Submission To

Australian Productivity Commission

PO Box 1428 Canberra City, ACT 2601

ACCESS TO JUSTICE INQUIRY

Compiled
7 DECEMBER 2013

Submission By

John Victor Ramses
United States Citizen, age 53
Prisoner, Acacia Prison
ID: d 217 4691

Acacia Prison
Locked Bag 1
Wooroloo, Western Australia
Australia 6558

Concerns addressed in this submission:

"The prospect of an innocent person being convicted of a serious crime represents a catastrophic failure of the legal system"

- Lord Igor Judge, Lord Chief Justice of England and Wales, speaking at the Australian Institute of Judicial Administration Conference, Sydney September 7-9 2011.

"That everybody who comes before the courts is entitled to a fair trial is axiomatic...."

"...the right to every citizen to unimpeded access to a court is a basic right".

- *Citing Martin Hinton QC, 'Unused Material and Prosecution's Duty to Disclose' vol 25 Crim LJ 121-139*

"Most Australians would probably be shocked to learn just how often people face prosecution and conviction without any competent legal representation. There is mounting evidence that more people are being forced to represent themselves in criminal cases..."

- *Citing Dr. Carmen Lawrence, former premier of Western Australia, 'Fear and Politics' © 2006 (Scribe Publications PTY) Page 70-72*

"The hard reality is that the cost of legal representation is beyond the reach of many, probably most, ordinary Australians".

- *Citing Chief Justice Wayne Martin, The West Australian Newspaper - 25 October 2012.*

"The resources that are mobilized by the State...are immense by comparison to those generally available to the accused".

- *'Unused Material and Prosecution's Duty to Disclose' vol 25 Crim LJ 121-139*

In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: *... to defend himself in person or through legal assistance of his own choosing; To be informed, [that] if he does not have legal assistance, of this right; And to have legal assistance assigned to him, in ANY case where the interests of justice so require; And without payment by him in any case if he does not have sufficient means to pay for it...*

- *'International Covenant on Civil and Political Rights, Article 14.3 The ICCPR was ratified by Australia on 13 August 1980 and entered into force for Australia on 13 November 1980*

Purpose of This Submission

The purpose of this submission to the Access To Justice Inquiry is to contribute my personal experience with matter on review, particularly, fairness to the accused, which in my circumstance, includes:

- Denial of legal representation for a criminal matter;
- Being forced as a result to face criminal hearings and a 5 – day trial alone in a foreign country with no knowledge of complex domestic law or trial matters;
- The stress, helplessness, anger, fatigue and fear of being left abandon in a foreign country (Australia) to face it alone.

Additional issues addressed include the dire lack of reasonable access to facilities and resources to properly prepare legal letters and documents, including access to a computer and printer, law library, basic assistance/guidance for prisoners on how to properly prepare legal documents.

This submission is presented through the viewpoint of a foreign national (United States citizen) faced with litigation in (Western) Australia and is written in the vernacular of an average person. The combined experience has been, and so far remains, a shameful atrocity of justice unbecoming of a modern, civilised nation whose political members, whilst in the global media spotlight, tout Australia's commitment to fairness, human rights and respect for the UN Charter and International Law, yet in practice demonstrate the opposite is true.

Included with this submission is excerpts from my own trial clearly depicting the impossible position an accused is *actually* confronted with when forced to face trial unrepresented, particularly as a foreign national in a foreign court. The transcripts exploit the apparent indifference to the situation by the trial judge, as well. [see Support Document 2]

The transcript also clearly shows my pleas to the judge (before the jury), telling the judge that that *"I don't know what to do", "I seem to be at a loss", "I don't know where to go", "I'm not a lawyer", "I can't defend myself, your Honor", "I have the evidence but don't know how [to show it]", "I'm just learning through this, but I'm catching on"* , but which comments and pleas were ignored by the judge.

As a reasonable-minded reader shall see through the course of this submission, the emotional and physical burden of attempting to defend one's self in criminal hearings and trial, with no knowledge of legal matters, and where the very life of the accused is at stake, can only be described without exaggeration as cruel, barbaric or, at least, exceedingly unfair, biased and prejudiced. The impact on my life, family and health is irreparable.

Furthermore, as members of the review committee may be aware, such circumstances as being denied legal representation *where the interests of justice so require* is in obstinate conflict with, and in breach of, International Law and Australia's obligations to

the International Covenant on Civil and Political Rights, which were, in part, established to prevent just such conditions as I have been made to endure.

My campaigns to bring awareness to my situation and the treatment I experienced, has spanned more than two years now since being 'convicted' in 'trial' on 12 August 2011, and which campaigns include letters and statements to numerous organizations, media and political parties, as well as the staging of a lone political plea for help from the roof of Acacia prison on 28 March where I painted a broad message to then PM Julia Gillard concerning Australia's disregard of my basic rights. A brief of the event and message to the PM can be found on page 21. The political plea from the roof was directly related to conditions arising from being denied legal representation and the unfair handling of my case.

While the injustices and misconduct I have experienced from the onset of this case, through arrest, trial, sentencing and incarceration are too numerous to list for this Inquiry, they are recorded in previous statements issued to the US Consul, Ambassador and my family in America, and which are available to any person of the public or media upon request.

With sincerity I say that mine may be one of the most important cases concerning access to justice and civil rights to cross the table of the Inquiry. It not only exemplifies in harsh detail what occurs to an unrepresented accused person against a mindset of indifference to fact, truth and fairness, but in particular, how vulnerable to misconduct and injustice a foreign national is against such a system that denies legal representation to those who require it most.

It also exemplifies the impact on one's life when procedural fairness and protocols are disregarded to ensure a conviction.

Since incarceration following that brutal trial I have met many other men young and old who have shared similar experiences to varying degrees. In the past two years I have personally read the cases, statements and transcripts of approximately 20 prisoners while assisting them in their legal affairs after they had been denied legal representation. The misconduct and methods used to ensure 'conviction', like in my case, epitomises the dire faults entrenched into the very design of Australia's system of justice. These unscrupulous methods appear to be standard operating procedures condoned by, if not defended by even our judges in the courts of law. But it cannot be overlooked that 'system' is itself comprised of individual people whose mindset creates and nurtures these faults.

I invite the reviewer to read –'The personal side', page 44, expanding on my experience as a prisoner.

Unlike civil or family disputes, matters involved alleged serious offenses adversely affects the very life of an accused person often resulting in a term of imprisonment wherein arises further, often irreparable psychological and sometimes physical damage through adjustment to prison life, exposure to hardened criminals and diseases, isolation from his their children and overall rejection by society, friends and, at times, family. In effect, he becomes non-existent to the world and may not be able to fully return to life after release. In a sense, a conviction can be an equivalent to murder for 'murder' to one's life is exactly what occurs. In that same sense it can be argued that an accused person who, through whatever excuse, has been granted less than full, equal access to justice and right to a fair trial before

a court of law is being set up to be 'murdered', rendered non-existent. It can be equally argued that an unfair trial, which always leads to a 'conviction', is therefore nothing short of a form of human trafficking.

With this in mind, it is my sincere hope that the review committee for the Access To Justice Inquiry take these issues and this Inquiry seriously in order to implement remedies that satisfy both fairness to the accused in the name of justice and Australia's obligations to the International Covenant on Civil and Political Rights, which were codified to prevent just such injustices.

Life is not cheap but precious. A price cannot be put on a life.
'Funding' is no excuse to ignore the law or life at stake.

- John Victor Ramses

In 2006 Dr Carmen Lawrence had this to say about the growing crisis of accused persons being forced to face litigation in Australia without legal representation:

Most Australians would probably be shocked to learn just how often people face prosecution and conviction without any competent legal representation. Yet this is an increasingly common feature in our justice system and it is clear that reductions in legal aid are a major cause of the increase. There is mounting evidence that more people are being forced to represent themselves in criminal cases, particularly in the magistrate's courts. Research shows that it is almost impossible to obtain legal aid for summary trials and there is no incentive for legal practitioners to take on such cases *pro bono*.

In criminal trials people have no choice but to appear. Those who are forced to represent themselves are at a great disadvantage, not least because they are unfamiliar with important aspects of the criminal justice system and may underestimate the consequences of failing to comply with directives from the court. Unrepresented defendants are unlikely to have an adequate understanding of the law in relation to their case and may not be able to judge what evidence they should put before the court. Furthermore, they may include irrelevant material in their submissions and may lack the necessary objectivity to frame a proper defense. It is almost inevitable that they will lack requisite skill to ask the right questions and avoid those that are potentially damaging to their case. All of these shortcomings may irritate the court and will almost certainly lengthen and increase the cost of proceedings. Such defendants typically lack familiarity with the sentencing options available, to their obvious disadvantage. A person without legal counsel also runs the risk of a prejudicial response from the jury who may assume that you can't find a lawyer who believes in you.

Legal aid was supposed to prevent injustices. As a result of successive funding cuts and changes to eligibility criteria, there are now growing concerns that only the well-off, or those in a position to liquidate all their assets, can afford justice. That this appears to excite very little comment is in part due to the predictable accompaniment to the 'law and order' chant with its implicit assumption that those charged are inevitably guilty.

