she [had] encountered in her life" (Borgstede 1).

Aunt Baby has been such an influence on me. This lady has overcome such things as an abusive husband, the death of another, discrimination in the work force, stares and whispers when she would wear anything that would in any way expose her wooden leg. Through all the obstacles and setbacks, this woman has managed to stay positive, upbeat and determined to set an example for her daughter and me. With the advancement of technology, she now has a leg that is made out of a material that is more life-like, natural and lighter. Now at the age of sixty-one, she has started showing a side of herself that I don't remember. It is vulnerability. It is tough for her to let anyone take care of her. She still strives to make the best of what life has for her. Living with her in our family has helped me see beyond the disabilities of others to the whole person. She has been a sister, a second mom and a special aunt to me.❖

Tammie's essay is a tribute to a courageous woman whose life taught Tammie—and teaches the reader—a great deal.
—Patricia Valenti

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One Hundred Percent Half-Breed

by Bridget W. Dimery

As it has always been within every culture, people are put into categories of society. Usually it is race that society categorizes a person in. But what do you do when you're two races, neither one more than the other? It is hard to fit in to one race when you are another at the same time. I fall into the category of bi-racial. Bi-racial is when you are two races, and both are exactly equal to each other. You see, my father is full-blooded Native American, and my mother is full-blooded white. So I've always had to defend myself to both races when one person out of their ignorance questions my claim to Native American. I think that being bi-racial has been the cause for my search of acceptance in the world, but mostly acceptance in the Native American world.

When I was in elementary school in Michigan, the majority of the students were white. I started there in the first grade, and some of the boys in my class asked me if I was an Indian. When I told them that I was, they laughed. They asked me where were my tomahawk and my tepee. They said I wasn't a real Indian because I didn't have a bow and arrow. Even at six years old, I knew what was going on. But I told those boys that those were just traditional ways of some tribes. I told them that we were modern day. We were just like every other average American. After those first few days of school, nobody really paid attention to it anymore, and I was just a kid like them. The only time that it ever came up was around Thanksgiving when we talked about pilgrims and Indians or in social studies when we discussed the 1800's. I never felt like I didn't fit in because nobody had ever really made a point to pick on me about being different from him or her because kids are usually teased by their peers for being different.

When I was ten years old, we moved to my dad's hometown of Pembroke where the

population is predominantly Native American. When I started the fifth grade, I knew that something was different. I was now labeled as the "white girl." I guess it was because I talked proper with a northern accent and my skin was a little bit lighter than most of my classmates. They would laugh at me when I would put down Native American as my race on my EOG tests and tell me I was just a white girl. I did the best that I could to fit in. As time went on, I made friends, but a few people still liked to call me the white girl, even in high school. I guess it was because my skin wasn't a dark copper color. They never paid attention to my dark hair and eyes, or to my Indian nose. So when my Dad would come pick me up from school they would be like "That's your dad? I thought you were white." I would get the last laugh when they accepted me after seeing my Dad. I think that they were taught at home that all Indians had nothing but dark skin. Since I was a lot lighter than the other kids, they thought of me as being as non-native. And all I wanted from them was the acknowledgement of being an Indian.

Back in my primary school days and even in today's society, people have a view of Native Americans as dressed in buckskins, long black hair, copper skin and tepees. But

Bridget Dimery lives in Pembroke and is a freshman majoring in American Indian Studies. After obtaining her degree from UNCP, she hopes to go to graduate school.

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that is just a typical stereotype. And since I don't fit the stereotype, I wasn't a "real Indian" to them. In Vine Deloria, Jr.'s *Custer Died for Your Sins: An Indian Manifesto*, he throws away the stereotypes and reveals who Native Americans really are; and that is nothing like the stereotypes. Also, by not being a full blood, I am looked down upon even more by some. In Deloria's chapter titled "Indians Today, The Real and the Unreal," he states, "The more we try to be ourselves the more we are forced to defend what we have never been" (10). It is difficult for me to be taken seriously as a Native American because my light skin doesn't fit the typical stereotype. And when I was in primary school, that was my only fault to the other students. I didn't have that bronze skin. I even used to wear self-tanner because I thought that I would be taken more seriously as a Native American and be accepted by my peers. But I can look back now and say I am a real Indian not just by blood but also by how I identify myself. And looking back now, I didn't need them to tell me who I am.

Looking back at those times now, I can laugh at how naïve we are as children. My Mom and I still joke about it now. I'll go places with my Mom and Dad, and she'll say stuff like "what's that white woman doing with two Indians?" One time I told her that, since I wasn't either white or Indian, I was a hundred percent half-breed. She told my Dad's friend, and he about laughed his head off. He said "gal, you're all right aren't you?" A lot of times though, people who are breeds (as they are usually labeled) can't find a place where they are wanted. In Louis Owens's *Mixed Blood Messages*, he takes narratives from other novels and movies and relates them to the mixed blooded Indian. In his chapter called "Mapping the Mixed Blood," he talks about half-breeds (people who are half Native American and half-white) and the struggles they face in acceptance from either worlds. He quotes Okanogan author Mourning Dove from her novel *Cogewea, The Halfblood: A Depiction of the Great Montana Cattle Range* of the issue she faces on being a breed. He quotes, "Our Caucasian brothers criticize us as a shiftless class, while the Indians disown us as abandoning our own race. We are maligned and traduced as no one but we of the despised 'breeds' can know" (28). I can relate to this because even though a lot of people don't pay any attention to what you are, there are some who won't ever accept you because you have the other race in you. They can't look past your outside. I've had white people look down on me in places because I'm an Indian. But I've also had some Indians to look down on me because I am also white. But that doesn't mean that I couldn't be accepted into either world. I could fit myself into society as either one or the other but never both. But I just choose to be Native American because those are my feelings that I have felt all of my life.

Many people would ask me why I feel so strong about being Native American. Since I am also white, then why are my feelings so strong? The truth is that I really don't know why. I can't explain how my heart feels when I hear about Native Americans in the media and society. Or why I hurt so much when I read about the genocide inflicted on the Native Americans. My favorite thing to read about is the history of Native Americans, good and bad. I just want to read all of the truth that I can and carry on the traditions for the generations to come. In Paula Gunn Allen's *The Sacred Hoop*, she writes about the struggles mainly Native American women face in society. Even though she is a half-breed herself, she is a strong believer in carrying on the traditions of Native America. Allen states, "The American idea that the best and the brightest should willingly reject and repudiate their origins leads to an allied idea—that history, like everything in the past, is of little value and should be forgotten as quickly as possible" (210). Many times when

Bridget's essay is a nice articulation of the tensions inherent in establishing and maintaining a sense of identity. She also demonstrates how the work of other writers can push us to evaluate our own positions in society. It is always nice to see students use writing as a vehicle for discovery.
—Jesse Peters

people ask me what I am going to college for and I tell them American Indian Studies, the reaction is usually "why do you want to study that, why not go into something to make money?" It's hard to explain to someone that I don't care about money and don't want a job that I am miserable with. Today's society is so caught up in the future that they want to forget the past. I'm a believer in holding on to the traditions and values of the past to make the future better. I can't go to school and learn everything there is to know about Native Americans, but I can live my life through my feelings and experiences. I can help to keep the Native past alive through keeping it strong through the future. I'm not a full blood technically, but every other aspect of me is a Native American.

