

December 2nd Protestors Conditionally Discharged



December 2nd protestors along with lawyers Delroy Duncan (far left), Jerome Lynch (wearing hat) and Michael Scott standing next to him.

On Friday, May 26, 2017, BIU President, Brother Chris Furbert, and seven (7) other BIU members including Brothers Glenn Simmons, Arnold Smith, Alafia Henry, Neville Goddard, Chris Furbert Jr., Antony Burgess and Rev. Nicholas Tweed and Sister Lily May Bulford appeared in the Supreme Court along with Brother David Saltus in connection with the December 2,

2016 protest. All defendants will bound over to keep the peace for the next six (6) months by Justice Carlyle Greaves. Additionally David Saltus, who was also charged with assaulting a police officer and pleaded guilty to that charge was given a six month conditional discharge.

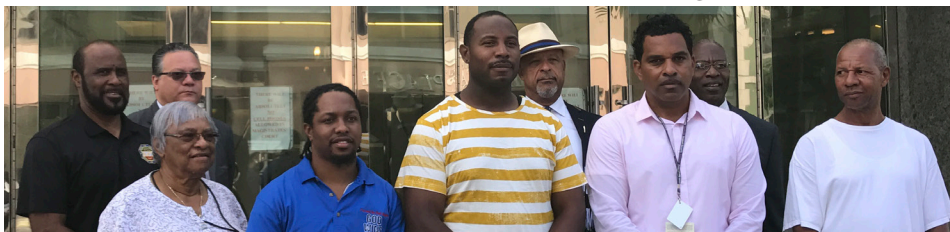
On Wednesday, June 14, 2017, the other four (4) defendants, Sherman Hill, Darnelle Farrel,

Antoine Minors and Ernest Trott, who were charged with "willfully obstructing police officers" on December 2, 2016, appeared in front of Magistrate Khamisi Tokunbo and were also conditionally discharged after pleading guilty.

Lawyers Jerome Lynch, QC and Delroy Duncan appeared for the BIU members and Michael Scott

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December 2nd Protestors Conditionally Discharged *(continued from page 1)*



Sister Molly Burgess with Brothers Antoine Minors, Dornielle Farrel, Ernest Trott and Sherman Hill.

appeared for Brother Saltus.

Explaining to the media and the crowd gathered outside of the court, QC Lynch summed up the court case as follows (as transcribed by Bernews):

"Today is a victory for common sense. What happened in Court does not involve an admission of guilt on the part of anybody here; it signifies that the prosecution was unnecessary to start with, and not in the interest of Bermuda as a whole."

"It is important that Ministers and the police understand the strength of feeling that members of the public have about various different issues that come before Parliament.

"They are interested in the future of their children, and of themselves, and most importantly of all, Bermuda as a whole.

"Offences that these defendants faced are over 110 years old, and we doubt that they have ever been brought before against any individual from Bermuda. Since those offences were introduced 110 years ago, there has been a constitution, trade relations legislation and human rights enshrined in our law in this country.

"It is better to sometimes ignore minor breaches of the law in the interest of allowing peaceful protest, which remains a constitutional and human right.

"This has no impact on the misuse of pepper spray on demonstrators who await the outcome of an internal police inquiry with interest, but with little confidence."

"So all I can say, on behalf of all of those who have been here today and have been through the ordeal that is this prosecution is that, in the end, common sense has prevailed."

Mr. Lynch added, "The law permits them to bring back a charge within a period of 12 months if they thought it appropriate to do so.

"But the reality is, I can't think of any circumstances in which that is ever likely to happen and indeed they have made it clear to us, that it is unlikely to happen short of a repeat performance, and that's not likely to ever take place.

"The reality is, here we have individuals who were seeking to exercise their constitutional right to protest. The fact that there may have been a breach of the peace during the course of that happens up and down the country – happens up and down every country – where people seek to protest and exercise their rights.

"Sometimes you just need to stand back from that and say 'you know what, we're not going to prosecute people for what was, in any view, a minor breach.'

"I mean, so, a few MPs weren't able to go into Parliament that day. Since then, what's happened? The bill has been passed and they're busy building the airport. What is the purpose of this sort of prosecution at this time?"

BPSU President, Brother Jason Hayward, who was also charged, appeared in Magistrates Court on Wednesday, May 31, 2017 and was also conditionally discharged. ■

THE WORKERS VOICE

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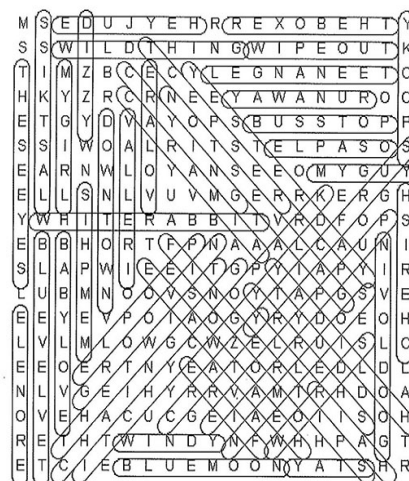
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More Exercises in Futility

In my opinion, the recently concluded court cases that saw some of the December 2, 2016 protestors given conditional discharges in the Supreme Court by Justice Carlyle Greaves and in Magistrates Court by Magistrate Khamisi Tokunbo were exercises in futility and a waste of the taxpayers' dollars. Many are asking why did the Government, the Director of Prosecutions (DPP) and the Bermuda Police Service (BPS) engage in that exercise.

Video footage, media reports and photographs as well as various social media sites have confirmed that there were hundreds of people who gathered around the House of Assembly on December 2, 2016 to protest the OBA's impending legislation to hand over the L.F. Wade Airport to Aecon. Yet, the DPP and the BPS, and by extension the OBA Government, chose to prosecute only fifteen people, including the Presidents of two of Bermuda's largest trade unions: Brothers Chris Furbert and Jason Hayward; and Rev. Nicholas Tweed, the Pastor of St. Paul's AME Church. One wonders why those fourteen men and one woman were chosen to be prosecuted.