Dr. Carmen Lawrence, former premier of Western Australia
Extract from her book '*Fear and Politics*' © 2006 (Scribe Publications PTY)
Page 70-72

PART ONE

Breif

On 2 July 2010, shortly following a separation from my wife amidst a heated custody / access dispute over our young daughter, I was arrested on unsubstantiated accusations of sexual abuse against my stepdaughter.

The accusation was reported by my estranged wife following announcement that I intended to take the custody dispute to Family Court for resolve, where I would invoke the Hague Convention on International Parent Rights.

The accusations were traumatic enough.

But it is the conduct and overall treatment of my case by the Western Australian legal and judicial system that is solely to blame for all that followed.

Most notably, being denied a lawyer, as a foreign national, which underscored all other matters relating to fairness in my case, contributing to what can be proven to any person with an interest to know, as a wrongful conviction of an innocent man and father.

The lawyer is the first and often only line of defence for an accused person.
I was left to defend myself alone in a foreign court utterly absent of legal knowledge or support....

Personal Data

John Victor Ramses

Born 15 February 1960

Murray, Utah United States of America

Immigrated to Australia 2 September 1999 for the purpose of marriage

Married 11 November 1999, Mullaloo, Western Australia

Permanent Resident Status granted in 2000

From this marriage a daughter was born 26 June 2000

Background History of Case (shortlist)

1. Separated 27 April. Began access / custody dispute of our daughter.
2. Accusations made by my estranged wife on 1 July 2010.
3. Arrested on accusation alone on 2 July 2010.
4. Jailed in Hakea Prison, WA
5. Bail made on 25 August 2010 only with Consular help.
6. Began search for a lawyer.
7. All lawyers required $30,000 to $50,000 up front to take on my case. Being freshly divorced and alone in Australia I did not have access to such funds. I held a job in manufacturing to support myself, which covered costs of living.
8. Approached Legal Aid in Midland, WA. Legal aid was refused due to my having a full time job.
9. Approached US Consulate for help in securing a lawyer, and asked for an observer on my case. The Consulate responded by telling me that they could "*not get involved in the legal matters of a host nation*". I was left abandoned to the whims of a foreign legal system without protection of my basic rights nor observers to ensure fair treatment. I had exhausted all leads from a list of WA lawyers the Consulate provided me, as well as exhausting options from the phone book, Internet and referrals.

   As one lawyer told me, I had "fallen through the cracks of the legal system". This was unacceptable in my view and it is these 'cracks' that must be repaired.

   These are not cases to be simply 'won' or 'lost' or treated frivolously, but are always a matter of a person's life at stake.

Hearings and Trial

10. Meanwhile, beginning from 18 November 2010, I faced hearings of which I did not understand and which were not explained to me.

11. During pre-trial hearings I explained to the magistrate my desire to have a lawyer and the difficulty I had encountered in securing a lawyer. There was no concern for my predicament from the magistrate. The responsibility to secure legal representation was put back onto myself.

    As a foreigner this was unacceptable. I had no choice but to face hearings and trial but had exhausted all options of acquiring a lawyer. As a US citizen it was unheard of. No one should ever be forced to face litigation without at least legal advice, much less a lawyer.

12. As trial approached, being alone in Australia, the stress and fears of facing trial alone began to incite anxieties and angina attacks. I had suffered a heart attack in July 1999, but which had not caused me any further complications until the pressures built up from not having legal representation. [see details in Support Document 3]

13. In the weeks preceding trial the angina attacks increased. Stress caused insomnia due to constant worry, fear of going to jail combined with heartache of missing my young daughter, whom I had not seen since 30 June 2010 – the day before the accusations were made.

    In my mind the battle I faced remained a battle for my daughter, as much as it would become a battle for my life.

14. With just two weeks until trial I resolved that I would have no choice but to attempt to defend myself.

    The only law firm to express interest in representing me was TalbotOlivier. However, they believed, in their view, that due to the trial being so close they would not have time to properly prepare a defence, subpoena witnesses and proof of fabrication of the accusations. They believed also that it would be highly unlikely that the judge would extend the trial date.

    I left the offices of TalbotOlivier as I had arrived: despaired and feeling hopeless.

15. In a pre-trial hearing, just days before trial, I told the judge (who would also be the trial judge) that I had exhausted every option available to me to secure a lawyer and that I would represent myself. I imagined the trial to be a 'Judge-Judy' scenario. I couldn't have been more wrong.

    In my mind it was still a battle for my daughter, a Family Court dispute, and not understanding the seriousness of criminal trials, nor the complexities involved. I felt that all I would have to do is prove with evidence that the accusations against me had been fabricated, and for what motive. I believed that certainly a judge would see this evidence and desire to know the truth in the matter.

16. However, in order to prove my case as being fabricated I required three witnesses and a bank statement belonging to one of the witnesses which proved that the

alleged crime was fabricated.

17. I informed the judge, in front of the prosecutor, of the witnesses and evidence I required for my defence, and explained why I required it. The judge informed me that I would have to subpoena the witnesses and the evidence and told me I would have to get the forms from a department near the lobby.

18. In the department (clerks office?) I was given one subpoena form by the clerk and was told I would have to make copies myself if I wanted more. Explaining to the clerk what the forms were for I was also told that only a lawyer could subpoena private bank documents with court order. I had no lawyer. I was told by the clerk that the subpoena may not be processed in time for the trial, at any rate.

19. The form was confusing and I was at my wit's end. I felt defeated at every turn, in spite of trying to do everything right. To me it was a nightmare, unbelievable that such a situation could occur in Australia.

Situation without a lawyer: Forced to ask arresting officer to assist me and officer's wilful betrayal of my trust.

20. Not understanding the subpoena form or the subpoena process, with less than a week until trial, I at last resolved to contact the arresting officer to assist me in securing my witnesses and vital evidence. I explained to the officer why the evidence was important, that it would prove fabrication of the accusations, whereby clearing my name of the charges.

21. The officer contacted the prosecutor with the information, who then paid visit to my witnesses' residence that very day. As a result of that visit two of the three key witness 'declined to get involved', and the vital document evidence I required for trial was conveniently ignored. The excuse the prosecutor would give me in trial concerning the absence of this evidence was that the witness 'did not know how to print it'.

22. This was unacceptable. It was vital evidence and not a trivial matter, as my life was on the line. Being without a lawyer I could do nothing. I did not know what to do.

23. The prosecutor had, in fact, enquired of the evidence and likely viewed it for himself, as it posed a serious threat to his case. In that it is my belief that the prosecutor dissuaded the witness from making it available in court, as I believe he dissuaded the other two witnesses from giving testimony supporting that evidence.

24. The trial judge also knew the evidence existed as I had told her so, and its importance to my defence.

25. Nonetheless, even though my witness told the truth in trial, the prosecutor used the absence of the document evidence to discredit her testimony before the jury. It was a cheap shot, one I believe the prosecutor had intentionally planned to do.

[see full details of this matter in Support Document 1 page 50]

Impossible conditions of trial without a lawyer:

Concerning cross-examination, conditions causing risk of collusion
[refer to Support Document 1 'Preparing for Cross Examination' page 57 for details]

26. Without a lawyer I was made by the judge to pre-write all the questions I intended to ask the complainant during 'cross examination'.

    I was made to pre-write these questions in the week before trial and deliver them to the judge before trial so she could approve of the questions before being put to the complainant in trial during cross examination.

    I had only the statement of the complainant to form questions from and I knew nothing about cross examinations. I prepared the list of questions to the best of my ability without knowing what was going to be said by the complainant in the actual trial.

27. Three days before trial I delivered my list of questions to the judge as required.

28. On Monday, the morning of the first day of trial, I was shocked that the judge intended to read aloud in court all the questions I had prepared. This was done in an open court environment in the presence of the prosecutor and friends and family members of the complainant.

29. This situation caused me considerable stress as the family members had access to the complainant and State witnesses who were sitting just outside the courtroom in the foyer.

30. At regular intervals, as my questions were read aloud by the judge, I witnessed certain family members of the complainant leaving the court room then returning minutes later. This occurred multiple times.

31. I feared that they were reporting to the State witnesses the questions I intended to ask, whereby allowing for a serious risk of collusion and opportunity to prepare fabricated answers before taking the stand.

32. I asked the judge to please dismiss the friends and family members of the complainant and State witnesses if the judge intended to continue reading all my questions aloud in the court. I explained to the judge my reasons for this request.

33. The judge told me it was a public trial and that they did not have to leave. Naturally, this caused anxieties and stress and I became afraid of answering the judge concerning my intentions of the respective questions. In this atmosphere I simply ended up omitting many of the questions I had prepared.

    This situation would not have occurred if I had been afforded legal representation to act on my behalf.

    [refer to Support Document 1 'Preparing for Cross Examination' page 57 for details]

Conditions of Actual 'Cross Examination' of Complainant:

34. With the remaining questions I had been made to pre-write, and after the prosecutor had examined the complainant, my list of questions – now edited and scratched out – were given to a court clerk to read to the complainant in my behalf, as I was not permitted to personally speak to the complainant.

35. Nothing in my pre-written questions addressed what the complainant had actually said in trail. My questions had been pre-written one week before trial.

36. The court clerk read my questions to the complainant in a simply, linear fashion, one after another, allowing the complainant to answer. I was not given fair opportunity to challenge the complainant's answers – most which consisted of unsubstantiated slander. Neither could I ask for clarification on an answer, or lead into other questions that an answer often required. I was helpless in every respect. I could only sit and listen to the damning accusations and slander – as the jury also did.