I think that being a non full-blooded Native American has been the cause for my search of acceptance in the Native American world. I just want my life to be fulfilled in a way that I can accept myself for who I am. I used to only care about what everybody else thought about me, but I think that as I grow older I realize the shallowness of my worries. I can't go on living my life worried about what everyone else thinks. But I can live my life fully if I finally accept who I am myself. And then I will be content with being a one hundred percent half-breed. Not full Indian in blood, but a full Indian in heart.❖

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Children in the System:

Who Represents Their Interests?

by Terri Gray

Terri Gray, who resides in Fayetteville, NC, is a nontraditional honors student who keeps busy as a commuter student, part-time employee for a bottled water company, and single mother of a twelve year old, Timothy. Terri plans to attend law school after graduation so that she can help abused and neglected children as an Advocate Attorney.

It is 8:00 on a beautiful spring morning in the year 2003 when the small Child Services District courtroom begins to fill. It is a closed session. No one enters without permission from the Judge. These are highly confidential sessions, the business at hand very fragile and serious. Waiting for the Judge to begin are the attorneys, law enforcement officers, social workers, a bailiff, a clerk, and, for some cases, a parent or two. The Department of Social Services (DSS) has custody of the children represented this day. They are concerned with the children's safety, and their priority is to find a permanent safe environment for each one. There are no children present, only adults, adults that make decisions that will drastically affect the rest of their lives (Cumberland County District Court, 2003).

In the far left corner of the courtroom sits an elderly man reviewing his notes. His kind face and gentle demeanor set him apart in the crowded room. He is a volunteer, a Guardian ad Litem, appointed by the Judge to research and report his findings back to the court. The focus of the Guardian ad Litem is entirely on the child. He has spent time with the child, interviewed parents and caretakers, discussed legal strategies with the Attorney Advocate, and will ensure that the court knows the child's wishes (Cumberland County District Court, 2003). Will he be asked to testify today? Will his generous, caring efforts make a difference in this case? The consensus is that they will. An article from the *Florida Naples Daily News* reports, "Bush established the Guardian Ad Litem Program Working Group May 28 after his Blue Ribbon Panel on Child Protection recommended that every child in state custody be given a court-appointed guardian" (p. [2]). Repeatedly, articles from various states express the same theme that I support one hundred percent. Every child in state custody should have a guardian ad litem assigned to represent their interest.

In this two-and-a-half-hour period of observation, the decision of the court session drastically impacts the lives of five different children. The first has a happy ending, an adoptive home family and a closed file. The second, a child now located out of the state, gets the fourth continuation of his case. The third is rescheduled because there is a language barrier; an interpreter is a must to proceed. The next is postponed while the court appoints a lawyer because the imprisoned mother cannot afford one. In the fifth case, child visitation is denied to a mental health patient mother because of her lack of compliance with court directed counseling sessions and problems for the children that were caused by her last visit (Cumberland County District Court, 2003). The speed at which the cases go through the process is alarming to someone unaware of all that occurs before the session. Did all of the five children have a GAL (Guardian ad Litem) assigned by the Judge? Three of them were there, but all too often there is none. According to a recent *Times* article (Gibb, 2002) about one family, their attorneys won a judicial review case against the Children and Family Court Advisory and Support Services as a result of the

national shortage of guardians ad litem. There are too many delays because there are none to be appointed to the position. Some cases are being tried without any guardian to represent the best interest of the child (p. [1]).

Evolution of the Child Protective System

To better understand this problem, let's take a look at the history of the child protective system and how it evolved to include the Guardian ad Litem program. A case that occurred in 1874 is regarded as the beginning of the child advocacy movement in the United States. It is the story of *Mary Ellen*. She was an orphan that the New York Commission of Charities and Correction had placed with Mr. and Mrs. Connolly. They abused her severely. Mary Ellen was not only beaten but rarely got outside and was undernourished and inadequately clothed. A neighbor suspected abuse because of the child's persistent screaming and reported it to a mission worker. The police said they could do nothing because no crime had been committed and social services did nothing because they did not have legal custody of Mary Ellen. It was Henry Bergh, the founder and president of the Society for the Prevention of Cruelty to Animals, who finally helped Mary Ellen by convincing a Judge to hear the case (Gratch, 2002, sec 2:5-6).

Mary Ellen came to court with a horse blanket wrapped around her and told this heart-wrenching story to the Judge:

> My father and mother are dead. I don't know how old I am. I call Mrs. Connolly mama. I have never had but one pair of shoes, but I cannot recollect when that was…My bed at night has been only a piece of carpet stretched on the floor underneath a window. Mama has been in the habit of whipping and beating me almost every day. She used to whip me with a twisted whip – a raw hide. [Mama] struck me with the scissors and cut me…. I have no recollection of ever having been kissed by any one – have never been kissed by mama. Whenever mama went out I was locked up in the bedroom. I do not want to go back with mama because she beats me so (Gratch, 2002, sec 2:6).

Mary Ellen did not have to go back to that abusive environment; she was placed in a caring home. After the public became aware of her story, so many calls came in to Bergh reporting other abuses of children that a year later, in 1875, the Society for the Prevention of Cruelty to Children was incorporated (Gratch, 2002, sec 2:5-6).

With the development of X-rays in the early 1900's, the number of cases of children with injuries and untreated fractures began to mount. In 1955, two prominent doctors began to speak out against their peers who ignored multiple injuries to children. With the reports about what Dr. C. Henry Kempe defined as Battered Child Syndrome in 1962 came a greater public awareness so that by 1965 every state had passed a child abuse reporting law. Subsequently, in 1974, Congress enacted the *Child Abuse Prevention and Treatment Act* (Public Law 93-247) that created the National Center on Child Abuse and Neglect. For the first time government funds were available for special programs designed to protect our nation's children. This law required investigation and reporting of abuse and neglect, the education of the public about the problem, as well as the establishment of the confidentiality of protective services.

By the time the *Adoption Assistance and Child Welfare Act* (Public Law 96-272) passed through Congress in 1980 the need for guardians ad litem was obvious. This law outlined the importance of all branches of government working together to preserve families and, when it is necessary, to establish new ones. The act provides for the recruitment of and sets the standards for culturally diverse foster and adoptive homes. It arranged for the periodic review and dispositional hearings of all children in foster care within eighteen

Terri's essay effectively integrates field observations with primary and secondary research to make a strong, consice, and well-written argument in support of this important program. Her work on this paper helped her obtain an internship with the District Administrator for the Guardian ad Litem program in Cumberland County.
—Monika Brown

months of placement and every twelve months thereafter. The requirement of data collection and the reporting systems established here were an area where the guardians ad litem prove to be true assets (Gratch, 2002, sec 2:8).