Not only has this exercise in futility been an unnecessary expense to the taxpayers, it has also been an unnecessary expense to the Bermuda Industrial Union and the Bermuda Public Services Union who had to employ lawyers to handle the cases on the behalf of their members. Thankfully, Bermudians did give generously to

the "Legal Defense Fund" set up at the BIU Members Credit Union which will go toward defraying the legal costs.

As I see it, the fact that the Bill was debated and passed by the House and the Senate, and as QC Jerome Lynch reminded us after the court decision on Friday, May 26, 2017, "They are busy building the airport. Why the prosecution at this time?" Was it to prove something to the people of Bermuda? If so, what was it?

Although the protestors were peaceful at all times on December 2, 2016, the BPS felt it necessary to deploy almost as many police officers each time the protestors went to court as they did on December 2nd.

It is interesting to note that seven of the fifteen who were prosecuted also filed complaints with the BPS as they were pepper-sprayed. However, to date, the complainants have heard nothing from the BPS or the DPP. Will these complaints remain on file or will they be addressed by the BPS? I would think that since the complaints have been on file for almost six months now, that is where they will stay, or be transferred to File #13.

I would expect that the remaining four protestors, who appeared in court in the morning on May 25th and due to return at a later date, will also be bound over to keep the peace, or have their cases dismissed.



At the end of the day, in my opinion the exercise has done nothing to endear the One Bermuda Alliance to the people of Bermuda and as I see it, it will serve as another nail in their coffin along with the other nails that have already been implanted, like the Commission of Inquiry, the arrest of Dr. Reddy, the continued harassment of Dr. Brown and attempt to deny Rev. Tweed a work permit. All of the aforementioned have come with high legal costs to the taxpayers on behalf of the Government. Yet we continue to hear that there is no money for the basic necessities to the Bermudian people. Some schools remain almost uninhabitable because of mold, Government workers have not received raises in over five years and seniors continue to struggle to pay high medical insurance rates.

In my opinion, all sensible people should have seen enough by the OBA Government to make them want to do away with them at the next General Election. Enough should really be enough!! ■

Open Letter to the Speaker of the House, K.H. Randolph Horton

The following letter was sent to the Workers Voice for publication.

Mr. Speaker,

In early June, for only the second time in many decades, the House of Assembly will be debating a motion of no confidence in the government. The difference on this occasion is that it will be the first time in our island's history that the government does not command a majority in the House.

As we know, the Government and Opposition both have 17 members of parliament, and there are two independent members, former Attorney General Marc Pettingil and former Tourism Minister Shawn Crockwell who both resigned from the OBA government.

I trust that you will remember that at the time of his resignation, MP Crockwell was heavily critical of Premier Dunkley's leadership stating that he had lost faith in the Premier and that *'the inability of government to listen and to appropriately gauge the temperature of the community'* had rendered it 'unworkable' for him to continue.

He stated that he had seen *'time and time again, that old UBP philosophy would prevail.'* He declared that he had been the victim of *'economic intimidation'* at the hands of the government, specifically the Attorney General Trevor Moniz as a result of his decision to resign.

MP Leah Scott echoed these concerns, stating that the government had *'clearly demonstrated*



why the OBA is so hated among blacks in the community.'

She wrote to Premier Dunkley and labelled previous statements by then Minister of Home Affairs, Senator Michael Fahy as *'dishonest'* and impressed upon her government colleagues that *'What you are doing is cutting right to the heart of Bermudian people.'*

Precisely a year after MP Crockwell's resignation, former Attorney General and founding member of the One Bermuda Alliance felt compelled to resign from the party stating that he found himself *'diametrically and philosophically opposed to the government's position or approach on numerous issues in endeavouring to move Bermuda forward.'*

Mr. Speaker, it will be the duty of every member of The House who is tasked with voting on the no confidence motion this Friday to honestly and sincerely ask the question whether they have confidence in this government.

Having regard to the fact that the government no longer commands

a majority in the House of Assembly, compounded with the serious principle issues that premised their resignations, it remains to be seen how Mr. Crockwell and Mr. Pettingil could honestly justify voting that they have confidence in the government. After all, if they had confidence, they'd still be in government, right? Well, we know that stranger things have occurred.

Mr. Speaker, if there is a tie on the motion of no confidence vote, and the duty lay with you to cast the deciding vote, what will you do?

Surely it hasn't escaped an esteemed statesman like yourself, Mr. Speaker, that you sit in the position that you do because you were elected by the voters of constituency 32, right?

In fact, you implored upon those voters in 2012 that *'The PLP needs to be returned to government'* and you promised them that you were *'committed towards the enhancement of the quality of life for the residents of Constituency 32, specifically and our Island generally.'*

Those voters sent a resounding message that they wanted to return the PLP to government and believed that you would remain committed to them specifically and our island generally. They rewarded you with a 'hat-trick', your third consecutive term in Parliament. Now, if the ball is placed at your feet, will you score for them, or against them?

I know that you're also a cricket man, Mr. Speaker. So, I must ask, if called upon, will you honor the 12 years of

(continue on page 7)

The OBA Government's Two Bermudas

The OBA Government is presiding over two Bermudas and although this has always been a reality in Bermuda, ever since the OBA became the government, this has become ever more manifest.

The evidence of two Bermuda's has always been based on race and the struggle of the Black Bermudian for civil and human rights, but underlying this has been the struggle for economic parity and the economic survival of the Black community. This struggle took the form of the creation of a trade union movement beginning with Bermuda's first union, the Bermuda Union of Teachers (BUT) which was formed in 1919. In 1944 the Bermuda Workers Association (BWA) was formed and this would later become the Bermuda Industrial Union, led by its first President, Dr. Edgar Fitzgerald Gordon, leading civil rights icon and national hero. This was followed by the creation of other trade unions such as the Bermuda Public Services Union and for a short time, the Dockworkers Union led by the indomitable Joseph Mills.

While this is considered to be an important development for the forward movement of civil rights in this country, especially in regard to the interests of blacks, there is one aspect that has not come to the fore, and that is the development of an economic base in their community. It could be said that with the end of official segregation and the advent of so-called integration, economic development within this community that is in terms of black

ownership of businesses experienced a setback.

