



PRISON CONSTRUCTION PLANS AND POLICY

HEARINGS

BEFORE THE

**SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE**

OF THE

**COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

**FEDERAL BUREAU OF PRISONS INSTITUTION
CONSTRUCTION PLANS AND POLICY**

JULY 28 AND 30, 1975

Serial No. 16



*United States Congress, House, Committee
on the Judiciary, Subcommittee on Courts,
Civil Liberties and the Administration of Justice.*

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PRISON CONSTRUCTION PLANS AND POLICY

MONDAY, JULY 28, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2237, Rayburn House Office Building. Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Pattison, Railsback, and Wiggins.

Also present: Bruce A. Lehman, counsel, Timothy A. Boggs, professional staff member, and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will come to order.

The Chair is convening the meeting with the sure knowledge that we will be joined shortly by several of my colleagues.

Today the subcommittee will begin the first of two scheduled days of public oversight hearings on the Federal Bureau of Prisons' construction policy and plans. For some time these plans have been the subject of a continuing debate within the Congress, the judiciary, and the growing corrections community.

I welcome this debate. For many years it has been my view that one of the unfortunate flaws in the discussion of the use of prisons is that so few members of the public have taken part. Slowly this is changing and correction issues now have a growing, active constituency.

Hopefully these hearings can begin a thoughtful discussion of both the specifics of the Bureau of Prisons' construction plans and the policy considerations underlying the continuing investment of tax dollars in the construction of prisons.

In 1969, following President Nixon's message on corrections, the Federal Bureau of Prisons began development of a proposal later called the "Long Range Master Plan" in which plans were proposed for construction of 29 new institutions, to complement the continued use of 33 of the then operating 39 Federal prisons.

Since that time the Bureau's plans have understandably been changed and adapted, and while Congress has appropriated moneys each year since 1970 for facility construction we have neither thoroughly scrutinized the overall proposal for new institutions nor analyzed the policy underlying the continued use of incarceration as the primary criminal justice sanction. Hopefully these hearings can be the beginning of such scrutiny and analysis.

In May 1970, the Bureau was operating 39 institutions. The original plans called for the closing of six of these, including the old penitentiaries at Atlanta, Leavenworth, and McNeil Island. Between May 1970 and December 31, 1975, 10 new institutions have been opened by the Bureau. Congress has appropriated funds for site acquisition and construction of 14 additional institutions and the Bureau's planning documents currently reflect an intention to ask Congress for funding for 21 additional institutions. If these plans are all carried out the Bureau would be operating 78 institutions by 1980. This figure does not include the 14 community treatment centers which the Bureau currently manages.

These plans and the continued commitment to the use of prisons as an instrument of correction have become very troublesome to many thoughtful people.

U.S. District Court Judge in my own district, James Doyle, stated in a recent prisoner rights opinion:

I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards and probably less rational.

Morales v. Schmidt, 1972.

Many, of course, do not share Judge Doyle's persuasion. However, a body of progressive thought seems to be developing in support of the commitment of public resources to alternatives to incarceration.

In December 1974, for example, the Select Committee on Minnesota Correctional Institutions recommended that a number of State prisons be closed and that funding be expanded to assure effective development of noninstitutional community-based correction programs.

In a similar vein in July 1972, the Final Report to the Governor of Wisconsin of the Citizen's Study Committee on Offender Rehabilitation reported:

The study committee has unequivocally established as its most fundamental priority the replacement of Wisconsin's existing institutionalized corrections system with a community-based, noninstitutional system.

The 1973 report of the Justice Department's National Advisory Commission on Criminal Justice Standards and Goals stated:

The failure of major institutions to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions do succeed in punishing, but they do not deter. They protect the community, but that protection is only temporary. They change the committed offender, but the change is more likely to be negative than positive. It is no surprise that institutions have not been successful in reducing crime. The mystery is that they have not contributed even more to increasing crime. The institution should be the last resort for correctional problems.

Many well respected organizations, including the National Council on Crime and Delinquency and the American Civil Liberties Union, have joined the call to halt further prison construction until a serious and planned effort is made to examine and attempt alternatives to incarceration. Whether this is possible in the context of the Federal prison system remains to be seen.

This element of planning is very important. If the Bureau of Prisons is to be mandated to build new prisons, I believe that this construction

must be considered as part of a well-documented, publicly developed long-range plan.

The Congress and the Bureau have been remiss in the failure to develop such a plan. Hopefully, Director Carlson and the subcommittee can work more closely in this effort in the future.

Meanwhile, the Congress must intelligently consider the Bureau of Prisons appropriations for 1976. At my request, pending further scrutiny by this subcommittee and the Appropriations Committee, \$23,200,000 requested by the Justice Department for the construction of two new prisons was deleted from the fiscal year 1976 appropriations. A similar deletion was made by the Senate for fiscal year 1975.

I am somewhat burdened by this deletion, for if we are going to oppose construction of new prisons, we must responsibly address the issue of how the three very old and crowded Federal penitentiaries at Atlanta, Leavenworth, and McNeil Island, Wash., are going to be closed. It is crucial that these institutions be shut down. McNeil Island was constructed in 1865 and criminal justice officials have been calling for its closure since 1910. Yet, yesterday its population count was 852. The subcommittee has twice visited Leavenworth and counsel is going again next month to investigate reports of poor conditions. I am troubled that the director of the Bureau of Prisons stated on September 19, 1974, that Leavenworth and Atlanta, "could not possibly be closed within the next 10 years" and that for each of the last 4 years the Bureau has requested funds for major capital improvements at each of these old penitentiaries.

I am also troubled that none of the critics of the Bureau has proposed a plan for the closing of these big houses. If this subcommittee is to support a moratorium on prison construction, such a plan must include the prompt closure of these three prisons. If this subcommittee is to support the construction of new prisons, such a plan must include the prompt closure of these three prisons. I will not take a position which will result in the maintenance of the overcrowded and ancient penitentiaries at Atlanta, McNeil Island, and Leavenworth.

The experience and expertise of the Bureau of Prisons are an indispensable element in the formulation of viable corrections policy and program. I urgently invite the Bureau to join the subcommittee in a continuing search for constructive solutions.

I have asked today's witnesses to address the subcommittee in three panels. Each individual has been asked to keep his testimony to approximately 10 minutes.

I am very pleased to call as our first witness Mr. Harold Confer, legislative secretary of the Friends Committee on National Legislation. Mr. Confer is accompanied, by Mr. Edward Honnold.

**TESTIMONY OF HAROLD CONFER, LEGISLATIVE SECRETARY,
FRIENDS COMMITTEE ON NATIONAL LEGISLATION;
ACCOMPANIED BY EDWARD HONNOLD**

MR. CONFER. Thank you very much. I would appreciate it if my statement could be entered into the record.

MR. KASTENMEIER. Without objection, your statement will be received.

[The prepared statement of Harold Confer follows:]

STATEMENT OF HAROLD CONFER ON BEHALF OF THE FRIENDS COMMITTEE
ON NATIONAL LEGISLATION

My name is Harold Confer, and I am the Legislative Secretary for Human Rights of the Friends Committee on National Legislation. I am here today with my research assistant, Edward Honnold.

The Friends Committee on National Legislation represents the interests of members of the Religious Society of Friends, or Quakers. Friends in this country and abroad have had a long and active history in the area of criminal justice and penal reform. However, in this matter, as in the many others in which we are involved, this Committee does not purport to speak for all Friends, who cherish their rights to individual opinions.