Congress became more and more aware of the critical role child welfare played in the protection of children from abuse and neglect and encouraged reform making changes including one that was helpful for the guardian ad litem programs. The emphasis on returning a child to his or her parents continues but, in 1994, the *Multi-Ethnic Placement Act* was implemented to encourage diversity and decrease the time children had to wait to be adopted. Steps were taken to prevent discrimination in the selection and placement of a child with foster or adoptive parents, and in 1996 the *Child Abuse and Treatment Act* (Public Law 93-247) was amended to provide a guardian ad litem assignment, not for all children in state custody, but for every abused or neglected child whose case requires judicial proceedings (Gratch, 2002, sec 2:7-8). But it was not until 1997 and the passing of the *Adoption and Safe Family Act* that the three main principles of child advocacy were embraced:

> The safety of children is the paramount concern.
> Foster care is a temporary setting and not a place for children to grow up.
> Permanency planning should begin as soon as the child enters foster care.

The act further requires that a child must be placed in a permanent home within twelve months rather than the twenty-four, that dispositional hearings must be held within twelve months of placement rather than eighteen, and that court reviews be done every six months instead of the twelve given before. Because of the increasing need for and use of volunteers to assist the court with these matters, in the same year, 1997, the *Volunteer Protection Act* was established to set limits on the liability of guardians ad litem (Gratch, 2002, sec 2:9).

Guardian ad Litem Programs and Benefits

The first GAL program was formed in Seattle, Washington, by King Court Judge David Soukup in 1977. The success of his program sparked the establishment of similar programs throughout the United States. Because some states required the GAL be an attorney, some volunteers were deemed Court Appointed Special Advocates or CASAs. The National CASA Association, Inc., was created in 1982 to umbrella the growing number of organizations being established nationwide. The organization holds conventions, provides training and technical assistance, and awards millions of dollars in grants to local and state organizations (Gratch, 2002, sec 2:10). The national mission statement of the CASA program emphasizes the importance of the organization:

> Our mission is to provide trained independent advocates to represent and promote the best interests of abused, neglected, and dependent children in the state court system and to work towards a plan that ensures that these children are in a safe permanent home (Gratch, 2002, sec 1:14).

Some of the reasons for the shortage of volunteers become evident when the qualifications and requirements of the position are reviewed. It is necessary for the volunteers in this program to have genuine concern for a child and the commitment to be the advocate until a safe and permanent home can be provided for that child. All guardians ad litem must be persons of character with better than average verbal and writing skills. They must be able to interact with diverse groups of people and remain objective and non-judgmental. After the Guardian ad Litem application is completed, personal references are checked and criminal background checks are

done. Each volunteer completes twenty-five to thirty hours of training taught by an experienced staff member. Continuing education on advocacy matters is ongoing as well as the supervision by a program staff member (Volunteer, 2001, p.1).

How do the children feel about the program? A study funded by the National Society for the Prevention of Cruelty to Children (NSPCC), focused on research **with** children rather than just **about** the children, supports the need for all children to have someone to speak for them. The book entitled *Out of Hearing* (1999) by Judith Masson and Maureen Winn Oakley reflects the vulnerability of children during proceedings about their care. Open communication between the social welfare and legal systems and the parents and family is crucial. The study was developed "specifically with the aim of redressing the imbalance by giving a voice to the children and young people involved in such court cases" (preface). Although the children in this study were in the British court system, American children would share the same fears and feeling of isolation expressed by the British children.

The isolation comes from being rejected by parents or having no contact with other siblings, relatives, friends, classmates, or neighbors. Foster care has its own set of problems: shortages and placements that are not ideal. Guardians are aware that some children are unhappy, but they know the limitations. They can report the child's concerns to the social worker but cannot make the change in caregivers. There is an appreciative tone in many of the responses from the children about their guardians ad litem, especially the many that did not relate to their social worker. Their guardian ad litem is a listening ear, someone who will answer their questions and explain proceedings and the agendas of the other players. The biggest concerns of most of the children in the study were things like where they were going to live, whom they were going to live with, and when they could see family and friends. These are questions not always easily answered, questions that are left to the court to decide (Mason, 1999, pp. 28-29).

Conclusion

The greatest evidence of the need for a guardian ad litem for every child in state custody comes from a report published in the *Prison Journal*. The article by Dalley (2002) presents data from a female inmate study in a Montana prison in which 75% of inmates were mothers of minor children. Typically throughout the United States, mothers in prison are poor, disadvantaged, uneducated and have few job skills. Mandatory guidelines and gender nondiscrimination policies have caused a huge increase in female incarceration numbers. The reality is that most of these women will be reunited with their children and will fail to stay drug or crime free (p. 1). The numbers are increasing at an alarming pace. There has been a 106% growth between 1990 and 1999. More alarmingly, the odds are that children of these mothers will continue the cycle. The report concludes with the statement,

> each state legislature should immediately appoint an independent guardian for every one of these children. Only then will it be possible for the child's rights to be protected (p. 28).

How can we fill the need with increasing demand and a shortage of volunteers? Increasing public awareness and increasing federal and state funding are two possibilities.

Valerie Haynes, Fayetteville's Guardian Ad Litem District Administrator reports that our GAL volunteers gave the state over $9 million worth of service in 2000. She emphasizes:

> There is a growing need for the Guardian ad Litem Program and the trained volunteers who give a voice of hope to

abused and neglected children. Without the GAL advocacy, there is an increased likelihood that these children would spend more time in limbo of foster care. The program needs the continued support of the legislature and the citizens of North Carolina so that we can continue to represent and advocate for the children who are perhaps the most vulnerable of our citizens as well as our future and greatest resource.

Another day in court, and there is a Guardian ad Litem that has built an obviously good relationship within a few weeks with a middle-school child. The father physically abused him. The school counselor is in the courtroom. The child is removed when the testimony becomes inappropriate for him to hear. His desire to be with his mother is expressed through his GAL and Attorney Advocate. Her history with drugs prevents this from being approved this day. The decision for foster care to continue will be explained by the Guardian ad Litem. The relationship builds from there; the proceedings are in the initial stage (Cumberland County District Court, 2003).

The state of North Carolina recently cut the budget for Cumberland County's office even though the benefits of this program cannot be denied. There is an old saying that definitely applies here: "You pay now or you pay later." It is worth the investment; let's find a way for all the children in state custody to have a guardian ad litem assigned to represent their interests.❖

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Racial Divides and Death

by Chris Lowry

"We hold these truths to be self-evident, that All men are created equal."Everyone remembers these famous words that Dr. Martin Luther King quoted from our Declaration of Independence so many years ago. But are all men treated equal in the eyes of Justice? The answer to that question is a resounding NO! To prove this point one need not look any further than the system of capital punishment that we employ in this country. The death penalty as we know it is marred by the racial divides that have plagued us for so many years. Most death penalty supporters like to say that the process is not racially biased. This sounds plausible. After all, we are in the twenty-first century, and you would think that those racial divides that separated us in the past are gone, but they are not.