During racial segregation Blacks owned a number of business concerns, even grocery stores and other retail shops, which catered to them and thereby created a black economy dominated and controlled by them. With the advent of integration this example of black self-determination declined as the white establishments and business concerns opened their doors to the black community with the result that the black community abandoned their own black enterprises causing its decline.

The only aspect of the social construct that the black community had created to ensure and protect their interests that remains with any strength is the trade union movement. Not even the political aspect as represented by the Progressive Labour Party and the two terms it served as government has served to bridge the economic gap between the two Bermudas. And that brings us to the situation we have today in Bermuda.

Under the OBA government things have gotten decidedly worse. Blacks made a big mistake when they carelessly either voted against the PLP as the government or did not go to the polls at all in a false attempt to register some form of protest against the than PLP government and as things stand now, it has turned out to be our detriment.

We now have continued high employment situation in Bermuda which affects Blacks the most, and continued emigration of Bermu-

THE OTHER ALTERNATIVE



BY ALVIN WILLIAMS

dians to another man's country (England) because they have found it increasingly difficult to survive economically in their own country hence the term economic refugee. Now it is true that in the beginning we saw exits to England by young males fleeing Bermuda's increased gang violence. In recent times we have seen in some cases whole families relocating to England and there was even a rumour that a well-known social workers was encouraging young single mothers and their children to go to England and even showing them how to take advantage of England's very liberal social programmes in housing, education and other social benefits that far outshines anything that the government gives in Bermuda.

This is the backdrop to the existence of the two Bermudas and the recent protests outside of Parliament have put it in sharp relief. You now have a judiciary, though separate from the Government, nevertheless, is about to engage in political trials involving union leaders and members of the civil society. The confrontation between the two Bermudas has come to a head and no one can predict the outcome of ramifications for the country. ■

CCL Congratulates Sister Jennifer Isaacs-Dotson



Governor-General, Her Excellency, Dame Marguerite Pindling (centre) and Prime Minister the Hon. Dr. Hubert Minnis with the newly appointed Government Senators at Government House, May 22, 2017. Pictured (from left) are: Senator, the Hon. Dwight Sawyer; Senator, the Hon. Jennifer (Jenny) Isaacs-Dotson; Senator, the Hon. Juanianne Dorsett; Senator, the Hon. Katherine (Kay) Forbes-Smith (Senate President); Prime Minister, Dr. the Hon. Hubert Alexander Minnis; Her Excellency, Dame Marguerite Pindling; Senator, the Hon. Dr. Mildred Hall (Senate Vice-President); Senator, the Hon. Sharon Annafaye Ferguson-Knowles; Senator, the Hon. Jasmine Turner-Dareus; Senator, the Hon. Ranard Henfield and Senator, the Hon. Jamal Moss. (BIS Photo/Letisha Henderson)

The Caribbean Congress of Labour is pleased to announce that its President, Sister Jennifer Isaacs-Dotson has been named to fill a Government Senate Appointment in the Upper Chamber of her native Bahamas. She is one of six (6) females called to serve at that level.

Prime Minister, Dr. the Honourable Hubert Alexander Minnis said that the appointments “reflect the diversity of our Commonwealth” and advances “gender equity in the make-up of the Senate.”

Sister Isaacs-Dotson, now, the Honourable Jennifer Isaacs-Dotson, remains committed to workers’ rights and will use her office to continue to advance the efforts in promoting unity, justice, development and security of the region.

The Caribbean Congress of Labour congratulates her and views her appointment as recognition of her competence, hard work and dedication to the cause of the working class in The Bahamas and across the region. ■



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Bermuda's Education System Deserves Better

According to MP, Diallo Rabain, the Shadow Minister for Education, the statement by Education Minister Cole Simons reinforces our belief that politics must be taken out of education. Backbiting, petty squabbling and name calling may impress some, but most Bermudians want solutions and not excuses. Despite this, the OBA seems more interested in finger pointing and ducking responsibility than on addressing the real issues facing our most important resource; our children.

"Bermuda deserves better and we can do better when we take the politics out of education, put an end to petty squabbling and make our children a priority," continued MP Rabain. "The PLP has committed to a restructuring of the education system that will provide our students with the tools necessary to achieve in this evolving technological world. Additionally, we have performed preliminary assessments to identify what is working, and what is not. After consultation, we will ensure



that we will not disturb what is working, but where improvements are necessary, we will take steps to address."

The PLP Shadow Minister said that the middle school system has proven to provide hardships to the development and success of our students, and we plan to address this in a phasing out and a return to a two tiered system.

"Minister Simons accused the PLP of doing "nothing in 14 years", a phrase rooted in pre-election

hyperbole," added MP Rabain. "During the PLP's 14 years in office, there were significant advancements made, including, but not limited to:

- Commissioning the Hopkins report, of which 8 of 10 recommendations were implemented
- Implementing the Internationally recognized Cambridge Curriculum
- Introduction of Career Pathways
- Implementing the Dual Enrollment Programme at Bermuda College
- Increased funding for Bermuda Government Scholarships
- Reducing Class size

"We understand there is much more to be done to advance our students and to prepare them for the future, and the PLP is committed to that task. Today, there are two Bermudas; one where access to quality education and a pathway to higher education and a career are a given and the other Bermuda that has been neglected and forgotten for too long. Bermuda can do better," concluded MP Rabain. ■

Open Letter to the Speaker of the House, K.H. Randolph Horton (continued from page 4)

trust placed in you by the voters of constituency 32 and run down the pitch, right arm over the wicket, and ensure that the off stomp of the OBA is left spinning? Will it be your shining hour when you grasp the nettle and take a stand for the people who for so many years idolized and placed their trust in you?

Or will it be the day that you show a feign solidarity to those that have long since made it their life's purpose to remain a thorn in the side Black Bermudians?

We must not be sidetracked; this is about power and its abuse by the UBP (now called OBA) government, and its inability to lead. This is about the realities of the two Bermuda and the growing racial and economic disparities that divide them.