We are pleased to have the chance to discuss with you today the construction budget and plans of the Federal Bureau of Prisons. As this Subcommittee has recognized, prison construction plans are just one aspect of the federal correctional system needing oversight. We must also investigate the program, or lack of program, inside prisons. And we must question to what extent prisons as a form of institution play a helpful or necessary role in our criminal justice system.

Prison construction plans are an appropriate starting point for this discussion. Just as the availability of guns facilitates armed robbery, the construction of new prisons tends to strengthen policies of incarceration. If new prisons are built, they become integrated into the criminal justice system and are likely to be used. If new prisons are not built, new resources and talents can be made available to develop alternatives to prison, and to create social programs which can help build a society less prone to violence and crime of all kinds.

These arguments aside, however, federal prison construction plans can also be challenged on an administrative level. Year after year, Congress is approached with arguments concerning overcrowding, poor conditions, and the age of federal prisons. Often, it has seemed advisable to grant the funds requested in order to ameliorate these conditions.

On closer examination, however, these arguments for new prisons construction appear highly dubious. Facility methods of population projection, fuzzy analysis of prison capacities, and a host of other errors in planning and administration make it impossible for the Federal Bureau of Prisons to defend its program adequately. The federal prison system comes to resemble a chain of hotels run wild, building new facilities everywhere with little understanding of where its customers are coming from, or what to do with them once they arrived.

To analyze this situation closely, we must first know the facts. What are the dimensions of the Federal Bureau of Prisons construction plans, for this and future years? How well are these plans justified by actual need? And what questions should be raised about the Bureau's methodology of prison planning?

PRISON CONSTRUCTION MASTER PLAN AND BUDGETS

All federal prison construction plans must be viewed in the context of the Bureau of Prisons 10-year master plan. This plan, adopted in 1970, would lead to construction of 52 facilities in all, including 13 youth prisons, 4 Metropolitan Correctional Centers (MCC's), 1 Correctional Research Center (CRR), 5 psychiatric prisons, 1 hospital, 20 adult prisons, and 8 Community Treatment Centers. Total cost for these facilities is estimated to be between \$600 and \$700 million.

New prison construction, however, did not begin in 1970. Since 1961, nine new federal prisons and a number of jails and camps have been opened by the Bureau, with a total new inmate capacity of 5,556. During the same period, several prisons and one camp have been closed, with a total loss in inmate capacity of only 2,474. This leaves a net gain during the period of 3,082 cellspaces.

In addition, at least 12 new prisons are now in different stages of completion. Seven prisons with a projected total of 2,450 cellspaces are currently under construction, and sites are being planned and acquired for five other prisons with a total of 2,000 cellspaces. In sum, 4,450 cellspaces will be added to the system when these prisons are completed. Outlays for these projects will amount to \$18.6 million in FY 76 alone. These funds were all appropriated in previous years, and thus were unaffected by the appropriations process for FY 76.

See chart on next page.

Type of facility	Location	Planned capacity
A. New prisons under construction with funds appropriated in previous years. (work on these prisons will continue even if no new construction funds are approved for fiscal year 1976); ¹		
MCC.....	New York.....	500
MCC.....	Chicago.....	500
Youth.....	San Diego, Calif.....	250
Do.....	Bastrop, Tex.....	250
Do.....	Memphis, Tenn.....	250
Do.....	Miami, Fla.....	250
CRR.....	Butner, N.C.....	450
New cellspaces under construction.....		<u>2,450</u>
B. New prisons in the site planning stage with funds appropriated in previous years:		
Youth.....	Amarillo, Tex.....	3 400
Do.....	Athens, Ge.....	400
Do.....	No site yet.....	400
Do.....	do.....	400
Do.....	do.....	400
Cellsapaces under site planning.....		<u>2,000</u>

¹ According to Federal Bureau of Prisons publication, Monday Morning Highlights, and confirmed with Federal Bureau of Prisons Office of Information in Washington, D.C.

² Population for each of these new youth prisons is estimated by the Bureau to be not less than 250 and not more than 500.

Several of the above construction projects will require additional appropriations in the future to be completed. \$24.8 million will be needed to complete the youth prison in Bastrop, Texas, and \$18.4 million to complete the set of three new youth prisons in the southeast, in Miami, Memphis, and Athens.

Clearly, appropriations to start prison construction in one year build pressure for equal or greater expenditures for prison construction (and maintenance, eventually) in future years.

This year, the pattern of new Institution requests has continued. For FY '76 the Federal Bureau of Prisons requested new appropriations of \$254 million for all of its programs, of which \$35.7 million—or 14%—was designated for construction and renovation of prisons. Despite the restraints of recession, budget authority requests for all programs of the Bureau of Prisons represented a 15% increase for FY '76 over appropriations for FY '75 (from \$219.9 million to \$254 million), while requests for federal prison construction and renovation were up by over 38% from appropriations for FY 75 (from \$26 to \$35.8 million).

Of this \$35.8 million for construction and renovation, \$21.7 million was requested for construction of a prison for adults in the northeast region, in Otisville, New York. Only \$5 million of this sum was to be spent this year, the rest in future years.

\$1.5 million was also requested in order to plan and to acquire sites for a new adult prison in the south central region and a youth prison in the northeast. While the first-year costs for these two prisons are small, the Bureau estimates that final construction will require appropriations of an additional \$79.1 million in future years.

In the renovation budget, \$12.5 million was requested by the Bureau for FY '76 for 22 separate projects designed to "update" 18 existing institutions. These projects vary widely, including sewer improvement, roof replacement, and other plant improvement projects. However, two of these projects, little noticed by the Appropriations Committees, would lead to significant expansion of federal prison capacity: a new minimum custody camp planned for the prison at La Tuna, Texas, at a cost of \$800,000 would open between 100 to 125 new cellspaces; and a new housing unit to be built at the Pleasanton, California, prison at a cost of \$2,860,000 would open 125 new cellspaces. Interestingly enough, this prison at Pleasanton has been under-utilized for most of the year, as recently as June 30, 1975, by 6.8%.

Some question should be raised as to whether these are really "renovation" projects, as listed by the Bureau, or construction projects. While both the House and Senate Appropriations Committees have decided this year to withhold funds for new prison construction, these two "renovation" projects were approved.

Two other renovation projects approved for FY '76 should also be questioned: a new drug abuse facility costing \$145,000 for the Atlanta prison, and a new activities building, power plant, and other installations costing a total of \$805,000 for the Leavenworth prison. Both of these prisons are as the Chairman pointed out, ancient: Atlanta was built in 1902 and Leavenworth in 1895. An even older prison, McNeil Island, built just after the Civil War in 1865, enjoyed renovation work last year costing \$450,000:

Prison facility	Fiscal year 1975 project	Cost	Fiscal year 1976 project	Cost ¹
McNeil Island (1865)	Electric cables	\$450,000		
Atlanta (1902)	Activities building renovation	100,000	Drug abuse facility	\$145,000
Leavenworth (1895)	Construction of activities building	325,000	Powerplant, activities building, and waterproofing.	805,000

¹ Source: Appendices to the budget for fiscal year 1976 of the Federal Bureau of Prisons, Washington, D.C.