37. The court clerk was not qualified to do anymore than read my questions, which were now edited and out of order and confusing. This only set me up to present as a bad person to the jury.

    [refer to Support Document 1 'Preparing for Cross Examination' page 57 for details]

Conditions of Cross Examination of my former wife - A defining moment of injustice:

38. In this instance I was permitted to cross examine my former wife.

39. It is important to note that many of the questions I had prepared for the complainant were similar in nature for my wife, but which questions I believe had been revealed to her (and the complainant) by her family members while the judge had been reading the questions aloud in court.

It was during this cross examination of my wife that I reiterated my concerns that the witness was tainted as a result of exposing those questions prematurely:

Transcripts - 10/08/2011 page 302 2.37 pm

Accused: Your Honour, I fear that with some of her family being in here when your being questioned they've actually gone out and pre-empted her - - -

Braddock: Sorry, Mr Ramses. Could you please speak up? You fear - fear what, Mr. Ramses?

Accused: I feel with her family being in here watching and listening as we've been going over questions this morning, she's had the opportunity to now be vague, which is completely different from her statement, and I don't feel I'm going to get anywhere with that particular subject so I'll move on.

40. Furthermore, my wife and I were still in the midst of a divorce after an otherwise good marriage of 11 years. The memories of that marriage, as well as the scar from it's ending, were still fresh. I had not seen my wife since the previous June before the allegations were made. Seeing her again triggered all the emotions associated with those respective memories.

    In spite of the divorce, and what she had done to myself and our daughter through this, I still loved her. Our 'love story' was well known, recounted in magazines, Sunday Times and the Internet and had been centred around our daughter and a series of strange events that had brought my wife and I together (Take 5 Magazine, 23 June 2006 [not included herein]).

41. This, combined with fatigue, stress angina attacks and bitterness for being separated from my daughter through such a cruel method, caused me to finally experience an emotional breakdown while attempting to interrogate my wife in trial. The slander she spoke from the stand was from something dark and sinister, not the woman I had married and shared life with. Naturally, it cut deeply, further demoralising what mental strength I had left.

42. All of this weighed on me, in combination with my disdain of the 'justice' system in Australia for its prejudiced treatment of myself and forcing me to stand their in that courtroom in that impossible situation. The breakdown caused certain prejudices in the jury to my detriment, much to the prosecutor's delight.

43. The judge – in my view callous and indifferent to justice or my vulnerable, defenceless circumstance - simply told me to 'compose' myself. How dare she, I remember thinking. Where is wisdom and honour and integrity in these courts? I was struggling alone in a ludicrous situation.

44. The judge should have aborted the trial in the name of fairness and demanded that I be provided with legal representation, whereas it was obvious I could not defend myself to any measure, and whereas my very life was on the line.

45. But indifferent to fairness, justice or my emotional condition, the judge continued the 'trial' to its conclusion and certain 'conviction'.

    [see transcript - Support Document 2, page 63]

46. Being made to face trial in a foreign country with absolutely no knowledge of legal or trial matters was despicable in itself.

    Being made under those conditions to also face and attempt to cross examine my former wife and family members whom I'd loved for eleven years, with memories and emotions still raw, was nothing short of barbaric.

POST CONVICTION

Note: It must be kept in mind while reading through these documents that I was, and still am, a foreign national in Australia with absolutely no support within Australia, no recourse to ensure fair treatment. To say I was frightened and desperate is an understatement. The reader should ponder what such a situation must be like by imagining themselves visiting a foreign country far from family and friends then being accused of a crime against a local citizen and denied any legal representation or legal advice through proceedings; to be told over and over that you're not in your home country anymore....

Arrested for publishing to my U.S. website in a plea for help, desperate and frightened:

1. After being 'convicted' in an exceedingly unfair, bias trial, and now looking at some years in a foreign prison for crimes I did not commit, I pleaded with the trial judge to allow a continuance of my bail until sentencing in order to collect my personal belongings and prepare them for shipping back to the United States.

2. The continuance was reluctantly granted.

3. Upon arriving home the events of the trial and verdict of 'guilty' left me in a form of shock, a disbelief of what I'd been made to endure by this justice system. No one had helped. I now had the task of having to call my parents and children in the US to inform them that, after all, my ex wife had won and I was going to prison in Australia.

4. My parents, due to their age, were most affected by the news, causing despair and depression. I am the eldest child, my mother's only son. I had long planned to return to America in 2010 to assist my parents in their latter years – This had been an agreement between my wife and I - 10 years in Australia, then, with my Australian family, I would return to the US. But the conviction took away my ability to do so; years locked in a foreign prison and the loss of career options I had worked long toward. There was so much lost. Life, to the people who put me in this position, is cheap.

5. Everything from the previous year to that point had caught up to me and I collapsed back at home sobbing until I finally, at long last, slept.

6. It is impossible to imagine my mental state except by those who have endured such situations of cruelty and injustice.

7. They had taken my daughter and robbed me of my life. They mocked my country and my pleas to respect my basic rights and forced me through a brutal criminal trial with no legal advice, representation or support. They obstructed my evidence and witnesses to ensure conviction. Then, most certainly, they congratulated themselves on another case well won; just another day on the job.

8. In the days following trial, between fits of sadness and anger, I began to collect and box my belongings. I couldn't get my mind around why I was boxing my belongings to send home, nor why I was going to prison. I was innocent and could have proven then accusations to have been fabricated in a fair court of law. But fairness was not what they wanted. They wanted another 'conviction'.

9. Desperate to get the evidence known my only recourse now was to post it all to my website, along with the details of the treatment of my case, in hopes someone would see it and investigate and help me.

10. My young daughter had been foremost on my mind through proceedings and trial as the transcripts confirm. I wanted my daughter back and I would not allow her to live a lie, nor to forget about her father. I was determined firstly to that end, and in that I registered my daughter's name as a Dot-Com (Amanraya.com) and posted all the photos and videos of she and I through the years, and all my music I'd written, and other things so she would not forget the sound of my voice nor the father she loved.

11. I was a programmer, internet developer and marketer. I had created numerous sites over the years with many Australian and US clients. I collected all my personal web sites onto one server in the USA and pointed anything with 'John Ramses' to my daughter's website so she would find it if she searched for her father's name on the Internet. All of it was under the an existing domain called AmericanDownUnder.com, which would become the site to which I would publish the evidence and injustices to. Both I and my wife had been fairly well known due to our 'love story' and a popular radio station I created called Ghost Radio Network. I was desperate for someone to see the site and the evidence and investigate my case. On the site I invited the media in the US and Australia to investigate. I had nothing to hide, but my former wife, the police and prosecutor did.

12. Unknown to me then the DPP and police were watching my website. Some days later the original arresting officer confronted me with an order to appear in court. The trial judge was also the judge for this matter. The judge revoked my bail and sent me to jail, leaving my car in the parking lot and all my belongings still in the home half-boxed. My despair and anger deepened.

13. I managed to contact my former supervisor who agreed to go to my residence and collect my belongings, including the important documents and evidence I'd brought to trial.
    (My supervisor and all my property have since disappeared and all efforts to locate either, including help from the consulate, have failed. Rumour is that he was warned off from helping me by police, who may have confiscated my property as well)

14. Two weeks after being sent to jail for publishing to my website the same arresting officer paid a visit to me in Hakea Prison where he demanded that I shut down my website or risk having charges put on me.

15. I refused to shut down my site and told the officer that it would require a court order from a US judge to shut it down, and that exposure of my web site to the judge and to the US media would also expose the injustices I had endured, of which he was implicated in. I welcomed the exposure. He obviously didn't.

16. No charges were laid and my site remains operation, where – maintained by my family in the States – I post birthday or Christmas letters to my daughter in hopes that she will find them. I had been arrested just 5 days after her 10th birthday. She's 13 now. It's only a matter of time before my daughter learns the truth of what her mother and Australian justice system did to her father to keep us apart. What then? For what purpose will any of this have served when she resents her mother and family in Australia? I've made certain that all my letters home, all the evidence and all I went through in my battle for her is available to her, with copies in Australia, the US and even Finland. My family in America searches for my daughter and will find her eventually.

Sentencing and the 'Token Lawyer'

1. My original sentence date was in September. I went to court for sentencing on that day.

2. By this point, after all I had been subjected to without a lawyer, I told the judge that I refused to stand in court any more without a lawyer. I demanded to have a lawyer.

3. The judge was not happy. I felt she was eager to pass sentence, in spite of presiding over a barbaric, prejudiced trial that had convicted me; a trial the judge knew to be unfair and rigged against me. Disgusted, the judge apologized to the complainant and her family who had come to witness the end result of their handy work and rescheduled the sentencing for 13 October 2011.

4. On the late afternoon of the 12th of October 2011 a lawyer named David Fort contacted me by phone via the prison. Fort informed me that he had been assigned to my case for sentencing in the morning, but that he had not had a chance to read through my case due to receiving it only the day before.

5. As this lawyer had not read my case, and only assigned to me the previous day, I had no faith in his ability to solicit on my behalf. He told me he would talk further with me in the morning at court.

6. On the morning of sentencing, 13 October 2011, Fort entered the courtroom and briefly introduced himself. We did not have time then to talk of the case as the court was convened almost as soon as Fort arrived. Fort offered a vague argument, rhetoric for show, but I knew the judge had already determined sentence and prepared her judgement long before. The grant of a lawyer (Fort) was only a 'token' effort to satisfy my demand for a lawyer.