Mr. Speaker, I am too young to remember your sports heydays, but my elders always made one thing clear: You were always a Trojan, never a Zebra!

We will be watching from the pavilion. Hope springs eternal!
-Eron Hill

Editor's Note: Eron Hill is an aspiring Barrister & Attorney pursuing his Law LLB (HONS) degree in the United Kingdom. ■

“The Thick Edge of the Wedge”

By Lawrence (Larry) G. Scott

“Is an overseas law firm permitted to exercise control over a Bermuda law firm?” I read with great interest the article by Delroy Duncan in the Workers Voice issue dated March 20, 2017.

I could not help but reflect back on this issue, and recall the year 1993. The ink was barely dry on Bermuda Bar Association practicing certificate, when I attended our Annual General Meeting of that year. Being proposed by Mr. Charles Collis (of Conyers Dill & Pearman) was a resolution that non-Bermudian associates of local law firms be allowed to become members of the Bermuda Bar Association. There were two objectors to that resolution: Dame Lois Browne-Evans and myself.

I recall too that, when I spoke against the measure, Mr. Collis said to the assembled audience that they should ignore than young fellow (i.e. myself), as I did not know what I was talking about. The resolution passed overwhelmingly. That was the thin edge of the wedge!

From that simple action many a law firm grew to even greater international stature with satellite firms around the globe and, the commercial business generated by that move brought to Bermuda the status of the world's leading offshore centre. Huge profits have followed; much legal growth and expertise in this area of the law resulted from that move. I suspect, as well, that many foreign jurisdictions may themselves have objected when seeing plaques of Bermuda law firms on doors in their capitals.



Dame Lois and I objected; being the protectionists that we were, having only in mind the effect all this would have on new members of the Bar, who might not get a chance to hone their skills in the local law firms which were now employing foreign counsel from all over the world right here at home.

Of course there were some small “crumbs” that scattered to small law firms being in the main, ancillary work not related to significant commercial work born of that decision. But those who did the commercial work, or represented the interests of their clients in civil proceedings, did very well, thank you very much!

All over the globe now Bermuda is known as the insurance capital of the world where all investors come because we have created here what has been called that critical mass where commercial transactions occur. Thus everyone now wants to come here including foreign legal entities.

It is quite amusing to see that now the protectionist blinkers have sud-

denly come off, and the Dame and I now have converts so late in the day. But the horse has long bolted, and in fact, is cantering along around the field on at least its second lap. In fact this time around I am of a different view. Firms wishing to come here may well give young Bermudian attorneys a real “look in” at the exposure that local firms cared little for when the “getting was good”.

Maybe like the very world which local law firms service with their mergers and acquisitions (M&A) ought themselves enter into M&As with overseas law firms rather than the fighting against the Bermuda Bar.

Trimingham's, Smith's, the Bank of Bermuda, etc. etc., have gone and if we don't change we will be gone as well.

In fact right in the legal profession itself, many an attorney who started with one firm now works for what was once its competitor, or have closed altogether and formed new partnerships.

I admit to my having changed my position since 1993, but I have seen a sea change of exposure that has benefitted Bermuda. I can't see why we should now begin to act like the President of the U.S.A. and start pulling up the draw bridge in protectionist mode, thus denying the young lawyers their chance, just so that we can preserve ourselves in our golden years.

The time is gone when Bermuda could protect itself from outside

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CURB Agrees with Burt on “Two Bermudas

On May 16th Opposition Leader, Mr. David Burt MP, gave a speech on Bermuda's social issues to the Hamilton Rotary Club and spoke about the Two Bermudas; the economic divide, ongoing income inequality, and the divisions that are present in our community.

The speech resonates with CURB's mission and philosophy around the need to address the divisions around race, and the urgent need to address the increasing polarization between those with wealth and the unemployed and impoverished; with this division predominantly along racial lines largely built on the back of generational inequities of a system built off the back of slavery and segregation.

There is a great need to address matters of racial justice and the need for change. James Baldwin, one of the 20th century's greatest writers, said “You cannot Fix what you will not Face.” His groundbreaking literary work on the exploration of racial and social issues is today as important and as relevant as it was in the middle of the 20th century. To address these issues head on resonates with Baldwin's adage. As a society we must be willing to face the truth of our past and its ongoing resultant inequalities. This work must be done not only at an individual level, but at a systemic level across political, economic, business, cultural, social and community organizations.

The lack of numbers at the luncheon clearly indicates there were those who chose not to attend



the presentation, an organization that is supposed to put “service above self.” The action taken by those members gives implicit support to the structural racism policies that gave rise to the Two Bermudas, and by default makes their stance far more political than the actual speech, which focused on social issues, collaboration and community. This action goes against Rotary International's stance that Rotarians be involved in their communities, be civic-minded, and engaged in public improvement; and to keep under review political developments in their own communities and to seek reliable information through balanced programs and discussion so that members can reach their own conclusions.

We hope the Hamilton Rotary Club will be inspired to follow the lead of the Bank of Bermuda Foundation, which has taken steps through their “Theory of Change” to tackle the conditions that gave rise to the Two Bermudas. CURB welcomes the Foundation's foresight and willingness to lead on this front.

Race continues to be a strong force in determining how opportunity is

distributed in Bermudian society. It influences important decisions made in people's personal, professional and social lives, including how we vote, what social programs we volunteer for, what cultural events we attend, and who we hire.

We also recognize the subtle forces of racism. We view the America's Cup Restricted Marketing Order, 2017, while protecting the rights and brands of participants and sponsors of AC35, as restricting the rights of less-well-off Bermudians in particular. A common practice of legally selling goods on the streets has been curtailed by this Order, save for Bermuda Day. An event which has been billed as one that will benefit all of Bermuda now restricts those most in need. To avoid the appearance of economic and cultural apartheid, we call on the Government to immediately restore the street-selling rights of ordinary Bermudians outside of America's Cup Village.

By talking about race we have the opportunity to explore, examine and challenge these attitudes. If we do not talk about race, it remains unchallenged and by default continues and worsens ongoing inequality in our society.