Such expensive projects tend to confirm that the Bureau of Prisons has no intention of closing these prisons in the foreseeable future.

In sum and I hope this is one of the most important things I am going to say this morning, with new prisons already completed, others in progress, a request for additional prisons pending in Congress and an active program of renovation which keeps old prisons alive, the Federal Bureau of Prisons is moving rapidly ahead with its master plan for system expansion.

Some figures I have mentioned to you so far are summarized below:

	<i>Millions of dollars</i>
Master plan costs:	
Federal Bureau of Prisons 10-yr master plan, 1970, projecting 52 new facilities in all	600-700
Fiscal year 1976 outlays and future needs:	
12 new prisons in stages of completion, outlays in fiscal year 1976	18.6
New authorization needed in future for completion of:	
Southeast youth complex	18.4
South central youth center	24.8
New authorization needed in future for completion of south central adult and northeastern youth complex if site acquisition funds approved this year	79.1
Fiscal year 1976 new budget authority requests:	
Total new appropriations requested for fiscal year 1976, Federal Bureau of Prisons	254
From total, amount designated for new construction and renovation	35.7
\$35.7 million figure includes:	
Construction of a new adult prison	21.7
Site planning and acquisition for 2 other prisons	1.5
Renovation costs on existing prisons	12.5

This year, as in the past, a variety of arguments have been raised in support of the Bureau's facilities construction program. We will deal with these arguments one by one.

PROBLEMS OF OVERCROWDING

The Bureau's most common argument is that existing prisons are overcrowded. However, the Bureau's statistics indicate that overcrowding is not a serious problem. On June 30, 1975, the most recent day for which statistics are available, the federal prison system as a whole was overcrowded at a rate of just 6.5%.¹ The opening of several new prisons in recent years, and the addition of three new prisons in 1974 alone, have brought the problem of overcrowding down to manageable level.

In some areas new prison capacity has even surpassed the need, leaving many prisons under-utilized. For example, on June 30, 1975, seventeen separate facilities were under-utilized, by these percentages: Eglin (camp), by 15.8%; Lexington (female), 12.7%; Lexington (male), 10.9%; Leavenworth (camp), 37.7%;

¹ See Federal Bureau of Prisons "Monday Morning Highlights," July 7, 1975.

Marin, 8%; Oxford, 1.8%; Sandstone, 5.6%; El Paso Detention Center, 1.3%; Fort Worth (female), 10%; Fort Worth (male), 17%; Florence Detention Center, 27.7%; Lompoc, 12.4%; Lompoc (camp), 20.9%; McNeil Island (camp), 16%; Alderson, .6%; Pleasanton (female), 3.3%; and Pleasanton (male), 6.8%.

Interestingly enough, if one subtracts the total number of prison spaces which the Bureau claims it currently lacks—1,433—from the total number of cellspaces in prisons currently under construction—1,450—it appears that a surplus of cellspaces is likely. Barring unforeseen jumps in inmate population, this surplus could exceed 3,000 within the next few years:

Perhaps in response to this situation, the Bureau of Prisons has recently come to argue that prison overcrowding is not a national but a regional problem. The Bureau argues that more prisons should be built in each region so that no prisoner will have to be transported too far from home.

However, there is at least one under-utilized prison at present in each of the Bureau's five regions, and the average is more than three. In addition, population centers in one region may be geographically closer to prisons in an adjacent "region" than to prisons within its own. In the past, the Bureau has rarely hesitated to transfer inmates from one region to another at its own convenience; regional divisions within the federal prison system were developed for administrative efficiency, not to create inmate population pools.

If the Bureau is sincerely reluctant to move prisoners too far from home, it could place greater emphasis on the use of Community Treatment Centers, or halfway houses, instead of building new prisons. On June 30, 1975, only one of the Federal Bureau of Prisons' ten Community Treatment Centers (in Chicago) was being used to capacity. Another, however (in Long Beach), was half empty; and Community Treatment Centers nationwide were being under-utilized at a rate of 18.6%. These statistics fluctuate wildly from month to month. Three months earlier, in March, 1975, the under-utilization rate in federal Community Treatment Centers was 34%.

The Director of the Federal Bureau of Prisons has supported Community Treatment Centers as a "good investment" because they "not only permit us to ease offenders back into society more successfully, but in the long run, they can also save money."² Carlson has testified that the average cost per day of supporting an inmate in a Community Treatment Center in 1976 is expected to be \$12.76, versus \$21.22 in a conventional prison. He has gone on to show that "because of limited facilities, only a minority of releases who can benefit . . . are now being served in these halfway houses."

Statistics would tend to support the Director's contention that more federal prisoners could be located in Community Treatment Centers than at present. Fewer than 25% of federal prisoners have been committed for violent offenses, such as murder and rape. The rest have been convicted of non-violent offenses (or victimless crimes) in which no injury was inflicted upon another individual. Many of these persons should be eligible for the lower-security, less expensive and less personally debilitating treatment available in a halfway house.

In sum, under-utilization rates at a wide variety of federal prisons, including Community Treatment Centers, plus the prospect of several thousand new cellspaces to be available as prisons under construction are completed, lead us to regard with skepticism any claims of serious overcrowding in federal prisons.

CONFUSION OVER PLANNED CAPACITIES

Unfortunately, any discussion of prison utilization is clouded by confusion over what "overcrowding" means. What is the appropriate *cellspace capacity* of each of the federal prisons? Officials of the federal prison system do not seem to agree. For each institution, the architect who originally designed the institution is likely to have one idea of planned capacity, the warden in charge of that prison another, and central administrators in Washington several more. A jumble of terms such as "planned capacity," "optimum capacity," and "present capacity" lack clear definition, and the figures to which they are supposed to relate shift constantly to suit the convenience of prison officials.

One certain fact is that various capacity figures for federal prisons have declined radically since those institutions were originally built. An official bureau

² See testimony by Norman Carlson, Director of the Federal Bureau of Prisons, before the House Appropriations Subcommittee on State, Justice, Commerce and the Judiciary, Apr. 17, 1975.

-publication listed "planned capacity" figures² in 1955 for various facilities which are assigned these much-reduced "planned capacity" figures today :

Prison	Planned capacity	
	1955	1975
Lewisburg.....	1,297	1,150
Petersburg.....	618	500
Atlanta.....	2,103	1,900
Ashland.....	463	425
Tallahassee.....	598	480
Leavenworth.....	1,976	1,680
Milan.....	563	535
Terre Haute.....	1,114	850
El Paso.....	1,146	900
Englewood.....	488	325
Terminal Island.....	785	760

By readjusting "planned capacity" figures for these 11 institutions, the Bureau "lost" a total of 1646 prison cellspaces. Yet the total shortfall of cellspaces for the federal prison system as of June 30, 1975 was only 1,433. If the Bureau had not "lost" 1646 cellspaces between 1955 and 1975 through altered figures, the system as a whole today would enjoy a net surplus of 213 cellspaces (+.9%) instead of a net shortfall of 1,433 (-6.5%).

Whose "capacity plan" has changed over these twenty years? The official explanation is that humanitarian considerations today allow each prisoner more floorspace, and greater cellspace privacy than before. If definitions of cellspace allotments were clear and uniformly accepted throughout the Bureau, this argument could carry weight. But at present, prison capacity figures which decrease without clear justification have the effect—if not also the intent—of creating the misleading impression that federal prisons are dangerously overcrowded.