The fact is that racial discrimination was one of the grounds for which the Supreme Court relied on in *Furman v. Georgia* in ruling that the death penalty was unconstitutional (Berger). Minorities, blacks in particular, are given the death penalty at alarmingly higher rates compared to whites that commit the same types of crimes. In California, for instance, blacks make up 39 percent of the inmates on death row, while they only represent 7 percent of the state's population (Gordon). In Maryland, "Blacks account for about 80 percent of the murder victims in the state, yet 92 percent of those currently on death row are accused of killing whites" (Stark). How can we as a "God fearing nation" accept such obvious bias toward black defendants? Stark's study does not stop there; he goes on to say that while black-on-white crime only accounts for less than 5 percent of the annual murders in the state, 62 percent on death row are blacks accused of killing whites (Stark). It seems unreal that such disparities happen right in front of our faces, but they are happening. "A late 1995 Congressional Record report showed that blacks convicted of killing whites are 63 times more likely to be executed than whites who kill blacks. In fact, 92 percent of those executed in this country since 1976 killed white victims, though almost half of all homicide victims during that period were black" (Injecting Finality). In Georgia an exhaustive statistical study of racial discrimination was performed. It showed that "the average odds of receiving a death sentence among all indicated cases were 4.3 times higher in cases with white victims" (Baldus 401). There is a huge gap here: most of the homicides happen to black victims yet most of the people on death row are there for killing white victims. In Georgia "no white person has been executed for the murder of a black" (Cockburn). The facts go on and on. It is obvious that a white's life holds more value, at least in the eyes of justice, than the life of a black. You can't make all this stuff up folks; something is wrong with this picture. Shouldn't justice be blind with regards to race?

This problem also hits home here in North Carolina. A comprehensive new study by Dr. Isaac Unah and John Charles Boger, both professors at the University of North Carolina in Chapel Hill, found many of the same patterns (Williamson). Boger says,

Chris Lowry is a sophomore majoring in Business Management. He lives in Pembroke with his wife and two boys, and they are expecting a third child due in August. Chris is also a volunteer firefighter for the town of Pembroke.

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"What we have found is clear and disturbing evidence that North Carolina's capital system in the 1990s continues to be infected with patterns of racial discrimination that cannot be explained by any of the legitimate sentencing considerations that have been sanctioned by North Carolina's legislative and judicial branches" (Williamson). Dr. Unah adds that, "race still does matter, particularly when a nonwhite murders a white" (Williamson). You may ask what would lead these two highly educated men to such conclusions? The answer is in the results. The study, conducted between 1993 and 1997, showed that "when defendants murdered whites, their odds of receiving a death sentence, on average, increased by 3.5 times over those who killed nonwhites" (Williamson). It also showed that "overall, nonwhite defendants who murdered whites received a death sentence at more that twice the rate of whites who killed whites - 6.4 percent to 2.6 percent" (Williamson). Unah and Boger even took the study one step further and looked only at 'death-eligible' homicides, which are homicides eligible for death under North Carolina's statutes (Williamson). They found that 11.6 percent of minorities that murdered whites received the death sentence, compared to 6.1 percent of whites that murder other whites (Williamson). It also showed that only 4.7 percent of minorities received the death sentence for killing other minorities (Williamson). This study shows an obvious bias towards minority victims and defendants. It is hard to believe that these disparities exist right here in the heart of the Bible belt, but the sad truth is they do exist.

Chris writes a good analysis, particularly given his conservative stance on capital punishment.
—Kim Gunter

Another sad reality is that prosecutors often work to get all white juries when trying a black defendant. The problem has gotten so bad that the Supreme Court has stepped in. They "revived a Texas death row prisoner's claim that prosecutors systematically excluded blacks from the jury" (Biskupic). Justice Kennedy, writing for the majority, "offered a painstakingly detailed account of the potential prejudice black jurors faced, showing how they were screened out at every turn. Ten of the 11 blacks left in the pool were then eliminated by prosecutors" (Biskupic). The prosecutors did everything in their power to insure that no blacks made it into the jury. They used different screening questions for blacks (Biskupic). Blacks were even shuffled to the back of the jury pool to make them less likely to be selected (Biskupic). The prosecutors showed blatant disregard for the Constitution because it forbids racial discrimination during jury selection (Armstrong). In Illinois "at least 35 times, a defendant sent to death row was black and the jury that determined guilt or sentence [was] all white-a racial composition that prosecutors consider such an advantage that they have removed as many as 20 African-Americans from a single trial's jury pool to achieve it" (Armstrong). Under the law, a person accused of a crime has a right to be tried by a jury of his or her peers. Yet prosecutors systematically try to remove most, if not all, blacks from a jury when trying a black defendant. How can we honestly say a jury of his or her peers has tried this person? All their peers were eliminated from the pool. I'm not saying we should have all black juries for black defendants; in most cases that would not be feasible. However, a jury should be as racially balanced as possible to ensure that racism, if not eliminated, can at least be minimized. If we do not do this, how can any American ever put faith in a system that is so flawed?

As our Declaration of Independence says,

> All men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Gov-

> ernment becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

Thomas Jefferson was right: we all are equal, and we deserve to be treated equally. Life is not a privilege. It is a "Right." No we should not overthrow the Government, but it is time we stand up as a people and say that we are tired of the atrocities that are happening to minorities in our justice system and that we are not going to stand for it anymore. It is time that we start standing for everyone's rights, everyone's safety, everyone's life. It is the "Right" of the people, as Jefferson said, to make this stand. Martin Luther King also said in his speech that "Now is the time to lift our nation from the quicksands of racial injustice." To that I would have to say Amen. It has been 49 years since Dr. King made that statement. Yet we still find ourselves stuck in the quicksand. It is time that we come out once and for all. It is said that a chain is no stronger than its weakest link. It is time we take the weak link out of our justice system. For if we do not, we will never be the great nation that Thomas Jefferson and Martin Luther King once envisioned.❖

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Eyes Wide Shut

by Krystle Melvin

A Lumberton, NC, native and a sophomore at UNCP, Krystle is majoring in Political Science with a concentration in Pre-Law and minoring in Business Administration. She plans to pursue a law degree with the goal of practicing corporate law at a Fortune 500 company.

> When we execute a capital defendant in this country, we rely on the belief that the individual was guilty, and was convicted and sentenced after a fair trial, to justify the imposition of state-sponsored killing . . . My 24 years of overseeing the death penalty from this Court have left me in grave doubt whether this reliance is justified and whether the constitutional requirement of competent counsel for capital defendants is being fulfilled.
>
> —Justice Harry A. Blackmun

This quote by Justice Blackmun illustrates the growing sense of inadequacy plaguing our criminal justice system today. As a nation, we have put our trust into a system that is not fulfilling the duty of upholding justice. Capital defendants are being served a great and unforgivable injustice by our system. They are being misrepresented by insufficient defense counsel. This issue of ineffective counsel largely affects the impoverished (Levinson 148). In fact, 90% of capital defendants are indigent (Levinson 148). Whether or not these defendants receive competent counsel depends largely on the state or local indigent defense system (Levinson 148). More often than not indigent defense systems fail to provide capital defendants with adequate counsel. Hence, capital punishment is being applied unfairly to the poor through this use of inadequate and insufficient defense counsel as representation.