7. I was sentenced to six and a half years for crimes I did not commit. I would not be surprised if the judge had tacked on the additional six months just for inconveniencing the court by demanding a lawyer. In effect I still had no lawyer, no fair treatment, no justice.

8. After sentencing, bitter of the situation, I met briefly with Fort who was now on the opposite side of a thick protective glass barrier. He had the nerve to ask me if I had any instructions for him. A bit late for that. But I told him my only instruction is to begin an appeal, briefly explaining the unfair conditions in trial and the injustices I had experienced. Fort feigned disdain of the situation and assured me that he would get an appeal started right away. I was taken back to a cell then later escorted back to Hakea Prison having a flicker of hope that an appeal would reveal the facts and set me free, return my daughter.

9. However, Fort never started the appeal, and only brushed me off each time I contacted him on the matter.

Note: Being provided with a lawyer upon my demand for sentencing begs an answer to the question: Why was I not granted a lawyer for proceedings and trial when it mattered?

Obviously, there was a certain power available to the judge to ensure a lawyer.

Neither the US Consulate nor the trial judge made the least effort to ensure I was provided a fair trial, which neglect came at a great cost to my life. Fairness to myself, as the accused, was wholly disregarded.

Disregard of my appeal for two years to current & political plea for help:

1. The neglect of my appeal and further injustices following sentencing eventually led me to stage a lone plea for help from the roof of Acacia Prison on 28 March 2012 in hopes that a news helicopter would arrive from one of the local networks and film a broad message to then PM Julia Gillard that I had painted across the roof of J-Block.

2. The incident brought the United States Consulate to the prison and the US Ambassador in Canberra was notified.

3. To date, for some yet to be determined reason, and in spite of numerous grounds and merit and further Consular involvement, my appeal has still not been lodged with the Court of Appeals. Rather, my appeal has been wilfully ignored by the current 'lawyer' assigned to it. It has been more than two years now. Why?
[See also 'Appeal Issues' on page 20 (obstacles in prison)

In closing part one, there should be no doubt in the reviewer's mind my case constitutes a serious miscarriage of justice, nor that wilful deceit and corruption played a strong role. There are damaging flaws in the system of justice in Australia which are ignored and thus encouraged to flourish, rather than be remedied.

This case should invite an investigation. There should also be a Royal Commission Inquiry into the legal and judicial system of, particularly, Western Australia as my case is just the tip of the iceberg. As I have personally been involved in assisting many other prisoners who have experienced similar injustices which funnelled them into prison, I have documented a pattern, common methods used in each case to ensure conviction. This system must be openly investigated, exposed and corrected.

I live with these prisoners on a daily basis. Perhaps they are your son, father, brother or a mate. I know their story, their cases and have documents each and mailed those journals back to the states for reference for my book, Not On My Life. I see the despair in their eyes that once mirrored my own. I see the desperation. I also see the flickers of hope when they learn of me and ask, *Can you help me with my appeal or legal letter*, and I reply, *Yes, as best as I can. I'm not a lawyer.* This is a system that preys on ignorance to win convictions and where there is no accountability at any level; free to reign to abuse basic human rights. It is, after all, a reflection of our society. It should always be kept in mind that you or someone dear to you could be next. There must be change.

End Part One

PART TWO

Access To Resources and Appeal Issues

As far as appeals go, again the accused is up against the same obstacles and mindset. Legal aid for lawyer assistance is refused. The accused must often attempt to make an application themselves, which of course, is daunting and often prepared incorrectly. Perhaps by design, prisoners in WA are granted minimal access to resources to prepare legal cases, including access to bocks on law, case documents and computers for typing and printing their legal documents. Many prisoners have not the literary skills to properly communicate their case or understand legal terminologies. Such situations cause appellants to miss court-ordered deadlines, resulting in the appeal being dismissed. For myself, gaining fair, reasonable access to a computer to type legal letters and documents has been a major contributor to stress and anxiety. What would normally take a few days to type and prepare must be spread out over months due to access problems. This document, for example, has taken nearly two months to type due to access problems. Furthermore, prisoners like myself who in 'protection' are faced with more obstacles in accessing resources than those in mainstream sectors, due to the nature of 'protection'.

Many prisoners are forced to seek 'legal advice' from other prisoners because lawyers simply aren't available to them. When a lawyer *is* afforded to an accused the common response from the lawyer is that 'there are no grounds for an appeal', even when there *are* grounds. Lawyers seem largely reluctant to fault a judge for a misdirection or miscarriage of justice perhaps again for fear of reprisal or alienation, even when a miscarriage of justice or unfair disadvantage is glaringly apparent. Furthermore, transcripts – as with my own – are edited with key sections missing that would reveal a potential miscarriage of justice, rendering such transcripts useless to an appeal lawyer looking for grounds to appeal. In WA a convicted person only gets one chance to appeal. Once dismissed there are usually no other remedies.

Following my own exceedingly unfair trial, the US Consulate at last intervened in October 2011 to obtain a legal aid lawyer to assist with an appeal. Yet to date the appeal has *still not been lodged,* in spite of multiple grounds detected, numerous letters and further Consulate involvement. Both I and my appeal has simply been ignored by the lawyer. The passage of time has now cause evidence and witness memory to become tainted. Some evidence, left in the care of a former work mate, has vanished under suspicious conditions,

along with my work mate, whom I once communicated with on a regular basis until May 2012. Unconfirmed rumours claim he was warned off from helping me by police. So far, no one, not even the Consulate, has been able to reach him for answers. It's not like him to simply vanish.

On 28 March 2012, desperate and disillusioned by the WA justice system and the unfair treatment I had endured, I staged a lone political plea for help from the roof of the prison where I had painted a broad message to then PM Julia Gillard, who I knew was with my president, Obama, at a summit in South Korea that day. The event was secretly but carefully planned to be executed on that particular day. My hope was that the incident would draw media attention, causing US representatives to question the accusations by a US citizen in an Australian prison. The message painted was simple: TO JULIA GILLARD. I AM AN INNOCENT US CITIZEN. WHERE IS FAIR TREATMENT AND NATURAL JUSTICE? GRANTED NO LAWYER. STOOD TRIAL ALONE. WHY? In the upper left portion of the roof I included a message to my young Australian daughter: DADDY IS HERE , followed by my symbol, which I knew she would recognise if she saw it on the news. With me to the roof I had taken a hand-painted US flag on which I had written a letter to my children across the bottom white stripe concerning the symbol of the flag, the value of the US Constitution and Bill of Rights, and what happens to good people in countries whose governments do not have or respect such rights. Due to its potentially damaging political nature (during an election season) it took several months before the flag was finally released to the US Consulate who mailed it back to the USA. The flag, and the details leading to the event, is currently with my family in the US, along with poignant paintings I've created depicting my ordeal from a very personal perspective.

Sadly, the media never showed up, in spite of my eldest daughter in the US having been in contact with Channel 7 News during that time, or there may have been a much different outcome to my situation – perhaps especially on the heels of the International Justice Conference held in Perth earlier that month. After surrendering to prison authorities the message was quickly painted over. The public never knew of the incident, or the injustices I had been forced to endure, which had put me in a foreign prison. My young daughter, whom I so desperately miss, never chanced to learn the whereabouts of her daddy.

A year later (March 2013) – after recovering somewhat from a heart attack and aneurism - I wrote to Attorney General in Canberra concerning the treatment I had received and neglect of my appeal. Assistant Secretary, Cathy Rainsford, responded (15 April 2013), "The appeal process is a fundamental part of our legal system as it affords people the right to challenge decisions which effect their legal rights".

Appeals may be a fundamental right in NSW, but in WA appeals are treated as a nuisance, and which process is in breach of the ICCPR, as demonstrated recently in South Australia. Granting leave to appeals acknowledges a problem in the handling of cases in trial, while admitting that police, judges and jurors don't always get it right. Ms. Rainsford continued, "You indicate that you have also provided a copy of this correspondence to the Attorney General in Western Australia, the Hon Michael Mischin, MLC. I trust that the attorney general will consider the matters you have outlined and provide a response to your concerns".

Again, 'trust' has been misplaced. To date Attorney General Mischin has not responded.

Meanwhile, in Victoria, the fundamental right to an appeal may also be relegated to history with complaints raised concerning the cost of public funded appeals. In a recent article (Judges back killers 35 years in jail – West Australian October 22 2013), it was disclosed by Victorian Legal Aid that $5.1 million of public funds had been spent on appeals in 2011-12, with Victoria Legal Aid 'now considering more stringent tests and limits on which cases it will support'. The article concerned Adrian Bayley's failed bid for reduction to his 35 year sentence for the brutal rape and murder of Melbourne woman Jill Meagher. Ms Meagher's husband, Tom Meagher, condemned the appeal bid 'as a waste of public money'. Anyone who followed the case of Ms Meagher's murder will likely concur with Mr Meagher. But the issue must not become an issue of money, or right to appeal a decision, but rather whether a murderer deserves to have sentence reduced. As fairly as I try to view the world it is my opinion that people who commit such heinous premeditated crimes (as with the murder of my nephew last year) should never be released. Jill Meagher will not have the opportunity to one day return to her life and family. However, an appeal must be a *fundamental right* to all people without discrimination, even when it has become personal or when emotions are running high. In cases including Button, Mallard, Mickleberg and many more, it is proven that police, judges and juries don't always get it right.