To that end as a community seeking to move forward and resolve the continuing inequality, we must be willing to face, to examine and to work towards eliminating barriers to opportunity by fashioning programmes, legislation and policies that support and enable social and economic opportunity. ■



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The Right to Strike of Utmost Importance to ILO

Further to the Human Rights Council side event on freedoms of association and of peaceful assembly in the workplace which took place on Monday 6 March, and on the occasion of a key meeting of the International Labour Organization (ILO), the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, is recalling that the right to strike is a fundamental one enshrined in international human rights and labour law, and that its protection is necessary in ensuring just, stable and democratic societies:

“As the 329th session of the Governing Body of the ILO starts today, I wish to reiterate the utmost importance of the right to strike in democratic societies.

As stated in my 2016 thematic report to the General Assembly (A/71/385), the right to strike has been established in international law for decades, in global and regional instruments, such as in the ILO Convention No. 87 (articles 3, 8 and 10), the International Covenant on Economic, Social and Cultural Rights (article 8), the International Covenant on Civil and Political Rights (article 22), the European Convention on Human Rights (article 11), and the American Convention on Human Rights (article 16). The right is also enshrined in the constitutions of at least 90 countries. The right to strike has in effect become customary international law.

The right to strike is also an intrinsic corollary of the

fundamental right of freedom of association. It is crucial for millions of women and men around the world to assert collectively their rights in the workplace, including the right to just and favourable conditions of work, and to work in dignity and without fear of intimidation and persecution. Moreover, protest action in relation to government social and economic policy, and against negative corporate practices, forms part of the basic civil liberties whose respect is essential for the meaningful exercise of trade union rights. This right enables them to engage with companies and governments on a more equal footing, and Member States have a positive obligation to protect this right, and a negative obligation not to interfere with its exercise.

Moreover, protecting the right to strike is not simply about States fulfilling their legal obligations. It is also about them creating democratic and equitable societies that are sustainable in the long run. The concentration of power in one

sector – whether in the hands of government or business – inevitably leads to the erosion of democracy, and an increase in inequalities and marginalization with all their attendant consequences. The right to strike is a check on this concentration of power.

I deplore the various attempts made to erode the right to strike at national and multilateral levels. In this regard, I welcome the positive role played by the ILO’s Government Group in upholding workers’ right to strike by recognizing that ‘without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers’ interests, cannot be fully realized.’

I urge all stakeholders to ensure that the right to strike be fully preserved and respected across the globe and in all arenas”, the expert concluded. ■

When can secret recordings of meetings be used as evidence in a tribunal hearing?

By Bro. Delroy Duncan

It's a fact of life, whether we want to admit it or not, the new technological age has arrived and is alive and kicking in the workplace.

With the advent of recording devices found in innocent looking items such as pens, cell phones and watches, the question which has arisen in courts of law is whether an employee or an employer can use secret recordings of conversations in an investigation or disciplinary hearing as evidence before an employment tribunal or a court of law.

We will examine this issue by answering the following questions:

I. When are secret recordings of investigation proceedings permitted to be used as evidence in a tribunal hearing or a court of law?

II. When are secret recordings of investigation proceedings not allowed to be used as evidence in a tribunal hearing or a court of law?

III. How will a tribunal or a court of law decide whether secret recordings of investigation proceedings are admissible in evidence?

IV. What can an employer legally do to stop secret recordings of investigation proceedings?

V. Can employers secretly record an employee?

VI. Conclusion.

I. When are secret recordings of investigation proceedings permitted to be used as evidence in a tribunal hearing or a court of law?



Readers of previous articles will remember that Bermuda law is based upon the law of the United Kingdom. As a result, Bermuda law relies heavily upon case law decided in the United Kingdom. In the United Kingdom, secret recordings of investigation meetings between an employer and employee may be relied upon as evidence in an employment tribunal or a court of law. In the case of *Amwell View School Governors v Dogherty* 2007 I.C.R 135, the Employment Appeal Tribunal said that where a secret recording had been made by an employee of conversations with an employer, the tribunal or court of law could in certain circumstances hear and rely upon the evidence in the recording. The tribunal went on to say that an employee subject to disciplinary proceedings was entitled to a fair hearing before a tribunal or a court of law. In some situations it would be unfair for an employee if the tribunal or the court of law did not hear the evidence in the secret recording. The tribunal gave by way of example, a case where a decision was made against an employee but

no reason was given for the decision and the secret recording indicated that the decision had involved discrimination.

In the United Kingdom case *Punjab National Bank v Gosain* 2014, the secret recording of the grievance hearing contained an instruction from the bank's managing director to dismiss the employee and the manager hearing the grievance stating that he was deliberately skipping the key issues raised by the employee in her grievance letter. The recording of the disciplinary hearing also suggested a sexual comment had been made about the employee during the adjournment. The Employment Appeal Tribunal hearing the case ruled that the recordings were admissible in evidence on the ground the comments made were not part of what the employer should have been considering to decide the grievance issue.

In the United Kingdom case of *Williamson v Chief Constable of Greater Manchester* 2010, the Employment Appeal Tribunal said that an important consideration is whether the secret recording is the only evidence of discrimination.

II. When are secret recordings of investigation proceedings not allowed to be used as evidence in a tribunal hearing or a court of law?

In the case of *Amwell View School Governors v Dogherty* 2007 I.C.R 135, the Employment Appeal Tribunal said that secret recordings of an investigation of an employee will not be admissible in evi-

(continue on page 15)

dence if the secret recordings are made during the employers private deliberations or the secret recordings would reach the public domain. The Tribunal said there was an important public interest in parties before disciplinary and appeal proceedings complying with the “ground rules” upon which such proceedings were based. The understanding that the panel members’ deliberations would be conducted in private was essential if they were to have a full and frank exchange of views. The tribunal also went on to say that if a recording was made illegally or as a result of unlawful interception of for example a telephone, the court would not hear that evidence because it had been obtained unlawfully. In Bermuda, secret recording of telephone conversations can only be carried out lawfully following permission from the Governor under section 61 of the Telecommunications Act 1981. This was decided by the Court of Appeal of Bermuda in the case *Lines v Lines Overseas Management Limited and LOM Securities (Bermuda) Limited*, Bermuda Civ Appeal 2005 No.11.