Indigent defense systems are set up by state and local governments. They are a means by which the government ensures the poor a right to counsel. The most widely used indigent defense system is the court-appointed lawyer. In this system the judge appoints a lawyer to represent the defendant when he/she cannot afford one. The judge may use his sole discretion in determining to whom to assign the case ("With Justice For Few…").

This system presents a problem. Most judges are elected and are therefore subject to political pressures ("With Justice For Few . . ."). These pressures cause politicians, including judges, to acquiesce to public opinion ("With Justice For Few . . ."). For instance, to assure the public that their lives are protected, politicians want to appear tough on crime. To do this, most become strong advocates of the death penalty ("With Justice For Few . . ."). In "With Justice For Few…", Richard Dieter writes that "judges in California, Texas, and Mississippi . . . lost their positions after their opponents mounted campaigns focused on a harsher application of the death penalty." In other words, judges who strictly apply the death penalty, are those who stay in office. Judges, like most politicians, base their decisions on what is good for their political career. If this means ensuring that more defendants get the death penalty, then so be it.

Judges very much use their authority to their advantage ("Inadequate Representation"). A report by the Texas Defender Service found that judges do not appoint counsel based on competence and experience but on whether they will process the case smoothly and quickly ("Inadequate Representation"). They appoint lawyers based on their ability to unclog the crowdedness of the

criminal courts. The defender, in his hurried attempt, often does not take the necessary time to ensure that justice is served for the client. How can we leave the lives of capital defendants to the mercy of judges who do not have equal justice for indigent defendants in mind?

Some states choose to establish public defender offices to serve as indigent defense. In this system, the chief defender assigns cases to the attorneys employed by the office. This system is a slight improvement over the court-appointed lawyer system in that not as much politics are involved. Some offices are reputable and successful establishments. In Washington, D.C. and Kentucky, public defender offices employ competent lawyers, investigators, and social workers (Bach 25). However, this is not true across the board. The majority of public defender systems suffer from inadequate funding and staffing (McDonald 97). Only 16% of defender agencies employ a wide variety of support staff including secretaries, investigators, social workers, law students, and paralegals (McDonald 113). This support staff is considered essential in order to provide the most adequate service (McDonald 113).

In his book, *The Defense Counsel*, Marshall J. Hartman writes, "Defenders are frequently subject to 'burnout,' a syndrome commonly associated with high defender caseloads, low salary, and little potential for career advancement." Hartman continues by asserting that "the low rates of fees places heavy pressure on assigned counsel to turn over cases quickly." In addition, overwhelming caseloads injure the productivity of public defender offices (McDonald 97). Often times public defenders seek plea bargains to speed up the process (McDonald 97). The process of plea bargaining often forces defendants to give up their legal rights (Jost 88).

Generally, public defenders have little incentive to spend time preparing and defending indigent defendants. As a result, capital defendants are not given adequate counsel by public defenders and justice is not served. For instance, Frederico Madas came within two days of execution in Texas because his defense attorney did little to prepare for his trial ("With Justice For Few . . ."). His attorney, being paid just $11 an hour, did no investigation for the sentencing phase and failed to call any witnesses ("With Justice For Few . . ."). Consequently, Madas was wrongfully convicted of murder ("With Justice For Few."). With help from the Texas Resource Center, Madas was cleared of all charges in 1993 ("With Justice For Few . . .").

Similarly, Wanda Jean Allen was convicted of the murder of her lover ("Inadequate Representation"). Her defense attorney had never tried a capital case and failed to present Allen's history of mental disability ("Inadequate Representation"). As a result, Allen was executed in January 2001 in Oklahoma ("Inadequate Representation"). Had a jury been told of Allen's illness her life might have been spared.

In the third type of indigent defense systems, the county or state contracts with private attorneys to perform a certain amount of indigent defense work for a flat fee. Generally the county or state accepts the private office with the lowest bid (Bach 25). Local governments, in an attempt to lower the cost of indigent defense, are moving toward the contract system (Bach 25). Twenty-one percent of the nation's largest 100 counties use the contract system, according to a 1999 Bureau of Justice report (Bach 25).

In this system, lawyers are solely assigned based on how low their rates are. Again there is a disregard for the competency of the lawyers. Hartman describes contract lawyers as "groups of hungry, young lawyers eager for business." In "Justice on the Cheap…," Amy Bach writes that, under this system, "the minimum standard for legal assistance has

Krystle is one of those students who just never has to be encouraged. She is probably the most professional, prepared Freshman Composition student that I've ever had, and her writing indicates this.
—Kim Gunter

sunk to new lows." Bach continues: "as if on a conveyor belt, defendants are uniformly processed to plead guilty." Bach describes one Georgia contract lawyer named Robert Surrency. She writes that Surrency does not know most of his client's first names and usually meets them for the first time on the courthouse stairs. "Representation means checking a list of plea offers from the district attorney and appearing before the judge…," Bach notes.

Also plagued by case overload, contract lawyers fail to provide for basic services such as investigation (McDonald 96). Hartman concludes that "the quality of work suffers because lawyers are overworked and lack necessary services."

In general, indigent defense systems fail to provide adequate legal assistance. In fact, 68% of all death sentences from 1973 to 1995 were overturned on appeal. ("Deadly Mistakes"). Mistakes made by incompetent counsel was one of the primary reasons for reversal ("Deadly Mistakes"). Moreover, due to inadequate pay and overload, defenders are spending little time preparing for capital trials ("With Justice For Few…"). Experts estimate that 500 to 1,000 hours are needed to prepare for a capital case ("With Justice For Few…"). Some defenders spend 20 hours or less preparing for a death penalty trial according to the *Tennessee Bar Journal* ("With Justice For Few…"). This amount of time spent for preparation is true in most defense systems.

As a result, little investigation is done into the history and lives of capital defendants (Levinson 164). Investigation can lead to mitigating factors, which lessen sentences. In "Don't Let Sleeping Lawyers Lie…," Jeffrey Levinson writes, "Effective enumeration and presentation [of mitigating circumstances] almost guarantees the defendant will be spared execution in all but the most grisly crimes." A review of attorney conduct in Tennessee capital cases revealed that in one-fourth of capital cases, defenders offered no mitigating evidence during trial ("With Justice For Few…"). In "Rolling the Dice to Decide Who Dies," Vivian Berger writes that "many attorneys do little or nothing by way of investigation geared to sentencing issues and hence do not learn themselves what they should be spreading before the jury." Berger cites several reasons for this lack of investigation including lack of knowledge, experience, compensation, and the will to assume the role demanded of them (Berger 6).

Whether or not the defense performs investigation can mean the difference between life and death for a capital defendant. A study by the Texas Defender Service concluded that death row prisoners "face a one-in-three chance of being executed without having the case properly investigated by a competent attorney or without having any claims of innocence or unfairness heard" ("Inadequate Representation"). Sylvester Adams, a poor, black man was sentenced in South Carolina on August 17, 1995 ("With Justice For Few . . ."). His court appointed lawyer failed to investigate into Adams's history of mental illness ("With Justice For Few . . ."). Later, one of the jurors came forward and admitted that she would not have voted for death if she knew about Adams's illness ("With Justice For Few . . .").