The appeal process in Australia was comprehensively challenged in South Australia during the Inquiry into Criminal Cases Review Commission 2010. Submissions by the Australian Human Rights Commission (AHRC) to the legislative review committee argued that the current appeal process, reflected across most states and territory, was in violation of the ICCPR Article 14.5 which states:

> Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law.

The AHRC identified relevant procedural protections in Article 14.5 of the ICCPR as being:

- Right to a review of conviction and sentence on [both] Law *and Facts*
- Right to introduce fresh evidence
- Right to a statement of reasons (concerning a decision)

In Western Australia appeals can only be submitted on points of 'Law'. The United Nations Human Rights Committee (UNHRC) makes it clear that State parties to the ICCPR are under an obligation to provide for the substantial review, by higher tribunal according to law, of both conviction and sentence, on law and fact. The AHRC notes that: The right to a fair trial is a key element of the Human Rights protection, and serves to safeguard the rule of law… The current system of criminal appeals in Australia for a person who has been wrongly convicted or has been subject to a gross miscarriage of justice, to challenge their conviction may not be fully compatible with the right to a fair trial as set out in the ICCPR Article 14.5.

The right to appeal invokes right to a lawyer:

Having established that a person has a right to appeal, which, according to the ICCPR Article 14 includes right to substantial review of the conviction or sentence on both law and fact, and that Australia's States and territory and jurisdictions (including Western Australia) are obligated to comply with and conform its domestic law in accordance with the rights set out in the ICCPR, and where the interests of justice so require, then triggers Article 14.3 and the right to a lawyer as set out in the ICPPR which states:

> …to have legal assistance assigned to him in any case where the interests of justice so require; And without payment by him in any case if he does not have sufficient means to pay for it.

Appeals require the specialized knowledge of lawyers trained and experienced in appeals (Appeal Lawyers). Both the right to appeal on law and fact and right to a qualified appeal lawyer to assist in the appeal process, is a minimum guarantee in full equality as set out in the ICCPR.

Prisoners, recognized by the UNHRC as individual protected in full under the ICCPR, have this right, especially whereas the issue concerns potential innocence of a crime. Australia has a duty of care to ensure that a persons rights under Australia's obligation to the ICCPR are enforced, not discarded or mocked as is the current atmosphere in Western Australia.

With so many cases being unfairly or wrongly handled in Western Australia, alongside incompetence, corruption and misconduct, appeals in WA are a given, but difficult to get through the proper channels. But there may be some light in the future of appeals. In a recent article (A motion to take politics out of appeals - West Australian 14 Aug 2013) Shadow attorney general John Quigley revealed that he would draft changes to legislation that would remove appeals from political discretion. Mr Quigley rightly noted that, "Leaving the discretion whether to permit an appeal or not in the hands of a politician is unacceptable… I think it is desirable for there to be an independent mechanism".

It would be a step in the right direction towards correcting WA's troubled, dysfunctional system of 'law and order', for as it currently operates 'convicted' prisoners are left to drown in a cesspool of hopeless within a cauldron of profit-driven corruption and self serving agendas.

I know firsthand. I'm a prisoner among them.

PART THREE

Australia and Obligations to the UN Charter & International Law:

Historical Attitude Toward Human Rights

As a national polity Australia is the only democratic country without a codified Charter of Rights and provides no guarantee of rights, including freedom of speech, right to assemble, and right to legal counsel or fair trial. This becomes especially concerning considering that Australia is a founding member of the United Nations and became a signatory to the *Universal Declaration of Human Rights* shortly following World War II and is currently a member of the UN Security Council. In 1980 Australia ratified the *International Covenant on Civil and Political Rights*. In ratifying this covenant Australia agreed to observe and promote respect for the Covenant and to conform Domestic Law in line with International Law. So far (2013), this has not occurred.

Offering somewhat an excuse for not providing the Australian people with a Charter of Rights constitutional lawyer, George Williams, pointed to a 'prevailing conservatism in Australia that has trusted in a belief that basic freedoms of citizens have been, and remain adequately protected by Common Law and by the *good sense of those elected as the people's representatives* in Parliament'. Such sentiments should be closely re-examined against the actual state of affairs. It is apparent that both 'trust' and 'belief' are dangerously misplaced.

As Tom Percy QC recently noted:

> "One defining feature of a just and civilized society is a guarantee of equality before the law. Sadly, until we have that sort of guarantee in our Constitution or in a Bill of Rights, we have to depend on our politicians to afford us that protection. But if recent developments are anything to go by, I won't be holding my breath"
>
> - *Tom Percy QC, Perth WA*
>
> *Writing in the Sunday Times Magazine, 1 Dec 2013*

Observing, in other words, that Australia's political body has no intention of recognising human rights and thus they cannot be depended upon to protect a person's rights.

In the early years of the Federation it was decided that the people of Australia should not be granted any form of codified Charter of Rights in order to prevent any person or organization from challenging the government on laws and policies it imposed. This mindset is shamefully active today more than a hundred years after the founding of the Federation in 1901. This naturally creates a situation where laws and policies of sometimes draconian nature can be passed unchallenged, often with little or no public notice. Rarely are these laws or policies put to a public referendum. In 2008 Prime Minister Kevin Rudd appointed a committee to undertake an Australia-wide community consultation for protecting and promoting Human Rights in Australia, with the proviso that the sovereignty of Parliament should be preserved and that there should be *no constitutionally entrenched Charter of Rights*.

Considering Australia's obligation to *observe and promote respect* for International Law, Human Rights, particularly in matters dealing with fair trials, appeals and rights of an accused person, Australia law is in conflict with International Law and in breach of its agreement to uphold the principles of the Covenants. Without respect for the rule of law and basic human rights, conditions in Australia become no different than those recently exposed in North Korea. As Tom Percy further added in his article, "...law investigation and enforcement has become a police and prosecutor picnic".

Or, as some have noted of WA, a *Police State*. In the Sunday Times (2 September 2012) Perth businessman, Ziad Jneid condemned the WA police and system for undue harassment he had received, saying, "The nature of the WA police is this: When you start complaining, when you start asking for your rights, they don't like it. They just start hitting you harder. I feel we're living worse than living under communists in this state..."

With disappointment I must vouch for Mr Jneid's sentiments. In the early stages of my ordeal, when questioning what I believed to be my basic right to fair treatment and due process, I was told by one officer, "*You're not in the US anymore*". On another occasion I was told, "*You watch too much American TV*".

It was a despicable thing to hear from those public servants whom we are encouraged to trust in what is presented to be a fair and just society. As a foreign national, neither my basic rights nor procedural fairness according to the UN Charter were observed, but rather were mocked. Already alone in Australia such comments, in conjunction with refusal of basic rights and legal representation, only amplified the feeling of isolation from the fair and democratic values I had believed Australia upheld. When such negative mindset towards human rights is coupled with denial of legal representation, police misconduct and unchecked judicial 'discretion' it can contribute to a bias and prejudice against an accused

leading to a wrongful conviction, not to mention an overall decay of societal values in general.

As far as *'the good sense of those elected as the people's representatives'* is concerned, perhaps George Williams and Australia's political leaders and judicial officers should be reminded of the ICCPR and their responsibility to uphold, promote and respect the principles therein:

Universal Declaration of Human Rights (UDHR) (1948)

Preamble:
Whereas recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, is man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be respected by rule of the law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in dignity and worth of the human person and the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore, The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among peoples of Member States themselves and among the peoples of territories under their jurisdiction.

[*Referring to Articles relevant to Criminal Proceedings only*]

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

6. Everyone has the right to recognition everywhere as a person before the law.

7. All are equal before the law and are entitled without any discrimination to equal protect of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against incitement to such discrimination.

8. Everyone has the right to an effective remedy by the competent international tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

9. No one shall be subject to arbitrary arrest, detention or exile.

10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligation and of any criminal charge against him.

11. [a] Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

    [b] No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

UN International Covenant on Civil and Political Rights (ICCPR)

[Australia Signed 1972, Ratified in 1980]

Preamble:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and equal and inalienable rights of all members of the human family is founded on Freedom, Justice and Peace in the world,

Recognizing that, these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as, economical, social and cultural rights,

Considering that, the obligation of states under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that, the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present covenant,

Agree upon the following articles:

[*In respect of Article 14 in particular, dealing with arrests and criminal proceedings*]

ARTICLE 14:

1. All persons shall be equal before the courts and tribunals. In determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law.

3. In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
(extract)

    - **[a]** To be informed promptly and in detail in a language which he understands of the nature and cause of the charges against him;

    - **[b]** To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

- **[c]** To be tried without undue delay;
- **[d]** To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

  To be informed, [that] if he does not have legal assistance, of this right;

  And to have legal assistance assigned to him, in ANY case where the interests of justice so require;

  And without payment by him in any case if he does not have sufficient means to pay for it;
- **[e]** To examine, or have examined, the witness against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as the witness against him;
- **[f]** To have free assistance of an interpreter if he cannot speak the language used in the court;
- **[g]** Not to be compelled to testify against himself or to confess guilt

4. In case of juvenile persons, the procedure shall be as such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law [Appeals Court].
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who suffered punishment as a result of such convictions shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penalty procedure of each country.