III. How will a tribunal or a court of law decide whether secret recordings of investigation proceedings are admissible in evidence?

In order for the Tribunal or court to determine whether the secret recording can be used in evidence, the Tribunal or court must listen to a transcript of the secret recording to decide whether it is relevant to the issues being argued by the employee. In the case of *Amwell View School Governors v Doherty* 2007 I.C.R 135, the Employment Appeal Tribunal also said if the minutes of

the disciplinary hearing were disputed as to their accuracy on the relevant issue, public policy would not shut out production of any other notes made by the claimant. The transcription of the secret recording was such a note.

IV. What can an employer legally do to stop secret recordings of investigation proceedings?

To reduce the risk of a tribunal admitting a secret recording into evidence, employers should take the following steps:

1. Include a term in the employee handbook prohibiting employees from conducting secret recordings of meetings.
2. If there is a break in a meeting, the investigation/disciplinary team should leave the room instead of the employee being asked to leave.
3. It would be prudent to make a note that this has been explained to the employee at the start of any hearing and it should be noted that the employee confirms they understand and declare that they are not making any recording. If an employee records a meeting despite this warning, the employees’ credibility may be undermined at the hearing of any case which may help the employer’s case.
4. Take detailed notes of grievance and disciplinary meetings and provide these to the employee following the meeting. A tribunal may be less likely to admit a recording into evidence if the employee has failed to take issue with the notes at the time of their creation.

V. Can employers secretly record an employee?

Tribunals draw a distinction between employers and employees. A tribunal will generally allow an employee to submit a secret recording into evidence for the reasons already stated in this article. Employers are held to a higher standard. In the United Kingdom case of *Scott Kilday v MGM International* 2014, a company was ordered to pay a former employee £16,000 in compensation for constructive dismissal in circumstances where it placed a bug in an employee’s potted plant at his desk. Employers should remember that any recording of their employees must be fair, transparent and carried out for the legitimate interests of the employer.

VI. Conclusion.

In conclusion, it can be seen that in certain specified circumstances, an employee will be permitted to produce evidence in an employment tribunal or a court of law through a secret recording of investigation proceedings carried out by their employer. However, employers are not granted the same latitude and are held to a higher standard. Employers are prevented from secretly recording activities of their employees and such recordings will rarely be admitted in evidence before a tribunal or court of law.

Source material for this article was produced by Julie Austin of McDowell Purcell. ■

Sleep Productivity and You



Sleepless in Bermuda

Tired? Welcome to the club. A recent study from the Centers for Disease Control and Prevention finds that almost one-third of American adults get less than seven hours of sleep per night.

Despite all the talk of “work-life balance,” for many of us the easiest thing to ditch when our schedules start bursting at the seams with family and work-related responsibilities is sleep.

Burning the Midnight Oil

Because our culture encourages a fast-paced lifestyle, it seems natural that getting more done sometimes requires giving up some time in the sack. And if the trade-off is a bit of bleary-eyed morning grumpiness, then we'll happily take it.

Here's why that attitude is counterproductive—multiple studies show that you're actually less productive when you aren't getting enough sleep. In fact, sleeping more may actually help you get more done during the day.

Your Productivity Wake-up Call

According to experts, adults need between seven and nine hours of sleep per night. Skipping even an hour of needed rest can carry significant costs, including:

- Poor judgment
- Difficulty learning and retaining information
- Difficulty processing complex information
- Delayed reaction time
- Irritability
- Impatience
- Negativity
- Fatigue
- Decreased concentration
- Diminished self-control



When you take these factors into consideration, it's easy to see how skimping on your shut-eye is the last thing you want to do. Your best, most productive work almost always comes when you're well rested.

Keys to a Good Night's Rest

- Maintain a regular sleep schedule. Instead of sleeping in on weekends to compensate for lost sleep, try going to bed an hour or two earlier at night and keeping this schedule all week long.
- Use your bed only for sleeping. This will help train your body to fall asleep quickly when you tuck in for the night.
- Keep your room dark.
- Don't exercise too close to bedtime. The resulting endorphin release will energize you and keep you awake.
- Use “white noise” such as a fan to dampen outside noise.
- Lower the thermostat. Studies show that a cooler temperature helps create more restful sleep. Go as low as you can while still remaining comfortable.
- Avoid caffeine in the evening. Half the caffeine you consume will still be in your body six hours later.
- Don't use alcohol to excess. Having a few drinks may help you go to sleep, but it will also disrupt your sleep cycle, leaving you tired in the morning.
- Invest in a good mattress. Mattresses stop offering the right amount of support after about ten years.
- Shut out negativity. If television news causes you stress and worry, then skip that late newscast and do something that relaxes you instead.

The Power of Napping

When all else fails, grab a pillow and snooze a bit during the day. Recent studies suggest that a nap as short as just ten minutes can boost mental alertness and productivity for hours.

Don't buy into the idea that napping is lazy. Cultures all over the world build nap time right into their workdays. Famous nap takers include Albert Einstein, Winston Churchill, and Johannes Brahms.

Beating the Busy Bug

The most common excuse people give for not getting enough sleep is that they're simply too busy. Here's the bottom line: You simply can't live a rich, happy, and productive life when you're stumbling around like a zombie due to lack of sleep.

If the daily grind is overwhelming your schedule, it's time to start eliminating all but your highest priorities and obligations and carving out some extra time for a good night's rest. Start small and try going to bed ten minutes earlier each night until you're getting a full eight hours of sleep.

Once you get there, maintain this schedule for a week and take note of the difference in your mood, energy level, and productivity. Chances are, you'll feel like a new person.



The Thick Edge of the Wedge (continued from page 8)

influences as the oligarchs did in years past, and yet expect foreign capital to risk doing business in Bermuda.

The world has simply moved on from that; it is now global where only the best compete and survive. Our legal children need exposures to the best who, as one can see, want to come right to their door with expertise, and they can be the best. How dare we close the opportunity in their faces, particularly now when stimulus is the only way out and up. But there are those who want to put the covers it; it is selfish to the extreme.

