Concealed Weapon

PWA Greg Smith is serving 25 years for attempted murder. His crime? Allegedly biting a corrections officer.

November 1, 1998 By Cindy Patton

It’s 1997. At first glance, the mural-graced wall enclosing Trenton State Prison looks like that of a minor-league baseball stadium, but the accordion wire along the top and the dark glass of the turret windows are the tip-off: This a maximum-security prison -- and home of Greg Smith.

My companion and I park by the Doin’ Time Bar and join the crowd awaiting contact visit no. 3. You can always tell who’s here for the first time: They get in the wrong line or violate the arbitrary and arcane dress code. Today my companion is turned away for wearing sweatpants. Who knew?

A guard yells, “Visit three will begin now!” followed by a summary barking of the rules and names. At “Smith!” I get in line. I show the stamp I got at the stamp desk, shuffle through the metal detector, get frisked and waved through.

Jammed hip-to-butt, we visitors shuffle awkwardly through a series of holding cells between doors with automatic locks until we reach our destination.

The visiting room is large and L-shaped, with plastic chairs set in long rows to discourage intimacy. As prisoners filter in to greet loved ones, I imagine Greg making his way through a dim -- or is it bright? -- maze of corridors that I will never see. I wait, watching wives and kids and brothers and grandmas strain to be cheerful with their men, all under the gaze of the guards on the bulletproof-glass observation deck. After a while, I begin to panic. My companion has gone home, and there is no sign of Greg.

Finally, a guard informs me that Greg was recently moved, and the central message center can’t find him. “You mean he’s lost?” I stammer. The guard shrugs, sympathetic but just as powerless as I am.

Halfway into the visiting hour, Greg arrives, handsomely dressed in jeans and a burgundy polo shirt. But there’s a grim, angry set to his jaw. By now, I’m frustrated too. In the world beyond these walls, a lost 30 minutes wouldn’t enrage us like this. But here, where inside and outside touch only fleetingly and on Sunday-best behavior, every second must be picture perfect.

Smith is serving 25 years for assault and attempted murder stemming from an alleged biting

incident while in custody in 1989 on a robbery charge. Sound harsh? Absolutely. What makes Smith subject to more brutal punishment than other prisoners is that he has HIV. From the first day of his original five-year sentence, he was viewed by prison officials as a diseased troublemaker. Judy Greenspan, chair of the HIV and Prison Committee of California Prison Focus, has followed many cases of HIV positive people incarcerated on charges out of all proportion to the actual incident. “Guards come to expect they will get into scuffles and fights with inmates,” she says. “The average prisoner gets 30 days in segregation. But the assumption is that people with HIV are attempting to kill the guard, not defending themselves.”

Greg Smith’s trial in New Jersey made headlines from Washington, DC, to New York City. Many activists were shocked that a biting charge brought more jail time than most murderers serve. After all, we thought, it’s 1990 -- only crackpots still believed that HIV could be transmitted through saliva. Greg had his moment as a cause celebre, but once his name and mug shot vanished from the papers, his fate slipped from my mind. This guy will get lousy care and little support, I thought, and there’s no way he’ll make it out alive. Back then, I didn’t even expect my positive friends, with their state-of-the-art regimens, to last another 25 years.

Then, a year and a half ago, friends from ACT UP/Philadelphia told me about a New Jersey prisoner with HIV who was writing a memoir. I had covered prison and HIV issues early in the epidemic and helped several prisoners place their writing. This seemed like a match made in heaven. So I sent a letter to someone I had long ago put down as a dead man walking.

And he wrote back.

I’m now pleased to report that Gregory Dean Smith is alive and well and making trouble in Trenton State Prison.

I began to visit Greg, sending letters between trips to the prison. I plied him with questions about his medical care and AIDS advocacy, and he regaled me with tales of his (usually) near-miss sexual conquests. Besides being, by the nature of his offense, open about his serostatus, Greg is one of only a handful of openly gay men in the New Jersey prison system. Early in his prison life, he became close friends with another young, openly gay man, a “big queen who can do some damage,” Smith told me. “We always hang together, eating meals and watching each other’s back. We use our special names, and we ’read’ the other inmates for who is hot and who is not.”

I also got the full story behind his sensational “biting murder” case. Greg Smith was frantic at his 1989 sentencing for the robbery conviction. He got five years, which, pre-protease, may as well have been 5,000. His only hope, he thought, was to get official assurance that he could serve his time at the AIDS ward in Trenton’s state facility. He was 27 years old. He had dropped out of high school and then had been discharged from the army. He had gone to New York City, waited tables and partied hard. Deep into drugs, he was soon committing petty crimes and racking up misdemeanors. In 1985, Greg tested positive, and he got scared; his drug use escalated and so did his crimes. While awaiting this transfer, Smith, quite ill, fell out of bed and hurt his back. When hospital staff declined to take X-rays, Smith demanded a copy of his medical report. The staff

viewed this as an affront and tempers flared. Accounts of what happened next conflict. According to the two guards present, Smith became violent, then threatened, spit on and finally bit one of them; according to Smith, he was beaten, handcuffed and dragged out of the hospital, where the guards and Smith fell to the ground. To this day he swears that a bite analysis -- never carried out by the court -- would have proved that the handcuffs and not Greg's teeth made the marks on the officer's hand.