In another case, Delma Banks, Jr. was charged with the murder of Richard Whitehead in 1980 ("Inadequate Representation"). Banks was convicted based on the testimony of one witness ("Inadequate Representation"). Banks's lawyer failed to investigate further into the case ("Inadequate Representation"). If he had, he would have realized that the witness had a charge dropped and was given money for his testimony ("Inadequate Representation"). There was also considerable evidence that Banks was out of town on the day of the murder ("Inadequate Representation"). Banks's case was accepted for review by the Supreme Court in April 2003 ("Inad-

equate Representation").

As a nation we must decide that it is time to stop and examine our criminal justice system. A nationwide moratorium should be put into place. During this moratorium, our nation should commit to examining the practice of capital punishment. We must look closely at the system and fix the many flaws. After this examination, if as a nation, we insist on keeping capital punishment as a system, then we must reform the way in which capital defendants are being tried.

The first reform should be the nationwide establishment of specific public defender offices for capital cases. For indigent defense systems, the public defender office is the best alternative. It offers less opportunities for political influence and error if run properly. The old public defender offices should be reformed, and the new ones should be created in the likeness of the offices in Washington, D.C., and Kentucky. The offices must be well staffed with secretaries, investigators, paralegals, social workers, etc. The more staff we employ, the less likely for the offices to be so backlogged that they begin to rely on plea bargaining as a means to speed up the process.

Secondly, we must increase the pay for these public defenders. How can we expect them to do an adequate job when they are receiving inadequate pay? Public defenders must have some incentive for spending the necessary 500 to 1,000 hours on each death penalty case. To increase the quality of service, we must increase the pay.

Lastly, there should also be a committee of non-employees that examines each case for error. In Travis County, Texas, district attorney Ronnie Earle oversees a committee of attorneys and the like who examine each possible death penalty case to see if capital punishment is warranted (Cloud 52). Much like this committee, the committee in each office should examine each case for any error. This will help to reduce the amount of appeals because each case will be tried fairly and accurately.

Now you may ask why put all this time, money, and effort into reforming our system. The answer is because we cannot afford not to. We owe it to the lives of these defendants to use whatever means necessary to ensure that justice is really served. Taking the life of any individual is a serious matter. We must be absolutely sure these defendants took the life of another person before we can take their lives. In reality, their lives are no less valuable than mine.

Obviously, we cannot eliminate every single flaw in our system. But we must at least try to do better than what we are doing. Currently, our system is biased against indigent defendants. These indigent defendants constitute 90% of all capital defendants. In other words, these indigent defendants frequently find themselves facing death. Without money, ineffective indigent defense systems must represent these defendants. Consequently, most indigent defendants do not receive adequate counsel. Without adequate defense, death is the outcome for most.

If we reform our system to provide better counsel for capital defendants, we can spare those lives that deserve to be spared. How long can we continue to overlook the flaws within our system? How long can we take the lives of those uncertain of whether their lives really deserve to be taken? Or better yet, how long can we continue to shut our eyes to injustice?❖

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Digging Up Bones

by Cristy Oxendine

There is a saying that we all have a skeleton or two in the closet, some deep, dark secret we would rather forget than to share with others. So why is it we do not bury these skeletons and move on? Why do we allow these ghosts to haunt all our living days? Perhaps the answer lies within the fact that these skeletons are often results of the experiences in our lives that are so traumatizing; they shape the people we become. These are experiences we hide, hoping to shut the door of opportunity for pain to recur, all the while failing to realize that our emotional wounds need treatment, just as our physical wounds do. Therefore, at any opportune time, something or someone may come along and make that wound fresh, raising those ghosts from the dead.

I remember the day my skeleton was born. It arrived in the mail, swaddled in an envelope with North Carolina School of Math and Science embossed on the front. I knew what the letter was, yet did not have a clue what it said. Locking myself in the restroom, I carefully opened the package and read it there in privacy. The date, time, even the people that may or may not have been there are irrelevant to that day's events. The note of importance falls upon my failure to be admitted into the school of my dreams. There in that restroom I cried as I had never cried before and at that exact moment, along with those buckets of tears, my life went down the drain. To understand why this was such a big deal, one would have to understand the person I was, the person that was born that day and the person I hope to be someday.

I never went to a preschool like most kids, but I remember being the only child in my kindergarten class who knew how to read, and I liked it. I liked the idea that I could do something the others could not. Testing showed that I was an above average student, and, in the second grade, I was labeled as academically gifted. Of course, living in Small Town, America that label did not mean that I was going to be educated any differently from my peers who were not gifted. There were a few times when someone would come along and attempt to offer a challenge, teachers who were supposed to be capable of aiding the "gifted" in tapping into overachievement. Yet they never stayed for any length of time, which no doubt had a thing or two to do with school funding. One week they were there, and the next week they were history. I remember wishing that my parents could afford to send me to a private school, knowing that something was missing from what I was receiving in public school. I was a dreamer, wanting to do the things that were unheard of; for instance, I wanted to be the President of the United States. It would have taken a lot of change for a country that has never had a minority President, not to mention one that is female, in order for me to have achieved that goal. I wanted to change the world and believed that I could do so. In my mind's eye, there was nothing that I could not make happen if I wanted it to.

Advancing from elementary school into secondary school, I became aware that the schools I was attending were exactly that,

Cristy Oxendine, an aspiring writer, is a freshman who is interested in the arts and sciences. Cristy, a mother of a three-year-old daughter, Paige Rhianne, is a Lumbee native of Robeson County where she attends Burnt Swamp Baptist Church.

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secondary. In the eighth grade, I was placed in a classroom with students that I dare to say were not even at the average level. At first, I did not understand why I was placed that way because my seventh grade year was filled with one great achievement after another. I had placed highest among my peers on the end of grade tests with a ninety-nine percentile, achieved recognition for instrumental music, and read three times as many books that year than any other student. Then I came to the conclusion that they (administration) wanted others to be influenced by me. Somehow they assumed that my eagerness to learn would influence these other students, who would have preferred to not attend school at all. I remember thinking about how bad of a hand I had been dealt, but I made the best of it and was content to be surrounded by those who did not offer a challenge. But that was the year school administration became my mortal enemy. I remember my principal offering a dinner at his expense to all students who made a grade of four on the state writing test . A four was the highest grade one could make on that test, and I wound up being the only student who did it. Needless to say, I never received that dinner or a reason why. I began to realize that school was no different from any other area of life. It is all about whom one knows or what one can do for someone else, not about overachieving for one's personal gain.

The beginning of my high school career was laced with possibilities. I was ranked at the top of all my classmates, and all was going in the right direction. By this time, I thrived on being number one, not on the idea that it made me superior, but that it gave me a sense of purpose. Roberts and Lovett state, "Academically gifted children may indeed elevate the 'normal' wish or preference to perform well scholastically into an emotional need for academic perfection" (243). Being academically gifted meant that I was not just like everyone else; in a way, it made me special. I was an overachiever, and everything I set forth to do had to reflect that: either I was best or nothing at all. My motto proved to be opposite from what one would learn on the playing field. Everything was about winning, and that was how one played my game.