TRENDS IN FEDERAL PRISON POPULATION

In planning for the future, problems of overcrowding are closely linked with trends in prison population. Yet accurate projections in this area are extraordinarily difficult to make. Changes in federal law, fluctuations of the economy, and new patterns of prosecution can all have an impact on the number of persons incarcerated.

As a result, the track record of the Federal Bureau of Prisons in population projections has not been good. In 1955, for example, the Bureau predicted an inmate population of 25,000 in 1965. However, between 1955 and 1965 the federal prison population grew only half as rapidly as expected, and finally reached fewer than 23,000. Similarly, in 1960 the Bureau predicted an inmate population in 1975 of 30,000. Today, however, the population is just over 23,500, or 1500 less than projected for 10 years ago, and 6500 less than projected for today.

In fact, since 1940, the federal inmate population has grown by less than 3400 persons, from 20,198 in 1940 to 23,566 today. This constitutes an overall growth rate of *less than 100 persons per year*. Within this period there have been wide fluctuations, with a low in 1950 of just over 17,000 and a high in 1962 of almost 25,000. But in the last thirteen years, the federal prison population has never again reached the high point of 1962. Last year, the federal prison population declined.

Yet the Bureau of Prisons is convinced that prison populations will grow. Arguments vary with the times.

Earlier this year, at the height of the recession, the Bureau of Prisons quoted studies conducted by the Congressional Research Service which indicated a direct relation between the rate of unemployment and rates of crime. As a result, the Bureau predicted that federal prison population would increase by 1000 during the current fiscal year, representing a faster rate of growth than in all but four of the previous thirty-five years of the Bureau's history.

² From "A Program for Future Development of the Federal Prison System: A Detailed Analysis," table 6, Aug. 15, 1955.

More recently, economic indicators have improved, and unemployment rates have stabilized. As a result, the Bureau is now less interested in economic factors and points instead to the rate of criminal case filings. Criminal filings, which had been on the decline for the first six months of the year, have most recently gone up. Last year, however, they went down.

This confusing situation illustrates the hazards of using short-term indicators to predict long-term trends in prison population. It also illustrates the willingness of the federal prison administration to justify an expansion of its program at the expense of logical consistency.

Many commentators suggest that an important demographic trend in the American population—the passing of the “youth bulge”—portends lower crime rates and lowered prison populations in the future. Others point to the likely decriminalization of various offenses, recent decreases in prison commitments in the areas of drug and selective service law, and the likelihood of expanded use of parole and probation.

However, speculating about future prison population is not the most useful activity for this Subcommittee. Instead, it should be enough to note that others who have attempted to make these predictions have failed, and also that these trends are open to influence. This Subcommittee could consider initiating various changes in law and correctional policy to reduce prison populations.

CLOSING DOWN THE OLD FACILITIES

Some persons believe new prisons should be built to replace old ones. Three prisons in particular seem fit for retirement: McNeil Island, built in 1865; Leavenworth, built in 1895; and Atlanta, built in 1902.

In 1960, the Federal Bureau of Prisons publicly slated McNeil Island for closure in 1965, Atlanta for 1975, and Leavenworth for 1979. Yet today, all three prisons remain open. And as we noted earlier, expensive renovations have been approved for two of them for this current year, and for all three of them last year.

We also pointed out earlier that since 1960, when the Federal Bureau of Prisons originally stated its intention to close these prisons, the federal prison system has enjoyed a net gain of 3,082 cellspace. Yet the total number of federal prisoners has actually declined by 408 since the end of 1960. These changes alone should have allowed for closure of at least two of these antiquated institutions. Why has not a single one of them been closed?

Together, these three prisons on June 30, 1975, housed 4,629 inmates:

Prison:	Population as of June 30, 1975
Atlanta -----	2,065
Leavenworth -----	1,726
McNeil Island -----	838
Total -----	4,629

While this is a large number of prisoners—19% of the total in the federal system at present—it is only slightly more than the total number of new cellspace to be made available when prisons currently under site planning and construction are completed. Theoretically, it should be possible within the next several years to close all three of these old prisons, and to distribute the inmates among the twelve new prisons.

Unfortunately, however, nine of the twelve prisons under construction are youth prisons unsuitable as replacements for McNeil Island, Atlanta, and Leavenworth, which are maximum security penitentiaries. Clearly, the Bureau of Prisons has not made accommodation for the closure of these three old prisons in its plans. In fact, we were informed by the Bureau's Office of Information here in Washington that the Bureau has no intention of closing any one of these antiquated prisons for the next ten years.

Old prisons, like new prisons, are a source of income and livelihood to the regions in which they are located and to staff who work there. Perhaps these factors, coupled with a strong reluctance within the Bureau to trim its own program, serve to sustain old prisons long after they could be replaced.

Our suggestion would not be to remedy poor planning in the past with better planning today, to build replacement prisons for Atlanta, Leavenworth, and Mc-

Neil Island. Instead, alternatives to prison should be developed to lower population throughout the system, so these three prisons—like others of their kind—can peacefully pass away.

INAPPROPRIATE LOCATION OF PRISONS

A final point often raised is that too many existing prisons are located in isolated rural areas which leave them "out of sight, out of mind". For reasons of family ties and rehabilitation, the Bureau proposes in its master plan that new facilities be built "reasonably close to the areas in which large concentrations of inmates live and to which they will return".

However, of the last nine prisons opened by the Bureau, six have been located in rural areas. For example, in Wisconsin a new prison abandoned by the state as a result of a new policy of de-incarceration was purchased by the Federal Bureau of Prisons. This prison is located in Oxford, 70 miles north of Madison, the nearest city, in one of the most isolated regions of the state.

Also, three new federal prisons now under construction are in rural areas: in Athens, Ga. (30 miles from the nearest town); in Otisville, New York (65 miles from New York City, from which most inmates will be drawn); and Bastrop, Texas (20 miles north of Austin). All of these locations will be inaccessible to many inmate families, and qualified prison staff will be hard to find.

In this instance again, construction plans are inconsistent with the Bureau's stated goals.

QUESTIONS OF METHODOLOGY

All these points we have discussed today raise basic questions about the Bureau's goals, and its methodology of planning. Some appropriate questions to investigate further are these:

By what process did the Bureau of Prisons embark on its 10-year master plan for prison construction? Was this plan as a whole ever justified publicly?

What is the definition of a "renovation" project? Are new cell units built at existing prison sites properly classified as "renovation" or "construction"?

What studies of cost or effectiveness have been done to justify expensive renovations of three old prisons, Atlanta, Leavenworth, and McNeil Island? By what method does the Bureau choose to close old prisons as new ones are completed?

What impact on overcrowding does the Bureau expect to result from completion of the twelve new federal prisons currently under construction?

By what criteria are prisoners assigned to one or another of the federal prisons? Are regional considerations so important?

How does the Bureau understand the role and effectiveness of Community Treatment Centers? Can available spaces in these Centers be used to relieve alleged overcrowding in other facilities?

What studies have been done to show the cost or effectiveness of Community Treatment Centers as opposed to other prisons?

Is any attempt being made to rationalize the variety of confusing definitions of capacity spacing within federal institutions? By what process are capacity figures derived, and altered?

In the light of past difficulties experienced in estimating future prison populations, can it be assumed that future trends in inmate population will move in any one direction rather than another?