Definitions of relevant words (Australian Oxford Dictionary):

OBLIGATION: 1. Constraining power of law, duty or contract; 2. Duty, task; 3. Binding agreement; 4. Indebtedness for service or benefit.

RESPECT: 1. Regard with deference or esteem; 2. Avoid interfering with or harming; 3. Treat with consideration; 4. Refrain from offending.

PROMOTE: 1. Help forward or encourage.

OBSERVE: 1. Perceive, become aware of; 2. Watch carefully; 3. Follow or keep to rules.

STRIVE: 1. Try hard to succeed.

Particulars of the ICCPR and UDHR

The *Universal Declaration of Human Rights* was created in 1948, following the atrocities of World War II.

The *International Covenant on Civil and Political Rights* was ratified by Australia on 13 August 1980 and entered into *force* for Australia on 13 November 1980.

A Duty To Comply

The UDHR Preamble States:

> Whereas Member States have *pledged themselves* to achieve, in co-operation with the United Nations, the *promotion of universal respect for and observance of human rights and fundamental freedoms,*
>
> Whereas a common understanding of these rights and freedoms is of the *greatest importance* for the full realization of this pledge,
>
> Now, Therefore, The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for *all peoples and all nations,* to the end that *every individual and every organ of society,* keeping this Declaration in mind, shall *strive by teaching and education to promote respect for these rights and freedoms* and by progressive measures, national and international, *to secure their universal and effective recognition and observance,* both among peoples of *Member States* themselves and among the peoples of *territories under their jurisdiction.*

The ICCPR Preamble States: (UN Signatory Nations)

> Considering that, the *obligation of States* under the Charter of the United Nations to *promote universal respect for,* and *observance of, human rights and freedoms...*

The ICCPR Preamble States: (Every Individual)

> Realizing that, *the individual,* having *duties to other individuals and to the community* to which he belongs, is *under a responsibility* to *strive for the promotion and observance of the rights* recognized in the present covenant...

This means that as an individual it is not only my duty and responsibility to self, and to my children and community to strive for, promote and observe the principles of the Covenant, it is the responsibility and duty of every individual within Australia, including citizen and public servant. It is also my duty to promote the principles of the ICCPR to any person who may be unfamiliar with it.

The same duty may be binding on educators within the school systems to teach the Covenant to students, whereas: *keeping this Declaration in mind, shall strive by teaching and education* [UDHR]; *...obligation of States...*(and)*... the individual...having duties and responsibilities to strive for the promotion and observance of the rights in the present covenant* [ICCPR].

Article 2 of the ICCPR states:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...and to...take the necessary steps in accordance with its constitutional process and... to adopt such legislative or other measures as be necessary to give effect to the rights recognized in the present Covenant.

Australia, as a UN Member nation and signatory to the Covenant, must undertake to respect and ensure to all individuals within its States, Territories and jurisdiction the rights recognized in the present Covenant.

Article 50 States:

> The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

This includes every state and territory within Australia and its jurisdictions, such as Christmas Island and Torres Straights Islands. No State or Territory is exempt.

Obligation to conform Domestic Law in line with International Law:

The Australian Human Rights Commission makes it clear that Australia law held that:

> It has been accepted that a statute of the Commonwealth or of a State is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in conflict with the established rules of international law.

This means that members of parliament, lawyers, judges and private citizens have a duty to promote, observe and adopt the rights set out in the International Covenant on Civil and Political Rights.

It also means that laws in Australia (as a UN member and Commonwealth member) must reflect the principles set out in the Covenant.

> **Article 2 states**: [to] *take the necessary steps in accordance with its constitutional process and... to adopt such legislative or other measures as be necessary to give effect to the rights recognized in the present Covenant.*

To act in a manner that ignores the fundamental law, or deprives a person of their basic rights, does not constitute an *interpretation* of the law, but a disregard of the law. Legislators cannot arbitrarily pass laws that conflict with established international law, nor violate basic human rights and freedoms, without first presenting their reasons in a clear language.

Former Chief Justice Murray Gleeson explained that in 1908 the High Court in *Potter v Maniham* had adopted a passage from *Maxwell on Statutes*, which said:

> "Courts will decline to impute to Parliament an intention to abrogate or curtail fundamental human rights or freedoms unless such an intention is clearly manifested by unambiguous language, which indicates that the Parliament has directed its attention to the Rights and Freedoms in question..."

Gleeson further noted:

> "It is the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness".
>
> "It is the working hypothesis of a liberal government".

Neil McCormick in *Rhetoric and the Rule of Law* stated:

> "A concern for the rule of law is one mark of a civilized society. The independence and dignity of each person is predicated on the existence of a 'governance of law, not men' ".

As the ICCPR applies to accused persons and prisoners:

The Australian Human Rights Commission states that the United Nations Human Rights Committee has made it clear that prisoners enjoy all rights set out within the ICCPR.

This means that any person accused of a crime and / or detained through incarceration within State, territory or jurisdiction of Australia are recognized as *individuals* and *human persons*, and as such have protection of their rights under the ICCPR, including right to fair trial, right to appeal, rights to effective remedy, and right to legal representation *where the interests of justice so require*.

Under the Charter it is the duty of an accused or prisoner who is informed of the ICCPR, and the rights therein, to promote to other persons and prisoners who may be unfamiliar with the ICCPR, as well as to inform any other individual who appears to be unfamiliar with the ICCPR, or who act in contradiction to the principles therein.

By contrast, as I and many others have experienced in Western Australia, requests that our basic rights be observed and respected only incites mockery and ridicule from police and even judges – either by words or actions.

Right to Fair Trial and Procedural Fairness

"That everybody who comes before the courts is entitled to a fair trial is axiomatic...."

"...the right to every citizen to unimpeded access to a court is a basic right".

- Citing Martin Hinton QC
- *'Unused Material and Prosecution's Duty to Disclose'* vol 25 Crim LJ 121-139

"The right to a fair trial is a key element of the Human Rights protection and serves to safeguard the Rule of Law".

- Australian Human Rights Commission

It is also a right guaranteed by the United Nations *International Covenant on Civil and Political Rights*, Article14 and *Universal Declaration of Human Rights*, Article 10.

ICCPR Article 14.1:
All persons shall be equal before the courts and tribunals. In determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

UDHR Article 10:
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligation and of any criminal charge against him.

Criteria For A Fair Trial – Decisions by the High Court of Australia

The criteria for what amounts to a fair trial are set out in Australia's domestic law in decisions of the High Court, and are defined in context of what is considered to be an *unfair* trial.

They make it clear that a trial may be unfair in 3 important respects:

1. Procedural Irregularities
2. Non-Disclosure
3. Misleading Evidence

Procedural Irregularities:

Where the basic conditions of a fair trial are absent, *the conviction must be set aside*.

'For the court will set aside a conviction whenever it appears unjust to allow the verdict to stand because some failure has occurred in observing the conditions which, in the court's view, are essential to a satisfactory trial'.

'Forensic Investigations', page 137 citing Davies and Cody v The King [1937] 57 CLR 170 at 180. http://www.netk.net.au/Davies.asp

In any case where an accused has been forced to face criminal trial without legal representation should constitute a miscarriage of justice, a mistrial, for reasons that should be obvious to a fair-minded, civilized person. Having a fair and proper defence in a matter affecting the life of a person, is a right that cannot be summarily ignored. A lay person before the court is greatly disadvantaged by lack of legal knowledge, or knowledge of legal terminologies. Procedural fairness is a high priority in criminal cases.

Resulting from Procedural Irregularities such as denial of legal counsel then opens the possibility for prosecutorial or judicial misconduct resulting in:

Non-Disclosure:

Where there has been a significant non-disclosure at trail, which could *possibly* have affected the jury's verdict the *conviction must be set aside*.

Misleading Evidence:

Where significant evidence is has been led at trial, which has subsequently proved to be non-probative, then if it could have *possibly* affected the jury's verdict, the *conviction must be set aside.*

* Note that cases make it very clear that the *mere possibility* that an error will have affected the jury's consideration of the matter means the verdict must be set aside. This goes to common sense.

All of the above conditions causing an unfair trial for an accused begins with restrictions to qualified legal representation. An accused deprived of legal representation can almost be assured of some form of misconduct occurring in the course of the proceedings ultimately leading to conviction.

Right to Legal Representation *in the interest of justice:*

> **"The resources that are mobilized by the State...are immense by comparison to those generally available to the accused".**

- *'Unused Material and Prosecution's Duty to Disclose'* vol 25 Crim LJ 121-139

> **"The hard reality is that the cost of legal representation is beyond the reach of many, probably most, ordinary Australians".**

- Citing Chief Justice Wayne Martin, The West Australian Newspaper - 25 October 2012

For a lay person indicted on criminal charges attempting to defend himself through hearings and trial is overwhelming, if not impossible, and goes to fairness to the accused to have legal representation in any case where the interests of justice so require. Australia routinely breaches International Law by refusing to provide legal representation to an accused person.

Concerning legal representation for lower income accused persons, Hugh Stretton, in *Economics – A New Introduction*, (2002) pp 528, explains:

Most countries offer a free defence to accused people who can show that they are too poor to pay for their own. Methods vary. Many countries begin with the first of the following but now rely on one or both of the second or third:

1. Lawyers, through their professional association, offer a free service. Each does a quota of free work or contributes to a fund which pays those who do the work.
2. Government employs salaried lawyers to do the work.
3. A public Legal Aid office pays private practitioners to do the work.