After all, my successes were not only a reflection of myself but also one upon my parents and teachers as well. The way it appeared to the rest of the world, my teachers were doing their jobs correctly if one of their students could do so well academically, right? I do not think anyone ever gave it the slightest thought that most of my knowledge came from the books I read outside of schoolwork and the studying I did just out of curiosity. As for my parents, it is not that they did not help; they encouraged my joy for reading. Yet, at times when I would have a question dealing with homework, the popular reply would be, "Do you know how long it has been since I was in school?" Most of the time, because my mother is a teacher, I would reply, "And you are teaching America's future?" Regardless, having to find the answers on my own proved to be my best studying. I am fortunate that their way of "helping" was not by finding the answers for me, like so many other parents.

The first time I heard about the School of Math and Science, I thought to myself that it was the solution to my problem. I thought that the education I had always dreamed of would be found there. In order to be accepted there, one must undergo a process of being nominated and applying. If one survives this process, they receive the privilege of an all-day affair of touring the campus, undergoing numerous tests and, finally, interviewing with one of the school's staff. The way participants are chosen begins with one from each of the one hundred counties in North Carolina, and there were only two students from my county there that day. After having a brief conversation with

Cristy tackled an extremely personal subject in this essay. Through the process of writing, she developed her sense of voice and used the written word as a medium for understanding and composing the self. She also invites the audience to consider their own positions in a complex world.
—Jesse Peters

the other student about the testing, I concluded that I was definitely going to be the one chosen. I had only one small fear, which was that I would not do well in the interview. The way the interview worked was that the interviewer asked one question and you had a time limit to answer. I remember well my question, "Have you ever failed at something?" Of course, I was more than ready to admit that I could not recall anything I had ever failed at. Once outside those doors, I felt as though the weight of the world had been placed upon my shoulders. I remember the realization settling in all too early that I might have just experienced failure for the first time. I had nothing to offer my parents on the ride home, no hope to give, nothing.

> Roberts and Lovett ask the question, Do gifted students' heightened negative responses to academic failures fall within the realm of functionality, or does academic failure lead to dysfunctional levels of distress in academically gifted students. That is, even though gifted students may experience a more negative emotional response to failure than their nongifted peers, do the gifted then respond adaptively with persistence and appropriate help-seeking behaviors, or do they compound the problem by simply giving up or refusing to seek help even in the face of multiple failures? (256).

I affirm that Roberts and Lovett are correct. My reaction to failure was far beyond the realms of dysfunctional distress. Not only did I stop being an overachiever, I now saw myself as the world's biggest loser.

The day the letter came, reality was far from kind. Why had no one ever told me it was okay to fail, that sooner or later it would happen? With my hopes and dreams drowned into a sea of nothingness, my life began to reflect exactly that. It was the summer after my sophomore year, and all I wanted to do was sulk around. Having never experienced failure, I did not know how to cope with it. My existence was based solely upon success. Needless to say, I was not ready to go back to school my junior year. By the time school was sixty days into the year, I had missed forty of them. I thought it was hilarious that I could go to school only two or three days out of the week and show up to ace the test on test day. It also said a lot about the educating that was going on inside those classrooms. The school made it plainly clear that I was not going to be allowed to advance to my senior year based upon my attendance record, so I dropped out of high school. Within the month, I had begun drinking, smoking marijuana and having promiscuous sex. Whatever part of the old me that existed, I tried to kill; life had no meaning. I could not find my way back to the person I was before and detested the person I was turning out to be.

That year while my ex-classmates were having their junior prom, I wound up spending two weeks in the hospital due to an asthma attack. I almost died, and the only thing I could think about at the time was how my life was wasted. When I was released from the hospital, I checked up on going back to school. That summer, I had English III classes in the daytime and Algebra II classes at night, at different schools. I had always chosen extra credit and advanced level classes; therefore, with the credits from these two courses, I had enough credits to go back to school with a status of senior with my former graduating class.

That was the first year that the school year was split into two semesters of four classes each, all of which I needed in order to graduate. During the first semester, one of my classes was English IV Honors; needless to say my habit of failing to make it to class every day had remained. Not only that, but when I was there, I was not the most attentive student, and I failed to ever do homework. Even though I did not miss too many classes to fail and my grades were passing, my teacher failed me. I wound up having to

go to school day and night once again during the second semester so that I could graduate. Three weeks before graduation, I was in an automobile accident on my way to school and missed two of the three weeks remaining. Nevertheless, I graduated in the top ten percent of my class as a North Carolina Scholar, relieved but far from happy. I say relieved because I had finally accomplished something, but there has always been the knowledge that the valedictorian speech was mine to make, should have been mine if I had kept my eye on the prize. Instead of wallowing in my self- pity about not being accepted into that school where I would have had to struggle to be in the top ten percent, I should have stayed focused on the task at hand and stayed number one.

So how do I go from graduation to present day, eight years later, being a college freshman? I tried college three times, and I just could not do it. It was not the academics, but my drive was gone; I was still hanging onto that sixteen-year-old girl whose dreams had gone out with the tide. Since then I have experienced a lot in life, jobs, relationships, and parenthood. As far as the job aspect goes, right now I have a good job; by good I mean the benefits are good, the pay is good; I am just not satisfied. There's always that nagging thought in the back of my mind that I could have done better, that there is still hope. The blue-collar workforce is not the place for me. I am always coming across someone whose intelligence is beneath mine whose job I could probably do better, yet I can never get any farther up the ladder because I think advancement should be based upon work ethic, not brown nosing. I decided to try once more to attain a degree after mentioning the idea at work. The majority of the feedback I received was, "Are you going to take computer classes for secretarial work? You need you an office job, something where you don't have to get dirty." I felt that this was very chauvinistic and degrading. Ultimately, it wound up being my biggest shove towards striving for my goal. The implications I got out of it all was that my intelligence was going to waste in that factory. As for parenthood, I would like to provide my daughter with a brighter future than the one that is feasible right now. Stability is a term that applies to careers, not blue-collar jobs.

Connor suggests, "For it is in coping with the failure and struggling to overcome it that real growth takes place" (17). Being much older now, I can appreciate the ups and downs in my life. My personal struggle with failure has left me a little worn around some edges and much too sharp around others. Perhaps the future has something in store for me, something for which this lesson will come in handy. I realize I am never going to be content until I have been as far as I can go. There is a level of fulfillment that I have yet to reach, a point where life is meaningful and all is not lost to seconds turning into minutes, minutes into hours, hours into days and days into years.

Author Adrienne Rich paints the picture best:

> I have wished I could rest among the beautiful and common weeds I can name, both here and in other tracts of the globe. But there is no finite knowing, no such rest. Innocent birds, deserts, morning glories, point to choices, leading away from the familiar. When I speak of an end to suffering I don't mean anesthesia. I mean knowing the world, and my place in it, not in order to stare with bitterness or detachment, but as a powerful and womanly series of choices: and here I write the words, in their fullness: powerful; womanly. (Rich 645)

I too desire to find contentment and rest in life. My failure has become my sense of familiarity, and I am ready to explore the unknown. To find my role in this play called life and no longer be a part of the scenery watching the world pass by would give me a sense of purpose. I choose to revive my fu-

ture and reclaim the person I know myself to be. My choice is to no longer allow failure to drag me through the streets of life but to grasp the reins and wrest control.