The opportunities missed, cannot be recovered by this fear, which was

initially ignored (or simply not envisaged) by many at that Bar Association meeting back in 1993.

The “thick edge of the wedge” is in the door, and no amount of prodding and pushing will close that door now without springing the hinges and even then a thumb in the dyke will not stop the water’s flow.

Sorry Mr. Duncan, your legal eruditeness notwithstanding will not hold back this tide. It is disingenuous in the extreme to claim “the OBA Government supports overseas law firms entering Bermuda, contending that it would give much needed competition to local law firms and

generate work and business in Bermuda.” This was the same argument made by Charles Collis back then. It worked and many benefitted from it; particularly those attorneys who chose commercial work over the criminal work.

I simply admit that I was wrong in my foresight at the time (1993). And when casting my mind over that almost quarter century, one cannot escape the fact that that period can only be described as our years of plenty and maybe now we are gain on the cusp of a new leap forward. I hope the oligarchs of the 90’s don’t spoil it for the children of generation “X”. ■



MEMBER BENEFITS

DISCOUNTS OFFERED TO BIU MEMBERS

- | | |
|--------------------------|--------------------------------|
| • Union Gas Limited | 5% off Mondays (cash only) |
| • Grotto Bay | 5% off of Famous Sunday Brunch |
| • Reefs Hotel & Spa | 10% off Food services |
| • El Shaddai Florist | 10% off |
| • ERU AT'ILE | 10% off |
| • Island Construction | 10% off Tires |
| • Newstead Belmont Hills | 10% off Hotel stay, Spa & Golf |
| • Hunt's Food & Supplies | 10% off Fridays |
| • DHL Express | 20% off on freight costs |
| • Fresh Breath Dental | \$25.00 on teeth cleaning |

MEMBERS MUST PRODUCE A VALID MEMBERSHIP CARD



It is wise to borrow through your shares

Here are the benefits:



**Your shares
are insured**



In the event of natural death your savings up to \$4,000.00 doubles to your beneficiary! In the event of accidental death your savings triples!

**Your loans
are insured**



In the event of death your loan up to \$20,000.00 is also insured and will not be at a cost to your beneficiary nor will the loan balance be deducted from your savings.

**The interest rate
is 5% below the
normal interest
rate**



When you borrow through your shares you build your wealth and could become eligible for even larger loans up to four times your savings. Conditions apply.



BIU MEMBERS CREDIT UNION CO-OP SOCIETY

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Email: creditunion@mbrscu.bm | Website: bermudascreditunionscoop.bm

We Do Take Care

Rev. Dr. Martin Luther King's Letter from a Birmingham Jail - 16 April 1963

By Larry Holder

Editor's Note: Brother Larry Holder, President of the Postal Division, shared with the Workers Voice Martin Luther King's "letter from a Birmingham Jail" in its entirety. According to Brother Larry, "I think it's good for now because of the climate we in Bermuda are in and what we're experiencing with our current leaders which I see as persecution through prosecution. Hopefully we will recognize the role that society has to play to its fellow man, from the pauper to the pulpit and from the pulpit to parliament."

The Workers Voice has published a small excerpt from the letter below.

My Dear Fellow Clergymen:

While confined here in the Birmingham city jail, I came across your recent statement calling my present activities "unwise and untimely." Seldom do I pause to answer criticism of my work and ideas. If I sought to answer all the criticisms that cross my desk, my secretaries would have little time for anything other than such correspondence in the course of the day, and I would have no time for constructive work. But since I feel that you are men of genuine good will and that your criticisms are sincerely set forth, I want to try to answer your statement in what I hope will be patient and reasonable terms.

I think I should indicate why I am here in Birmingham, since you have been influenced by the view which argues against "outsiders coming in." I have the honor of serving as



president of the Southern Christian Leadership Conference, an organization operating in every southern state, with headquarters in Atlanta, Georgia. We have some eighty five affiliated organizations across the South, and one of them is the Alabama Christian Movement for Human Rights. Frequently we share staff, educational and financial resources with our affiliates. Several months ago the affiliate here in Birmingham asked us to be on call to engage in a nonviolent direct action program if such were deemed necessary. We readily consented, and when the hour came we lived up to our promise. So I, along with several members of my staff, am here because I was invited here. I am here because I have organizational ties here.

But more basically, I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must con-

stantly respond to the Macedonian call for aid.

Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial "outside agitator" idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.

You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations. I am sure that none of you would want to rest content with the superficial kind of social analysis that deals merely with effects and does not grapple with underlying causes. It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city's white power structure left the Negro community with no alternative.

In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation; self purification; and direct action. We have gone through all these steps in Birmingham. There can be no gain-

(continue on page 18)

Rev. Dr. Martin Luther King's Letter from a Birmingham Jail

(continued from page 17)

saying the fact that racial injustice engulfs this community. Birmingham is probably the most thoroughly segregated city in the United States. Its ugly record of brutality is widely known. Negroes have experienced grossly unjust treatment in the courts. There have been more unsolved bombings of Negro homes and churches in Birmingham than in any other city in the nation. These are the hard, brutal facts of the case. On the basis of these conditions, Negro leaders sought to negotiate with the city fathers. But the latter consistently refused to engage in good faith negotiation.

Then, last September, came the opportunity to talk with leaders of Birmingham's economic community. In the course of the negotiations, certain promises were made by the merchants--for example, to remove the stores' humiliating racial signs. On the basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims of a broken promise. A few signs, briefly removed, returned; the others remained. As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. Mindful of the difficulties involved, we decided to undertake a process of self purification. We began a series of workshops



on nonviolence, and we repeatedly asked ourselves: "Are you able to accept blows without retaliating?" "Are you able to endure the ordeal of jail?" We decided to schedule our direct action program for the Easter season, realizing that except for Christmas, this is the main shopping period of the year. Knowing that a strong economic-withdrawal program would be the by-product of direct action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.