By what process does the Bureau of Prisons develop construction priorities from year to year, within its master plan? How will the construction of youth prisons facilitate the closing of maximum security penitentiaries like Atlanta and Leavenworth?

And finally, has the process of planning within the Bureau taken into consideration the possibility of changes in correctional policy, such as decriminalization, flat-time sentences, pre-trial diversion, and expansion of parole and probation? Have the Bureau's administrators taken initiative in exploring and advocating any of these changes? What changes of this kind could be made within the prison system without change in law or correctional guidelines?

Mr. CONFER. The Friends Committee on National Legislation represents the interests of members of the Religious Society of Friends, or Quakers. Friends in this country and abroad have had a long and active history in the area of criminal justice and penal reform. However,

in this matter, as in the many others in which we are involved, this committee does not purport to speak for all Friends, who cherish their rights to individual opinions.

We are pleased to have the chance to discuss with you today the construction budget and plans of the Federal Bureau of Prisons. As this subcommittee has recognized, prison construction plans are just one aspect of the Federal correctional system needing oversight. We must also investigate the program, or lack of program, inside prisons. And we must question to what extent prisons as a form of institution play a helpful or necessary role in our criminal justice system.

Prison construction plans are an appropriate starting point for this discussion. Just as the availability of guns facilitates armed robbery, the construction of new prisons tends to strengthen policies of incarceration. If new prisons are built, they become integrated into the criminal justice system and are likely to be used. If new prisons are not built, new resources and talents can be made available to develop alternatives to prison, and to create social programs which can help build a society less prone to violence and crime of all kinds.

These arguments aside, however, Federal prison construction plans can also be challenged on an administrative level. Year after year, Congress is approached with arguments concerning overcrowding, poor conditions, and the age of Federal prisons. Often, it has seemed advisable to grant the funds requested in order to ameliorate these conditions.

On closer examination, however, these arguments for new prison construction appear highly dubious. Faulty methods of population projection, fuzzy analysis of prison capacities, and a host of other errors in planning and administration make it impossible for the Federal Bureau of Prisons to defend its program adequately. The Federal prison system comes to resemble a chain of hotels run wild, building new facilities everywhere with little understanding of where its customers are coming from, or what to do with them once they arrive.

To analyze this situation closely, we must first know the facts. What are the dimensions of the Federal Bureau of Prisons construction plans, for this and future years? How well are these plans justified by actual need? And what questions should be raised about the Bureau's methodology of prison planning?

All federal prison construction plans must be viewed in the context of the Bureau of Prisons' 10-year master plan. This plan, adopted in 1970, would lead to construction of 52 facilities in all, including 13 youth prisons, four Metropolitan Correctional Centers, MCC's, one Correctional Research Center, CRR, five psychiatric prisons, one hospital, 20 adult prisons, and eight community treatment centers. Total cost for these facilities is estimated to be between \$600 and \$700 million.

New prison construction, however, did not begin in 1970. Since 1961, nine new Federal prisons and a number of jails and camps have been opened by the Bureau, with a total new inmate capacity of 5,556. During the same period, several prisons and one camp have been closed, with a total loss in inmate capacity of only 2,474. This leaves a net gain during the period of 3,082 cellspaces.

In addition, at least 12 new prisons are now in different stages of completion. Seven prisons with a projected total of 2,450 cellspaces are

currently under construction, and sites are being planned and acquired for five other prisons with a total of 2,000 cellspaces. In sum, 4,450 cellspaces will be added to the system when these prisons are completed. Outlays for these projects will amount to \$18.6 million in fiscal year 1976 alone. These funds were all appropriated in previous years, and thus were unaffected by the appropriations process for fiscal year 1976.

I have put these into two charts on the next page, one for the prisons that are actually under construction, and one for those which were under site plan.

Several of the above construction projects will require additional appropriations in the future to be completed. \$24.8 million will be needed to complete the youth prison in Bastrop, Tex., and \$18.4 million to complete the set of three new youth prisons in the southeast, in Miami, Memphis, and Athens.

Clearly, appropriations to start prison construction in 1 year build pressure for equal or greater expenditures for prison construction, and maintenance eventually, in future years.

This year, the pattern of new institution requests has continued. For fiscal year 1976, the Federal Bureau of Prisons requested new appropriations of \$254 million for all of its programs, of which \$35.7 million—or 14 percent—was designated for construction and renovation of prisons. Despite the restraints of recession, budget authority requests for all programs of the Bureau of Prisons represented a 15 percent increase for fiscal year 1976 over appropriations for fiscal year 1975, from \$219.9 million to \$254 million, while requests for Federal prison construction and renovation were up by over 38 percent from appropriations for fiscal year 1975, from \$26 to \$35.8 million.

Of this \$35.8 million for construction and renovation, \$21.7 million was requested for construction of a prison for adults in the northeast region, in Otisville, N.Y. Only \$5 million of this sum was to be spent this year, the rest in future years.

\$1.5 million was also requested in order to plan and to acquire sites for a new adult prison in the south central region and a youth prison in the northeast. While the first-year costs for these two prisons are small, the Bureau estimates that final construction will require appropriations of an additional \$79.1 million in future years.

In the renovation budget, \$12.5 million was requested by the Bureau for fiscal year 1976 for 22 separate projects designed to update 18 existing institutions. These projects vary widely, including sewer improvement, roof replacement, and other plant improvement projects. However, two of these projects, little noticed by the Appropriations Committees, would lead to significant expansion of Federal prison capacity: a new minimum custody camp planned for the prison at La Tuna, Tex., at a cost of \$800,000 would open between 100 to 125 new cellspaces; and a new housing unit to be built at the Pleasanton, Calif., prison at a cost of \$2,860,000 would open 125 new cellspaces. Interestingly enough, this prison at Pleasanton has been underutilized for most of the year, as recently as June 30, 1975, by 6.8 percent.

Some question should be raised as to whether these are really renovation projects, as listed by the Bureau, or construction projects. While both the House and Senate Appropriations Committees have decided

this year to withhold funds for new prison construction, these two renovation projects were approved.

Two other renovation projects approved for fiscal year 1976 should also be questioned: a new drug abuse facility costing \$145,000 for the Atlanta prison, and a new activities building, powerplant, and other installations costing a total of \$805,000 for the Leavenworth prison. Both of these prisons are, as the chairman pointed out, ancient: Atlanta was built in 1902 and Leavenworth in 1895. An even older prison, McNeil Island, built just after the Civil War in 1865, enjoyed renovation work last year costing \$450,000.

We have also put these into a chart at the top of page 5.

Such expensive projects tend to confirm that the Bureau of Prisons has no intention of closing these prisons in the foreseeable future.

In sum, and I hope this is one of the most important things I am going to say this morning, with new prisons already completed, others in progress, a request for additional prisons pending in Congress and an active program of renovation which keeps old prisons alive, the Federal Bureau of Prisons is moving rapidly ahead with its master plan for system expansion. These are the master figures that I have listed in the chart below and I have tried to take the budget figures which I have taken out of the budget and put them in the chart at the bottom of page 5.

This year, as in the past, a variety of arguments have been raised in support of the Bureau's facilities construction program. We will deal with these arguments one by one.