Where exactly am I going? I do not know yet, but I do know this, my goal is somewhere down the road between four and eight years from now. If I happen to run into failure again, I hope he has his shin guards on because, this time, I am not going down without a fight. I refuse to let anyone or anything else hold me down. Having dwelt too long in this graveyard of dreams, I understand that I have been a prisoner to failure for far too long, and it is time to bury those bones once and for all.❖

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Echoes of the Farm

by Austin Sheppard

Austin Sheppard was born and raised in southeastern North Carolina. He is an art major who believes that visual media can speak volumes beyond the written word, yet he cannot deny the inherent beauty of language as an art form.

All individuals have places of their own that bring out their true selves. These are places that, when they visit them, they come alive and truly appreciate what they have been given. It is the essence of life for them. When I go to my family's farm, I feel as though I have truly gone home. Granted to my family by King George III in 1737, it has been distinguished as one of the oldest family-owned farms in North Carolina. It is also listed on the National Register of Historic Places due partially to the fact that it was the residence of Capt. Daniel Patterson, the last man to surrender his troops at the battle of Fort Fisher in 1865.

All of these facts are important to historians, but, to me, every weathered board and broken pane of glass holds a memory of what will one day be forgotten. It is not only the place I love but also the memories of the people that I have grown to associate with it over the course of my lifetime. My Papa was the living embodiment of all that the farm is. A miserly, vivacious man with a warm heart and a big smile, he was the type that always new exactly how much was in his wallet, but if anyone was hard up and needed a little extra, he didn't really care if they paid it back or not. I can still stand in my front yard and hear him shouting commands to his workers in that firm and immediate tone. The one thing I will always remember about him is how he would pile watermelons under the old black oak in the side yard just in case someone came to visit and wanted one. Red was the old, black man that used to work for us. He would always let me ride on the back of the tractor when he went to feed the hogs. I would sit on the pallet with a cool breeze in my hair and not a care in the world. He had probably done more work than every other man in Bladen County combined, and no one, not even Red himself, knew how old he really was. We had lots of visitors in those days. Mr. Tom Powers would stop by now and again, and he always had his old, black dog with him. It was kind of funny how that dog would just sit next to Mr. Tom in the passenger seat like an old man along for the ride. Even if Mr. Tom stayed for hours that dog wouldn't move, but would sit there staring out the window like a statue. About once a week, Little Wilt would stop by to get feed for his hogs. He and my Uncle were practically raised together even though Wilt was a couple of years older and black. In fact, it was Papa that nicknamed him Little Wilt, and our family was the only one that called him that. He drove a bright red 1967 Chevrolet truck, which was undoubtedly the shiniest truck to exist at that time. I was always amazed at how immaculate he kept that truck.

All these friends helped to pass the time between planting time and the harvest. Those were the busiest times of the year on the farm. Most days Red would leave on the tractor before I even got up and would return only after it had gotten dark. Papa would always plant the garden with the old tractor. He bought it new in 1959 and used it in the fields for years before retiring it to a life of gardening and pulling wagons. When it was really hot, I would sit in the house and watch

him out the window and listen to the sputter of the old 140 as it made its rounds through the garden. It had the classic "putt-putt-putt" sound that absolutely enthralled me when I was a kid. The summers were long and hot, but I passed the time by helping with the tobacco. Well, actually I hung around the barns and drank Mountain Dew and ate watermelons while the adults took out the dried leaves and replaced them with fresh, green ones. The smell of cured tobacco filled the air, and these weren't modern barns, but the old log type that predated Papa and that I see in picture books nowadays. I would go everyday to break off weeds and give them to the hogs. That was one of the few odors that could overpower the tobacco barns, but to me it seemed very pleasant and comforting. It wasn't like being stuck behind a modern hog truck, not even close. The other kids on the school bus would pinch their noses and make gagging sounds when we got to the farm, but I couldn't figure out what all the fuss was about. It smelled good to me, and at least I knew when I was getting close to home.

The towering weeds around the farm were no match for me and my tobacco stick swords. They were the perfect weapon, dry and hard from years of being used to dry the tobacco leaves. Like a samurai on the battlefield, I would cut them down sometimes two or three at the time, sometimes limb by limb. Most of my pants were permanent shades of green and purple, thanks to the berries that grew on the tall red weeds. They were the most fun to smash. Most kids today have no idea what a tobacco stick is, let alone how to use it properly (as a sword), even the kids raised on farms. How people expect their children to learn how to sword fight is beyond me. When the corn began to dry out so that the wind made a rustling sound through it, I knew that the harvest wasn't far away. Picking corn and beans was the time when I would always go elsewhere. The dust would burn my eyes and make me cough and itch. I found that my time was better spent waiting for the peanuts to ripen. I am now fairly certain that peanuts were invented for the soul purpose of putting a smile on kids' faces. After they would dig the peanuts, I would walk barefoot through the cool, powdery dirt and snatch them off of the vines when no one was looking. When they were turned to dry in the sun that delicious, peanuty smell would fill the air for miles around since everyone dug theirs at roughly the same time. I always wanted to climb in the wagons and lay on the tons of harvested peanuts and wallow in them like a hog in her mud, but I knew Papa wouldn't have let me. I managed to develop the knack for selecting the perfect peanut to snack on. That was one of the few things I would actually eat until I got sick. Not chocolate footballs or moon pies or nutter butters, but perfect, delicious peanuts. Don't ever let anyone say that peanuts will make you fat. Miserable maybe, but not fat.

Things sure have changed a lot on the farm since those days. New, shiny shelters have replaced many of the old dilapidated barns, and the tobacco is long since gone. I still have the same old feelings for the place that I did when I was little though. Every now and again I smash weeds with tobacco sticks, and now I can climb in the wagons and eat peanuts if I want to. I can't help but feel a little bit of sadness, though, when I think about what I have lost, what will never return. I drove by Little Wilt's House the other day. There was an old, beat up, rusted out Chevy truck in the front yard with a for sale sign in the window. Now when I go to the farm there are no watermelons piled around. The preacher spoke of those watermelons under the tree at Papa's funeral, and I cried like never before.❖

Austin's essay is a lovely, nostalgic account of his family's farm. He draws the reader into the beauty of a place and time.
—Patricia Valenti

Call For Papers

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For Further Information:

Jesse Peters
ETL Department
117 Dial Humanities Bldg.
(910) 521-6635
peters@uncp.edu

Susan Cannata
ETL Department
119 Dial Humanities Bldg.
(910) 521-6806
cannata@uncp.edu

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Be sure that no name or identifying marks appear on submission. Please return form with attached submission to Dr. Jesse Peters or Dr. Susan Cannata in the Department of English, Theatre, and Languages.

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