The day after the scuffle, Greg awoke facing charges of attempted murder, aggravated assault and making terroristic threats. When the case went to trial nine months later, the officer who was allegedly bitten was on disability for post-traumatic stress syndrome; the one who charged only assault had reportedly left corrections for the ministry. Smith sat in prison.

The State of New Jersey v. Gregory Dean Smith began on April 3, 1990, like a B-grade TV courtroom drama. In his opening statement, Assistant Prosecutor Harold Kasselman depicted Smith as a hard case who, in his desperate bid to do his time in a cushy medical unit, "intimidated and threatened sheriff's officers" with a dangerous weapon. This was no ordinary weapon, he went on, "it wasn't a machete, it wasn't a homemade shiv and it wasn't a handgun that he smuggled into the jail. It was his own personal weapon of misery."

Dramatizing the peril of Smith's very presence for the jury, he said, "he carried with him a virus and he carries it with him today." He argued that the fact that HIV cannot be transmitted through biting was irrelevant to the charge of attempted murder. As long as he could prove that Smith intended to kill the guard by "giving him AIDS," then Smith should be found guilty.

As effectively as Kasselman used Smith's HIV against him, the court-appointed defense attorney, Ralph Kramer, argued that Smith was simply a patient desperate for adequate care for AIDS and an injured back. He asked the jury to imagine itself in Smith's situation: "You scream and you yell and you pray to God that somebody's listening. He can't go to Cooper Hospital, ladies and gentlemen, when he wants to, he can't go to his family physician when he wants to, he can't go to his preacher for comfort when he wants to. He's locked in a cell." In addition to humanizing Smith, Kramer argued that there could be no intent to kill because Smith was well-educated about HIV and knew that transmitting the virus through biting was impossible.

Was it a night of threats from a belligerent prisoner or one of AIDS hysteria? Was Greg Smith a monster or a victim? This was the stark choice the jury faced as the weeklong trial concluded. Smith didn't have to wait long. On April 11, 1990, he was found guilty of attempted murder, assault of a police officer and making "terroristic threats."

ACT UP and the ACLU were out in full colors for the May 18, 1990 sentencing. The prosecution asked the Honorable John B. Marino to give Greg an "extended term" of 50 years as a "persistent offender"; the defense, after reminding the judge of Smith's ill health and lack of a violent record, asked for the minimum. Marino opted for the maximum, but not "extended" term, a total of 25 years, half of which Smith had to serve before he could try for parole.

The harshness of the sentence literally stunned Smith's supporters. "I was so upset, I stood up and

yelled in open court," recalls veteran advocate Judy Greenspan. "I thought the first voice would be ACT UP's, but it was mine, screaming, 'You've given this man a death sentence!'"

Greenspan, like many activists and people with HIV, was outraged that Smith was being punished less for getting physical with a guard -- a relatively routine prison infraction -- than for having HIV. "This was a 'symbolic landmark' case," said Scott Burris, associate professor of law at Temple University. "It added nothing new to the body of legal rules, but it dramatically illustrated the capacity of stigma and racism and HIV phobia to justify official brutality."

Greenspan goes further. "The judicial system is trying to criminalize the very existence of people with HIV," she says. "It's that simple. In virtually all of the dozen or so cases of this kind, the person was incarcerated on petty drug or theft charges. But officials seem to believe people with HIV who get in brushes with the law should be kept in prison as long as possible."

Hard-nosed prosecutors like Kasselman reject this analysis as the sentimentality of naive, dewy-eyed radicals. At the sentencing he took a swipe at Smith's supporters. "This man is a selfish, malicious three-time felony loser," he told the packed courtroom. "It is unconscionable and unfair to try to raise this individual as a martyr, to place him in the same category as people like Ryan White, who truly were veterans of discrimination."

For all the press and stress of his trial, this period remains a blur for Smith. During it his mother was very sick with cancer. On the night before jury selection, he was up late in his Trenton cell worrying and reading his nightly Bible. "About 1 am, just as I began saying my prayers, it started to thunder outside," Smith tells me on one of my visits. "Not a cloud in the sky, but it was the loudest thunder. And when I finished praying, the thunder stopped. That's when I knew my mother had passed away. I cried all night. I said to myself, 'Gregory, it can't get any worse than this.'" A photo of Smith at her funeral, shackled and flanked by prison guards, ran in the local papers.