The Bureau's most common argument is that existing prisons are overcrowded. However, the Bureau's statistics indicate that overcrowding is not a serious problem. On June 30, 1975, the most recent day for which statistics are available, the Federal prison system as a whole was overcrowded at a rate of just 6.5 percent. See the Federal Bureau of Prisons' "Monday Morning Highlights," dated July 7, 1975. The opening of several new prisons in recent years, and the addition of three new prisons in 1974 alone, have brought the problem of overcrowding down to manageable level.

In some areas new prison capacity has even surpassed the need, leaving many prisons underutilized, and I list these in the rest of this paragraph.

Interestingly enough, if one subtracts the total number of prison spaces which the Bureau claims it currently lacks—1,433—from the total number of cellspaces in prisons currently under construction—4,450—it appears that a surplus of cellspaces is likely. Barring unforeseen jumps in inmate population, this surplus could exceed 3,000 within the next few years.

Perhaps in response to this situation, the Bureau of Prisons has recently come to argue that prison overcrowding is not a national but a regional problem. The Bureau argues that more prisons should be built in each region so that no prisoner will have to be transported too far from home.

However, there is at least one underutilized prison at present in each of the Bureau's five regions, and the average is more than three. In addition, population centers in one region may be geographically closer to prisons in an adjacent region than to prisons within its own. In the past, the Bureau has rarely hesitated to transfer inmates from one

region to another at its own convenience; regional divisions within the Federal prison system were developed for administrative efficiency, not to create inmate population pools.

If the Bureau is sincerely reluctant to move prisoners too far from home, it could place greater emphasis on the use of community treatment centers, or halfway houses, instead of building new prisons. On June 30, 1975, only one of the Federal Bureau of Prisons' 10 community treatment centers—in Chicago—was being used to capacity. Another, however—in Long Beach—was half empty; and community treatment centers nationwide were being underutilized at a rate of 18.6 percent. These statistics fluctuate wildly from month to month. Three months earlier, in March 1975, the underutilization rate in Federal community treatment centers was 34 percent.

The Director of the Federal Bureau of Prisons has supported community treatment centers as a good investment because they not only permit us to ease offenders back into society more successfully, but in the long run, they can also save money. See the testimony by Norman Carlson, Director of the Federal Bureau of Prisons, before the House Appropriations Subcommittee on State, Justice, Commerce, and the Judiciary, dated July 17, 1975. Carlson has testified that the average cost per day of supporting an inmate in a community treatment center in 1976 is expected to be \$12.76 versus \$21.22 in a conventional prison. He has gone on to show that because of limited facilities, only a minority of releasees who can benefit are now being served in these halfway houses.

Statistics would tend to support the Director's contention that more Federal prisoners could be located in community treatment centers than at present. Fewer than 25 percent of Federal prisoners have been committed for violent offenses, such as murder and rape. The rest have been convicted of nonviolent offenses—or victimless crimes—in which no injury was inflicted upon another individual. Many of these persons should be eligible for the lower security, less expensive, and less personally debilitating treatment available in a halfway house.

In sum, underutilization rates at a wide variety of Federal prisons, including community treatment centers, plus the prospect of several thousand new cellspaces to be available as prisons under construction are completed, lead us to regard with skepticism any claims of serious overcrowding in Federal prisons.

Unfortunately, any discussion of prison utilization is clouded by confusion over what overcrowding means. What is the appropriate cellspace capacity of each of the Federal prisons? Officials of the Federal prison system do not seem to agree. For each institution, the architect who originally designed the institution is likely to have one idea of planned capacity, the warden in charge of that prison another, and central administrators in Washington several more. A jumble of terms, such as planned capacity, optimum capacity, and present capacity lack clear definition, and the figures to which they are supposed to relate shift constantly to suit the convenience of prison officials.

One certain fact is that various capacity figures for Federal prisons have declined radically since those institutions were originally built. An official Bureau publication listed planned capacity figures in 1955 for various facilities which are assigned these much-reduced planned capacity figures today. These figures come straight from their master

plan, "A Program for Future Development of the Federal Prison System: A Detailed Analysis," Table 6, dated August 15, 1955.

By readjusting planned capacity figures for these 11 institutions, the Bureau lost a total of 1,646 prison cellspace. Yet the total shortfall of cellspace for the Federal prison system as of June 30, 1975, was only 1,433. If the Bureau had not lost 1,646 cellspace between 1955 and 1975 through altered figures, the system as a whole today would enjoy a net surplus of 213 cellspace—plus .9 percent—instead of a net shortfall of 1,433—minus 6.5 percent.

Whose capacity plan has changed over these 20 years? The official explanation is that humanitarian considerations today allow each prisoner more floorspace, and greater cellspace privacy than before. If definitions of cellspace allotments were clear and uniformly accepted throughout the Bureau, this argument could carry weight. But at present, prison capacity figures which decrease without clear justification have the effect—if not also the intent—of creating the misleading impression that Federal prisons are dangerously overcrowded.

In planning for the future, problems of overcrowding are closely linked with trends in prison population. Yet, accurate projections in this area are extraordinarily difficult to make. Changes in Federal law, fluctuations of the economy, and new patterns of prosecution can all have an impact on the number of persons incarcerated.

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Yet the Bureau of Prisons is convinced that prison populations will grow. Arguments vary with the times.

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first 6 months of the year, have most recently gone up. Last year, however, they went down.

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Some persons believe new prisons should be built to replace old ones. Three prisons in particular seem fit for retirement, the three that were mentioned by the chairman this morning: McNeil Island, built in 1865; Leavenworth, built in 1895; and Atlanta, built in 1902.

In 1960, the Federal Bureau of Prisons publicly slated McNeil Island for closure in 1965, Atlanta for 1975, and Leavenworth for 1979. Yet today, all three prisons remain open. And as we noted earlier, expensive renovations have been approved for two of them for this current year, and for all three of them last year.

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Together, these three prisons on June 30, 1975, housed 4,629 inmates, as listed in the chart below.

While this is a large number of prisoners—like 19 percent of the total in the Federal system at present—it is only slightly more than the total number of new cell spaces to be made available when the prisons currently under site planning and construction are completed. Theoretically, it should be possible within the next several years to close all three of these old prisons, and to distribute the inmates among the 12 new prisons.

Unfortunately, however, 9 of the 12 prisons under construction are youth prisons unsuitable as replacements for McNeil Island, Atlanta, and Leavenworth, which are maximum security penitentiaries. Clearly, the Bureau of Prisons has not made accommodations for the closure of these three old prisons in its plans. In fact, we were informed by the Bureau's Office of Information here in Washington that the Bureau has no intention of closing any one of these antiquated prisons for the next 10 years.

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Also, three new Federal prisons now under construction are in rural areas: in Athens, Ga., 30 miles from the nearest town; in Otisville, N.Y., 65 miles from New York City, from which most inmates will be drawn; and Bastrop, Texas, 20 miles north of Austin. All of these locations will be inaccessible to many inmate families, and qualified prison staff will be hard to find.

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What studies of cost or effectiveness have been done to justify expensive renovations of three old prisons, Atlanta, Leavenworth, and McNeil Island? By what method does the Bureau choose to close old prisons as new ones are completed?

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What studies have been done to show the cost or effectiveness of community treatment centers as opposed to other prisons?

Is any attempt being made to rationalize the variety of confusing definitions of capacity spacing within Federal institutions? By what process are capacity figures derived, and altered?

In the light of past difficulties experienced in estimating future prison populations, can it be assumed that future trends in inmate population will move in any one direction rather than another?