Then it occurred to us that Birmingham's mayoral election was coming up in March, and we speedily decided to postpone action until after election day. When we discovered that the Commissioner of Public Safety, Eugene "Bull" Connor, had piled up enough votes to be in the run-off, we decided again to postpone action until the day after the run off so that the demonstrations could not be used to cloud the issues. Like many others, we waited to see Mr. Connor defeated, and to this end we endured postponement after postponement. Having aided in this community need, we felt that

our direct action program could be delayed no longer.

You may well ask: "Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound rather shocking. But I must confess that I am not afraid of the word "tension." I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. The purpose of our direct action program is to create a situation so crisis packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue. ■

Chef Fred Ming Snubbed by ACBDA

By LaVerne Furbert



One of Bermuda's leading chefs, Fred Ming, told the Workers Voice that he was snubbed by the America's Cup people as they did not accept his bid to offer his "gastronomical delights" at the America's Cup Village in Dockyard.

Chef Ming told the Workers Voice that he submitted his application form to be a vendor at the Village in early February but he never received a positive response from the organizers.

"A good friend of mine and I were anticipating setting up a booth at the America's Cup Village but our offer was turned down," explained Chef Ming. "We were offering Bermuda gastronomical delights such as mussel pies, conch stew, fish chowder, fried fish, chicken nuggets, red beans and rice, crispy slaw and fish cakes on buns. We believe that when people travel they like to taste the food of the country and that Bermuda is more than fish chowder".

Chef Ming went on to further explain that on February 28, 2017 he and his business partner attended a Vendors' Meeting at St. Paul's Centennial Hall hosted by ACBDA. He said that the organizers discussed issues regarding vendors for Dockyard and Harbour Nights in Hamilton.

"After the meeting I approached one of the spokespersons and asked how we made out because we had no

reply to our application. It was then that we were told that our application had not been accepted".

The celebrated chef said that the hall was full of people who were interested in being vendors, but he felt that the meeting was a farce. "I say that is because the lady was able to tell me that our application wasn't accepted after the meeting and that vendors had already been selected. If that was the case, why have the meeting?"

Apart from teaching at the College for twenty-eight (28) years, Chef Ming also runs Ming's Catering and has catered to many large functions. He said that he has trained many students for the hospitality industry and helped them find suitable jobs.

"I have taken many students around the world to compete in several culinary competitions," continued Chef

Ming. "I personally have received several awards including "Young Person of the Year", "Lecturer of the Year", "Chef of the Year", two gold, one silver and three bronze medals for culinary arts and the "Culinarian of the Year" award by the Bermuda Society for the Arts."

Chef Ming said that he has cooked for many famous people, including the Queen of England, Princess Margaret and Prince Philip to name a few. Additionally he worked for two years at the U.S. Consulate and at the famous Savoy Hotel in London and was the first Bermudian and first Black chef to do so.

"I read in the Royal Gazette where the organizers of the America's Cup said that they were prepared to work with me, but I still not have heard from them," concluded Chef Ming. ■

SAVE THE DATE

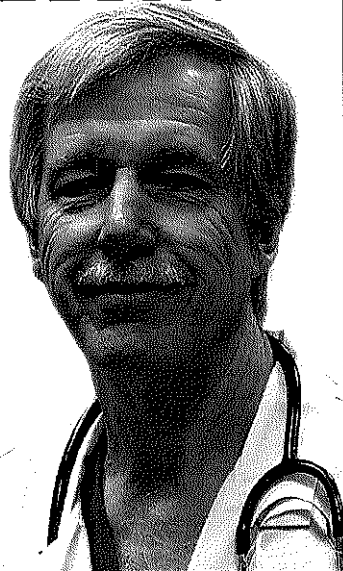

Bermuda Health Foundation

15th Annual Salute To Service Award Luncheon

HONOURING
Dr. Edward Shultz
*Chief of Emergency Services
King Edward VII Memorial Hospital*

Friday, June 30, 2017
Fairmont Hamilton Princess,
The Trudeau Ballroom

TICKETS: \$150.00



FOR FURTHER INFORMATION
Contact LaVerne Furbert
lavernef@northrock.bm or 335.8232

60's Songs

Find and circle all of the 1960's song titles that are hidden in the grid.
The remaining letters spell the title of an additional 1960's song.

M S E D U J Y E H R R E X O B E H T Y
S S W I L D T H I N G W I P E O U T K
T I M Z B C E C Y L E G N A N E E T O
H K Y Z R C R N E E Y A W A N U R O O
E T G Y D V A Y O P S B U S S T O P P
S S I W O A L R I T S T E L P A S O S
E A R N W L O Y A N S E E O M Y G U Y
E L L S N L V U V M G E R R K E R G H
Y W H I T E R A B B I T V R D F O P S
E B B H O R T F P N A A A L C A U N I
S L A P W I E E I T G P Y I A P Y I R
L U B M N O O V S N O Y T A P G S V E
E E Y E V P O I A O G Y R Y D O E O H
L V L M L O W G C W Z E L R U I S L C
E E O E R T N Y E A T O R L E D L D L
N L V G E I H Y R R V A M T R H D O A
O V E H A C U C G E I A E O I I S O H
R E T H T W I N D Y N F W H H P A G T
E T C I E B L U E M O O N Y A T S H R

BABY LOVE
BLUE MOON
BLUE VELVET
BUS STOP
CARA MIA
CHAIN GANG
CHERISH
CRAZY
CRYING
DIZZY
DOWNTOWN
EL PASO

ELENORE
FINGERTIPS
FIRE
GALVESTON
GOOD LOVIN'
GROOVIN'
HAIR
HEATWAVE
HEY JUDE
HOLIDAY
ITCHYCOO PARK
LAST KISS

MEMPHIS
MY GIRL
MY GUY
PEOPLE
PUPPY LOVE
RESPECT
RUNAWAY
SHERRY
SOUL MAN
SPOOKY
STAY
SURF CITY

TEEN ANGEL
THE BOXER
THE TWIST
THESE EYES
VALLERI
VOLARE
WHITE RABBIT
WILD THING
WINDY
WIPEOUT
WORDS
YESTERDAY

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