The standard of service commonly varies with the gravity of the crime. Beginner lawyers defend drunk drivers while experienced lawyers take on more difficult cases. Everyone poor enough to pass the means test gets a lawyer. However, there may be discrimination in applying for appeals. If the public officers believe there are no plausible grounds they may not finance an appeal. But the catch 22 is that an accused needs a lawyer to look for grounds in the first place as the accused would not know what to look for.

Legal Aid is not a recent concept.

For some (myself among them) there has been better access to justice via legal aid in the past than there is today, in spite of being guaranteed a lawyer and fair trial.

In *Stretton* we learn that English statutes passed in the fifteenth and sixteenth century, and not repealed until 1883, allowed litigants who could pass a means test to come before the courts as a *pauper*. Courts waived their court fees and supplied them with free counsellors. Those counsellors were often the best of their profession as they were the ones who could afford to do without the fees. In the fifteenth century the pauper's access ran all the way to the King's Council (the highest court) where lawyers who refused the pauper service were sacked.

King Henry VI ordered that:

> The Clarke of the Councell shal be sworne, that each day of sitting shal cause the Bills of the poorest suitors to be first read, and answered, so near as he can aske, or inquire, And that the King's Seargent to be sworne to give councell without fee, to such as shal be accepted for the poore, upon paine to be discharged of their Offices.

- From William Lambarde, Archion, or a Commentary upon the High Courts of Justice in England (1591), pp 173-4 of the 1635 edition.

Discrimination in Legal Aid grants

While ordinary Australians and foreign nationals like myself are denied legal aid (unless they plead guilty), high flying, wealthy former barrister, Lloyd Rayney, was granted legal aid to cover the costs of his lengthy and expensive trial to the tune of approximately 2 million dollars. Afterward, when the DPP sought a retrial, Rayney again applied for and received legal aid funding. Rayney hired three of Australia's top lawyers for the trial and has enlisted the services of other top QC's to fight the appeal for retrial. Yet, at the time he applied for legal aid for his trial he held some million-plus in assets (see related news articles attached). Naturally, I followed this news from my prison cell with bitter resentment of the so-called 'justice system'. As Dr. Lawrence pointed out in 2006 it would seem that only the wealthy and well-connected qualify for legal aid funding, which was created to assist the financially disadvantaged to ensure a fair treatment. Clearly there exists a discrimination and broad division between the wealthy or influential and the ordinary person in respect for whom 'fairness and justice' are available. Foreigners caught up in litigation are more vulnerable to misconduct and consular assistance to ensure fair treatment is not always available– or, as in my case, the US Consulate "*cannot get involved with the legal matters of*

the host country". Perhaps worse, judges involved with such cases appear to be more and more content with the matter.

Right to a Lawyer in Context of the ICCPR:

The ICCPR states, Article 14.3:

In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

> ... to defend himself in person or through legal assistance of his own choosing; To be informed, [that] if he does not have legal assistance, of this right; And to have legal assistance assigned to him in ANY case where the interests of justice so require; And without payment by him in any case if he does not have sufficient means to pay for it.

This means that any person accused of a crime, or subject to criminal judicial proceedings, or for consideration of appeal (in the interest of justice), is entitled to legal representation of their own choosing, even if the accused cannot afford legal representation on their own.

> Being denied legal representation for a criminal matter is in conflict with the ICCPR.
>
> Being denied aid to enlist the services of legal representation may be in conflict with the ICCPR.

Legal Aid was established, in part, to satisfy fairness to an accused and to meet the obligations of the ICCPR. Regardless of how a legitimate request for a lawyer is achieved, the State, under its obligation to the ICCPR, must responsibly satisfy the accused's request for legal representation. The lawyer must also be qualified in the matter of the case. It is especially relevant in light of the power and resources available to the State (police and prosecution).

Right to *Qualified* Lawyer

That it is a right to have a qualified lawyer experienced in a matter at question is self-evident. One would not enlist the services of a corporate lawyer or a family lawyer if their case is a criminal matter. Neither would one employ an inexperienced lawyer in matters

affecting the life of an accused. In complying with Article 14.3 the State can not grant just *any* lawyer but must provide a lawyer specialized in a particular area of your requirements. To provide just *any* lawyer does not satisfy Article 14.3 but rather only pacifies it.

As an analogy, it would not be proper to hire a tradesman skilled in carpentry to do the job of an electrician, even though both are 'tradesman'. Furthermore, continuing the analogy, an inexperienced tradesman is considered an apprentice still requiring training and supervision on the job. An inexperienced lawyer may be viewed in similar context. The State, in keeping its obligation to the Covenant, can not set up an accused for failure / defeat by refusing a *qualified* lawyer, nor by providing an inexperienced lawyer. This goes to fairness to the accused and the right to a fair trial.

Plea bargaining to obtain legal aid for legal representation:

Further undermining fairness to an accused, in 2012 new changes to legal aid now require that an accused person must plead guilty before they can qualify to receive legal aid funding for legal representation. What then is the point of even acquiring legal counsel other than a token appearance for sentencing? Legal aid is either available or it is not, and should not be available under conditions of a 'plea of guilty'. A policy of this nature has absolutely nothing to do with 'funding cuts' but rather a mindset that seems more concerned with earning profits through incarceration and racking up kudos for the 'tough on crime' campaigners who benefit politically. The policy takes advantage of the timid or naïve who can be frightened into pleading guilty out of desperation, even when they are innocent of the charges (see related documents included).

> Being made to plead guilty in order to receive aid for legal representation may be construed as threat, intimidation or coercion to secure a 'plea of guilty', which then violates Article 14.3 [g] of the ICCPR, whereas:
>
> > [An accused individual will] *Not be compelled to testify against himself or to confess guilt.*

Any plea of guilt confessed by an accused person as a result of being made to plead guilty in order to receive legal aid / lawyer, which is his right to have *where the interests of justice so require*, can be shown to have made such plea under duress, which should entitle the accused the right to change his plea at any time during proceedings or after sentencing in pursuit of justice and fair trial.

> Article 14.3 guarantees right to legal council. The State must make provisions for the operation of this right. Legal Aid was established to meet the requirements of Article 14.3.

(**Note:** Article 14.3, as well as Article 14.5 also invalidates the legality of the Department of Corrective Service's *Denier's Course* (Western Australia). Refusing the course can not invoke threat or punishment.

APPEALS and the Right to Appeal Lawyer

The appeal process in Australia was comprehensively challenged in South Australia during the Inquiry into Criminal Cases Review Commission 2010. Submissions by the Australian Human Rights Commission (20 Nov 2011) to the legislative review committee argued that the current appeal process, reflected across most states and territory, was in violation of the ICCPR Article 14.5 which states:

> Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law.

The United Nations Human Rights Committee makes it clear that State parties to the ICCPR are under an obligation to provide for the substantial review, by higher tribunal according to law, of both conviction and sentence, on law and fact.

The Australian Human Rights Commission notes that: *The right to a fair trial is a key element of the Human Rights protection, and serves to safeguard the rule of law…*

In March 2013, after recovering somewhat from a heart attack and aneurism - I wrote to Attorney General in Canberra concerning the treatment I had received and neglect of my appeal. Family Law Assistant Secretary, Cathy Rainsford, responded (15 April 2013):

> "The appeal process is a fundamental part of our legal system as it affords people the right to challenge decisions which affect their legal rights".

The right to appeal invokes right to a lawyer:

Having established that a person has a right to appeal then triggers Article 14.3 and the right to a lawyer as set out in the ICCPR which states:

> …to have legal assistance assigned to him in any case where the interests of justice so require; And without payment by him in any case if he does not

have sufficient means to pay for it.

Appeals require specialized knowledge of lawyers trained and experienced in appeals (Appeal Lawyers). Both the right to appeal on law and fact and right to a qualified appeal lawyer to assist in the appeal process, is a minimum guarantee in full equality as set out in the ICCPR.

A prisoner, recognized by the United Nations Human Rights Committee as an *individual* protected in full under the ICCPR have this right, especially whereas the issue concerns potential innocence of a crime. The State has a duty of care to ensure that a person's rights under Australia's obligation to the ICCPR are enforced, not discarded or mocked as is the current atmosphere in Western Australia.

When basic rights of an accused person are denied, including right to legal counsel, such conditions cannot satisfy what is considered to be a fair trial. Rather, it can only be described as a form of human trafficking, as the accused person is destined to conviction and prison with little or no recourse for help.

The ICCPR was signed and ratified by Australia in conjunction with other nations to demonstrate Australia's support for the UN Ideals and value of the principles and rules set out in the Covenant.

The agreement, as signed and ratified by Australia, is binding – no different than if signing an agreement on a mortgage.

After 33 years since ratifying the ICCPR Australia continues to disregard it, and basic, inherent human rights, but today only mocks by words and actions those who dare to ask that their rights be observed.

And Australia still refuses its citizens any form of codified Charter of Rights.

End of Part Three

The Personal side

It has been more than three years now since being arrested on an accusation alone, followed by a gruelling, lonesome struggle for justice against a renegade legal system on the remote margin of western civilization. What began as a battle for access rights to my young daughter evolved into a fight for freedom, justice and my life, with my love for my daughter, my life and justice remaining the driving force that keeps my heart beating and my mind clear and determined.