By what process does the Bureau of Prisons develop construction priorities from year to year, within its master plan? How will the construction of youth prisons facilitate the closing of maximum security penitentiaries like Atlanta and Leavenworth?

And, finally, has the process of planning within the Bureau taken into consideration the possibility of changes in correctional policy, such as decriminalization, flat-time sentences, pre-trial diversion, and expansion of parole and probation? Have the Bureau's administrators taken initiative in exploring and advocating any of these changes? What changes of this kind could be made within the prison system without change in law or correctional guidelines?

Thank you very much. If I can answer any questions, I will be pleased to.

MR. KASTENMEIER. Thank you, Mr. Confer, for a very illuminating statement.

I think at the outset, while we are really discussing the Bureau of Prisons, it should be understood that the Bureau of Prisons is not wholly responsible for the criminal justice system. They are one part of the continuum. They do not write the statutes or arrest people or prosecute them or sentence them. We cannot expect the Director of the Bureau of Prisons to assume responsibility beyond that for which he has direct authority, although, of course, he can make recommendations. In other words, he is the receiver of people under sentence, and we cannot fault him for what is criminal or not decriminalized. So really when we discuss this in terms of the Bureau of Prisons, we are only talking about one entity that has a responsibility for what you would ideally like to see happen. Is that not correct?

MR. CONFER. Right. And that is why I stuck primarily to their projections and budgets rather than talking about alternatives.

MR. KASTENMEIER. One of the criticisms that you level, is, that present facilities may be underutilized, and you point out the reduction over the years in prison populations at the major criminal centers. Can you have it both ways in that connection? Most critics of the prison system have, in fact, criticized various systems for overpopulating prison systems, for administrators who do not, in fact, move toward smaller prisons and smaller prison populations. Therefore, how can you be a critic of the fact that Atlanta 20 years ago had a population of 2,103 and now its planned capacity is 1,900. That is what your comparison is. How can we fault the Bureau of Prisons for trying to reduce overcrowding in these facilities, to reduce the populations to more manageable, more optimum sizes in some of the Federal institutions?

MR. CONFER. I guess our problem with it is not with that of overcrowding. Our problem is with the way in which they seem to manipulate the figures in order to get construction moneys to build new prisons. If, in fact, their lower population figures would have meant

that these three ancient prisons you talked about earlier had been closed earlier, then you might be able to take into account more of the stated humanitarian goals of lowering the projection figures, but in fact they are asking for renovation moneys at the same time for the old facilities, so it is clear that they are not trying to close those facilities down. And I just think that it is a question of who has been truthful in terms of their figures. And I do not mean to impugn motives here. But when you manipulate figures, and then for supposed humanitarian considerations, and the three worst prisons in the system are continually being renovated, I do not see how that is in any way having it both ways. I think that is having it both ways on the other end of the spectrum.

MR. KASTENMEIER. I think the present Director of Prisons present views are that so long as the Federal Bureau of Prisons is mandated to be the keeper of a number of individuals under sentence in the Federal system, he will insist that the conditions be as humane as possible, and he will try to make them as humane as possible. One of the ways to accomplish this is to have new and decent facilities for incarceration, assuming you have incarceration. How can you say we should not have any humane prisons rather than the old debilitated institutions?

MR. CONFER. I guess the experience that we have had within the country is that when we have new institutions, we tend to fill them up, and I have not seen too many examples of the old institutions being closed down. In fact, we end up creating more total bed spaces, and then we end up filling them. And I think this is a political problem as well as a budgetary problem. It is very hard, it seems to me, to opt for construction of a new facilities if then that facility is going to go empty. The taxpayers are going to say, you know, why, why have you spent so many million dollars in constructing new facilities if you do not really intend to use them. So I think it is a political problem as well. It is not just a problem that is integrated within the criminal justice system.

MR. KASTENMEIER. I take it it is your view that we need less space in prison, and we need to deal with people by other means. You mentioned decriminalization, but this is something that the Bureau of Prisons is not responsible for. You mentioned halfway houses, and to some extent the Bureau may be able, through their own philosophy and their own allocation of resources, to place a greater emphasis on that as an alternative means of custody than the traditional setting. How far would you go in that connection in advising them?

MR. CONFER. Again, I would point to alternatives within the Federal Bureau of Prisons presently. The Community Treatment Centers that are presently underutilized. I think within the guidelines that the Federal Bureau of Prisons has, and I am not talking about what they get necessarily as guidelines from the courts, but within their own system they have alternatives within the system that they can use that they are not using presently. And certainly they are not using it to the extent that they could use them. And so I would say that irrespective of whether alternatives are produced on the outside that there are obviously alternatives on the inside that are being underutilized.

MR. KASTENMEIER. I take it it is not your position that we could literally close all prisons?

Mr. CONFER. No. I think that is a very unreal position, and I think that the fact that 25 percent of your inmates are in for violent offenses means that there is going to be a need for incarceration of some form to deal if not with them, with perhaps even a wider population than that. I guess my feeling is that these people who are probably your most difficult people to deal with in society have even less time and facilities spent on them, because we are having to house the other 75 percent that we could possibly deal with in other, less expensive ways.

Mr. KASTENMEIER. If you were negotiating with the Federal Bureau of Prisons in terms of the future, would you be willing to make a deal with them; that is to say, that if they agree to close the facilities that ought to be closed, would you be agreeable to granting them new money for new facilities?

Mr. CONFER. I do not think so, because I think that there is enough. If you went back to their original projections, for example, of cell space, and if you added to those cell spaces the new prisons that are either under construction or under site acquisition, you would actually end up with more cell spaces than you presently need. For example, your closure of your three old institutions, if you close down Leavenworth, Atlanta, and McNeil Island, you would lose—well, you would add a need for 4,629 inmates, and you got rid of overcrowding that they said was in existence, you would have 1,433 spaces, for a total of 6,062. But if you went back to the lost capacity changes by the juggling of figures, you would add 1,646. And if you added the new cell spaces that are currently under construction or site acquisition, you would add 4,450, for a total of 6,906, and you would actually have 34 to the better. So I just think, you know, they have enough under construction, obviously. They have manipulated these figures, so you can argue this both ways.

Mr. KASTENMEIER. Of course, the Bureau of Prisons can speak for itself.

Mr. CONFER. Sure.

Mr. KASTENMEIER. But I wonder about how convincing your explanation to the retention of these facilities is when you say that old prisons are a source of income and livelihood to regions in which they are located and to the staff who work there. Do you think that is the real explanation of why those facilities have not been either closed or even programmed for closing in the near future?

Mr. CONFER. Well, I think there are a lot of other reasons as well. I think those are two very important reasons. But I am sure there are many other reasons both within and without the criminal justice system. I think there are political reasons as well. There are all kinds of reasons why prisons do not get closed down.

Mr. KASTENMEIER. Political reasons?

Mr. CONFER. Well again, if you have an existing institution, and you do not have a plan to move those inmates into other kinds of facilities, or convince the community that you can rationally deal with them, then that becomes a political problem to close that prison down. This is certainly one of the problems that was faced in Mr. Drinan's State, in Massachusetts, in closing down facilities there. It takes a lot of preparation in the community to convince the community that this is something that is not a bad thing for the community.

Mr. CONFER. Yes; I think so.