In memory of her, Smith began to focus on advocating for other HIV positive inmates in the hope that his attempted-murder conviction would be struck down. He wasn't alone. In November 1990, radical lawyer William Kunstler announced that he would handle the appeal. The ACLU and nearly two dozen gay, AIDS and human rights groups filed an amicus brief on Greg's behalf. Argued in November 1992, the highly technical and lengthy appeal challenged the handling of evidence concerning the feasibility of transmitting HIV through biting, and argued that the jury instructions were improper. The following February, the court upheld the original decision. Smith's disappointment turned to devastation when Kunstler died in 1995. "I was hurt, really heartbroken," Smith recalls. "He was the lawyer of little people. I remember talking to him on the phone and saying, 'Mr. Kunstler,' but he said, 'No, Mr. Smith, call me Bill.'" Years passed. The reality that he was likely to be in prison for a long time began to set in. His lawyers abandoned his case, and his health deteriorated. A few supporters kept in touch; ACT UP/Philadelphia, along with family friend Jacqueline Smith, sent him monthly food packages with special items that helped Greg "feel like I was still a person."

Then, in 1996, ACT UP joined with a local prison-rights group to protest the privatization of the

New Jersey prison medical system, charging that the co-payment system implemented by Correctional Medical Services, the new vendor, disadvantaged people with chronic illnesses. “Greg called us daily with updates on what was happening inside,” said ACT UP/Philadelphia’s Asia Russell. “He reported on the inmates’ concerns over being able to pay to see doctors.” The advocate and organizer in Greg Smith was reborn. Soon he was contributing a regular column to Critical Path, the award-winning HIV treatment information website and newsletter managed by Kiyoshi Kuromiya (see POZ, February/March 1996). “He’s bright and talented,” Kuromiya says. “It’s a waste of his life -- and state funds -- to keep him in prison for a silly offense. That’s why we send him writing materials and food.”

It’s 1998: Last year’s visits with the once-upbeat Greg now seem to me like a dream. For most of the past year, he has been locked in “administrative segregation” (Ad Seg) with about 300 of Trenton’s 2,000-plus prisoners cited for misbehavior. He is locked down for 23 hours a day, and denied contact visits. Greg believes he is in Ad Seg for trying to organize a prisoner work stoppage against new cost-cutting policies that limit visits and phone calls, eliminate food packages and require inmates to wear only prison uniforms. The administration refuses to comment on the reason for his confinement.

Mary Petty, a social worker and ACT UPer who regularly visits Greg, worries about the decline in Greg’s mental and physical health. “The whole point of Ad Seg is to limit social contact, both with other prisoners and with the outside world,” she says. “The general skewing of perspective that prisoners develop from being out of society is exacerbated by the segregation. Basically, its designed to drive them crazy.”

It’s hard to hold a conversation over a bad phone and through a wall of Plexiglas. At first, I felt silly putting my hand up to match Greg’s, as though this somehow made up for the lack of “contact.” I feel defiant in this gesture: They can keep prisoners from their only outside contacts, but they cannot stop us from aligning the few things we have in common, for the few minutes we have together.

For all the distance, there are moments like this: Ever the gossip, Greg eyes the visitors next to me, a transperson with a young child. He spots a macho guy walking to the prisoner side of the locked cage. “Did he sit down across from the cross-dresser?” Greg asks excitedly. I say yes. “Damn! I knew it!” Greg squeals in delight. He has long suspected the prisoner is a “queen,” but the man has always denied it.

In our last few visits, I’ve been pleased to see that Greg’s will to fight is returning. He has figured out how to accessorize his drab new clothes, and he has even shared a new joke or two. The big concern now is Greg’s health. Since his arrest in 1989, his weight has fluctuated from 160 to 110 and back. He’s had Bell’s Palsy -- a viral infection in the facial nerves -- and he has lost all of his teeth through poor dental care. His doctor visits are minimal, and his lab work sporadic. He is currently taking diflucan and Bactrim along with vitamins and Ensure, but no antiretrovirals.

It’s lonely inside. With little to gain in the way of medical attention, many men don’t want to admit

they have HIV. “They figure they’re going to die anyway,” says Smith, “so why go through the hassle of people knowing they have HIV?” It is hard to get proper care for yourself, much less push for better treatment institution-wide.

But Smith is one man who’s trying. He’s at the forefront of a revolution inside that we on the outside can help by making sure that he can at least pay for his prescriptions and doctors’ visits. In the meantime, Greg Smith is working on his memoir. We should all be so lucky to find a place in his pages. When he finally gets out of prison, besides continuing to work on his memoirs, Greg vows to give his time to ACT UP. “I picture myself answering the phone,” he says. “ACT UP, Greg Smith here. How can I help you?”

EXCERPTS FROM LETTERS TO *POZ* FROM PWAS BEHIND BARS:

“Everyone in here wants to remind you that you’re dying, as though they are immortal and are not ever going to die.”

—Lawrence Owens, Southern Ohio Correctional Facility, Lucasville, Ohio

“I’ve seen three different doctors, and all three gave me different explanations for the newly formed white lumps on the back of my throat.”

-Steve Launer, California Medical Facility State Prison, Vacaville, California

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