And that fight continues to evolve.

Here, in the 'belly of the beast' a place where few among society have credential to even comment save for hearsay or movies, I know personally the men young and old from all walks of life, the high profile and the barely mentioned, whose intentional deeds or misplaced trust led equally to this *Dante's hell*. Perhaps they are your brother or father, a son, neighbour or mate. We share meals and muster, heartaches and hopes, tears and occasional jokes, conversation and support, at times divulging aspects of our lives and feelings that not even the prison psychoanalysts are privy to learn. Having been written off by the outside world, more often than not we are all we have. I know their regrets, indifference or frustrations. I know many of their stories and many of them know mine. And in that capacity I am not 'delusional' about the horror and effects of genuine crime. There are those here among us who, for whatever motive, spontaneous or premeditated, have committed terrible acts against other human beings, the nature of which is nearly incomprehensible to people of sound mind and good heart. We of my own family are no stranger to such horrific crime. My beloved nephew – an outgoing, charismatic young man with a bright future – was last year murdered in cold blood protecting his father from two gunmen who entered their small shop in Utah, USA, with no other motive than to kill. Of course, it has left our family irreparably shattered and hollow. And, as such events always do, it has filled us with resentment and rage, a yearning for reasons and some thing to blame.

But within the same prison with me are also those whose crimes did not warrant prison but rather other, more productive solutions, both for their benefit and the benefit of society overall. It is easy to recognize them by anyone willing to look or listen. Many of them simply had poor or socially incorrect influences or challenging upbringing. Some are the product of a bygone era when certain antics, ethics or innocent flirtations were acceptable, but which today are indictable offences. But they are the same whom, if chanced by a

different environment, would have taken a much different path in life. Provided with opportunity, education and positive encouragement, they could still amend their life towards that productive path.

Among us also are those who have varying degrees of autism, or other mental disabilities that were probably never addressed or even acknowledged; their social conduct, mannerism, speech or appearance has more often incited prejudice from those members of our society who have labelled themselves somewhat more 'perfect'. I have personal credentials in this area, also. My stepson is autistic. Thirteen years ago when I married his mother, the 'professionals' told us he would never speak or function in life and that we had no choice but to accept that. Neither I nor his mother *would* accept it. When I last saw my son in 2010, at the time of the divorce, he was in TAFE community college studying computer technologies. He loves to cook and had written a screenplay for a short film he produced. He was well on his way to becoming self-sufficient. And, he speaks very well, thank you, albeit with a strong tinge of an American accent. It was not easy but we *never* gave up on him simply because someone told us he was not worth fighting for. And society should not give up on those 'inside' who may be intellectually challenged. Under different circumstances, perhaps different parents, my stepson – now age 20 – may have ended up in prison or worse. Regardless of the labels, they are still someone's loved one and should be encouraged to become part of a *productive* society, rather than a reflection of its failures.

Moreover, in spite of the so-worn dogma, '*everyone in prison claims to be innocent*', there are those in prisons who are, <u>in fact</u>, innocent, who were swept up within an indiscriminate dragnet where those 'captured' in the legal webbing are *presumed guilty* by an irreconcilable mindset that insists that '*all those charged are ultimately guilty*'. I know from personal experience the unscrupulous tactics used to win that *ultimate* prize of 'conviction'.

In the past three years I've not only heard all the usual claims of 'innocence' from convicts, but while attempting to assist them with appeals or legal matters where a lawyer had been refused, I've read their cases for myself; the statements, charges and transcripts of hearings and trial. I've read the conflicts in testimonies, implausibility of events, blatant lies, shameful defence argument, prejudice use of 'discretion' and overall evidence that in no way should constitute a verdict of *'guilty beyond reasonable doubt'*. Few members of the outside community have ever bothered to read the facts in actual cases, some of which are in striking contrast to the accusations headlined in tabloid-style reports procured from unreliable, biased sources or purely manufactured to promote agendas. Few defence lawyers read the facts in their client's case, either, it would appear. Of the 20 inmates whose cases I've personally assisted in the past two years only two left me with some 'shadow of

doubt' as to their innocence. But the alleged crime itself was anyhow long from being a jailable offence.

One may argue of me: "*He's a convict. He's not a lawyer. How could he know anything about legal matters?*"

The question would, of course, confirm that an accused person must have a lawyer for legal matters, for certainly no lay person could understand the complexities of the law, thereby admitting that no accused person should ever face legal proceedings without legal representation! However, without much exaggeration intended, my answer to them would be that in many of the cases I've read a child could see the obvious faults. Why can't they?

As far as being a *convict*: For a half century I was just another average member of the community, not so different from you – 40 years in my home country, 11 in Australia. I am a father, grandfather, son, brother and mate. I've been an author, songwriter, musician, producer, businessman and entrepreneur. I've been featured in the *Sunday Times*, *ABC Stateline*, *Take 5*, *The Couch* and more for my innovative creations and concepts such as Ghost Radio Network, Underworld Show, Haunted Australia and other projects. I've travelled, explored, dreamt and wondered, searched for and found legendary lost mines in Arizona. In other words, like so many other 'convicts', I've lived life. My education, accumulative life experience, wisdom, reason and common sense was not merely vanquished with the label of 'convict' amidst some self righteous sentencing spiel. On the contrary, this ordeal, no matter how destructive and painful, has only added to my portfolio of life experiences, while introducing to me in vivid detail a very troubled part of our society that must be fiercely addressed and reformed. Until you go through such an ordeal, until you are *in here*, you cannot begin to comprehend the true nature of mechanisms, factions and ideologies powering the *law and order industry*. It was not for lack of intelligence that I became a 'convict', but rather an over-abundance of trust in the justice system – or more accurately, trust in those *individuals* who comprise the 'system'. But now I know. And it is my obligation and duty to work diligently to assist in reforms, and assist where I can to amend injustices, not because the UN Covenants bind me, but because I am a father, son, brother, mate, a human person and member of our mutual democratic societies.

On the late evening of June 30, 2010, after returning with my daughter from McDonalds, I had tucked her into bed, kissed her goodnight with a promise to take her fishing on the weekend with the new fishing poles I'd bought for her 10th birthday just 4 days prior. That was the last time I saw my little girl to date, and the last time she saw her father.

On July 1, 2010, shortly following a divorce, amidst a dispute over custody and access rights, my young daughter was effectively kidnapped from me by my former wife through a commonly used weapon called *False Allegations*. And, it was provably, with evidence, a premeditated act, in collusion with my former wife's family members. A 'kidnapping' is exactly what it was and remains.

But while such cruel, selfish acts are common amidst a divorce, perhaps epidemic as of recent years, accountability for all that followed falls squarely on the Australian legal and judicial system: unscrupulous tactics used by police, prosecution and courts to ensure conviction; refusal of, and mockery of my requests for my basic inherent rights to procedural fairness, legal representation and unbiased trial; a near-fatal heart attack I suffered from the immeasurable stress and emotional trauma followed by an aneurism and deteriorating health; loss of career, friends, status, good name and the toll it has taken on my family in America.

Yet, from the beginning, responsible, relatively inexpensive *proper* investigation would easily have revealed the evidence of false accusations and the motive for the same – evidence I had but could not show in trial all alone, evidence still available today. By contrast – aside of the personal cost to my life - how much money did those proceedings and five-day trial cost the Australian taxpayers? Half-million, at least? And how much is costing taxpayers to keep me incarcerated? $150,000 – $200,000 per year? - double the amount earned in a two-income middle class household (then times that by the number of those who are innocent or simply do not belong in prison). For the judicial system, it was not about seeking truth or facts (they knew one week before trial that I had evidence and witnesses to discredit the accusations as being fabricated, but effectively kept it from trial). It was solely about racking up 'convictions', for what performs more as a contest in a game show than professional respect for law and justice.

Accusations of sex abuse are today thrown around like confetti at a New Years Eve party, used as weapons to bring down world leaders, politicians, CEOs, teachers, doctors and charity workers as easily as an average man and father. In Western Australia large sums have been rewarded for accusations of 'incidents' occurring a half century ago – no evidence required. Such offers, and ease of submitting applications, always bring out the unscrupulous along with the genuine victims. Amidst an atmosphere of 'presumed guilty' there are no protocols in place to determine fact from fiction, resulting in a bias against the accused. Politically motivated campaigns and Inquests, accompanied by media sensationalism, has created a public paranoia of men of all walks and ages where an innocent hug, professional medical examination or mere accidental touch can incite

damaging accusations followed by costly judicial proceedings. The accusation by itself has the destructive power equivalent to murder – for murder is exactly what such accusations do to a person's life. There must be implemented stringent policies and protocols for investigating and reporting such accusations, and the elimination of juries whereas the *'better safe than sorry'* mentality, combined with emotions will always, unfairly, suit the prosecution.

The life and rights I fight for today may tomorrow be your own- or *someone dear to you.*

I encourage your response to this statement.

I'm not a convict of a crime, but a hostage to injustice.

John Victor Ramses, age 53
US citizen, son and father

ID: d2174691
Acacia Prison
Locked Bag 1
Wooroloo, Western Australia
Australia 6558

If you know my daughter tell her I love her beyond imagination. I never left her. She was taken.