Mr. KASTENMEIER. Thank you. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Confer, there may be some undercrowded facilities in the Federal system, and on that point I cannot quarrel with you. However, I did have a chance to visit Leavenworth, and if ever there was an overcrowded facility a year ago, at least in my judgment, it was that particular facility. I do not know if you have ever had a chance to visit that one.

Mr. CONFER. No, I have not.

Mr. RAILSBACK. Well, I think that particular institution was probably the worst except for the Cook County jail as far as overcrowding. Cook County jail is absolutely terrible.

Let me ask you this: Given the existing Federal facilities, what would you do as far as programs to try to improve, or restore, or renovate, or change? What programs would you implement if you had the job of Norm Carlson?

Mr. CONFER. I think, as I tried to state earlier, I would try as much as possible to move the nonviolent offenders into the less expensive to run, perhaps less debilitating kinds of facilities to the individuals involved to the community treatment centers, halfway houses. I would try to keep those up to maximum capacity.

Mr. RAILSBACK. Would you go any further and would you expand that kind of facility?

Mr. CONFER. They certainly have that kind of mandate under their construction plan. They could be constructing community treatment centers instead of youth facilities, for example. They could be doing lots of things that would lie within their mandate. I would definitely do that, and that could be done within the prerogative of their mandate. And I do not think most people would have too much argument with that.

Mr. RAILSBACK. We talk about estimated future capacity or future prison populations. I am a little bit concerned that the prison populations have remained on about an even keel, and yet our violent crime rates have gone up drastically. How do you explain that? In other words, we had a 17-percent increase in violent crime.

Mr. HONNOLD. The percent of persons being held in Federal prisons who are convicted of violent crimes has, in fact, risen over the last few years, and it is now about 25 percent, whereas 10 years ago it was only 15 percent. So in fact, the prison population does reflect this social trend. However, those persons convicted of nonviolent offenses are a smaller percent now of the Federal prison population than they were before, and those are the persons that we would take the first initiative in moving into alternative sources of community-based institutions.

Mr. RAILSBACK. But apparently some initiative has, in fact, been taken over the last few years? In other words, when you compare the figures, it seems to me that what you are saying is true, that on an increasing basis the more violent people are being kept in prison and there is an effort being made to keep the less violent out. Would you agree with that? Maybe not to the extent that you would like, but would you agree that that has happened?

Mr. HONNOLD. I think that has happened. I'm not sure you would point to the Federal prison system as having been the executor of that

action. It probably happens more as a result of the increased use of parole and probation.

Mr. RAILSBACK. But we are talking about the Federal prison system.

Mr. HONOLD. Right. And as the chairman pointed out, the prison system reflects the sentencing that takes place in the courts, so it has reflected this change. But it is not an internal change in itself. It is more the recipient of a trend that is taking place.

Mr. RAILSBACK. Have you had a chance to visit Federal prisons, and have you had a chance to visit with inmates?

Mr. CONFER. I personally have not. I worked fairly extensively in the time I worked in Rhode Island in the State penitentiary and their problems, but I have spent no time in any Federal prisons.

Mr. RAILSBACK. What is your organization, by that I mean, who comprises your group? I am just curious. Incidentally, I could not read your statement because I have had an annual physical and my eyes have been examined and dilated, and I cannot see to read.

Mr. CONFER. The Friends Committee on National Legislation is a registered lobbying group here in Washington, D.C., which represents a large number of Friends or Quakers within the United States. It does not purport to speak for all Friends in matters of our concern. We do have statements of legislative policy that were passed by the group that supports us, and we have a newsletter mailing list of close to 10,000, and an active constituency of about 1,000.

Mr. RAILSBACK. Do your members visit prisons?

Mr. CONFER. Oh, a large number of our Quakers have spent quite a bit of time in prisons as a result of their conscientious stands over the years. So, they usually have some pretty firsthand experience. I did alternative service overseas and did not spend it in a U.S. prison, but a large number of Quakers do. And this is one of the reasons they bring a concern to this issue.

Mr. RAILSBACK. Thank you.

Mr. DRINAN. Thank you very much, Mr. Confer. Would the logic of your argument suggest, therefore, we should go back to where the United States was in 1895, where we just contracted out the prisoners and the prison bureau was not established until 1896 when they took over a part of Leavenworth? Would you feel following that line of argument that there is going to be a lot of empty places in State and county jails and the Federal Government should seriously consider a permanent moratorium or a moratorium for a long time and have the States, if there is a Federal prisoner in New England, contract him out to the particular local unit? It would be your information, in other words, that jails can be decentralized or jails will be deinstitutionalized, so there is going to be a lot of places around?

Mr. CONFER. Well, I would certainly try to move in that direction just because I think that when you have prisons, you tend to fill them. The experience is that it is very hard to shut down old prisons and fairly easy to build new ones. But once they are built, they get filled up. And I would much rather use the existing facilities in a particular State, but at the same time I think that I would also argue for alternative forms of incarceration that perhaps our experience, and in our experiences in other countries of the world, we have not really done

much experimentation with. I understand that Mr. Danielson and Mr. Kastenmeier have been visiting some of these other facilities over the summer and they may have a lot more firsthand information on that than I do.

Mr. DRINAN. I take it you are recommending we postpone the \$22-plus million appropriation that has been requested for two new rather sizable prisons?

Mr. CONFER. Yes. I think that that has already been postponed by the Appropriations Subcommittee.

Mr. DRINAN. Would you recommend that we have a moratorium on all the existing construction? For example, at Otisville?

Mr. CONFER. I certainly would.

Mr. DRINAN. Do you have any evidence at all why Mr. Carlson apparently has approved these new units now being built even though he has said, and I have heard him say it time and time again, that prisons should not be built in rural areas? And I recall him saying specifically that Sandstone in Minnesota is very unuseful to the Bureau because it is 180 miles from Duluth and an equal amount of miles from Minneapolis. So why has he permitted some five of the nine new buildings now in construction to be built in the rural areas?

Mr. CONFER. I really cannot answer that question. I was not a part of his planning group.

Mr. DRINAN. No, but have they ever tried to rationalize it or justify it?

Mr. CONFER. Not to me.

Mr. DRINAN. I wonder whether or not they say it is just too expensive to build in an urban area. It obviously would be more difficult to build in Manhattan or in the Bronx than in Otisville, N.Y.

Mr. CONFER. I think it is obviously true that there are political considerations here too. It is a lot easier to build a prison in an area where you have a relatively acquiescent population, a very small population, than in an area where you may have a very articulate population and a population that may realize some of the social implications of having say a maximum security institution within the boundaries of their city. I know of the experience of a constituent of ours in San Francisco who was involved in trying to negotiate on the site planning for a new facility in San Francisco, and the kinds of questions that his committee, which was Mayor Alioto's committee, raised with the Federal Bureau were just the questions which were not answered, and finally the Federal Bureau decided to go someplace else.

Mr. DRINAN. Well, that brings up the question that you did not have a chance to get into so much: Namely, the architecture of these buildings and every jail that I have ever been to, and I have been in many of them. I have here a list of all of the Federal installations, and I have been in most of them or many of them. They have one model that goes back to the 19th century, and no architect has come along, I guess, since then and has rethought the thing. They always have to have a tower, a yard, all of these cells like animal cages and a cell-block. Well, has your organization given thought to alternatives to that? Why do we have to go back to that, and that is what is being constructed, I take it, with the proposed appropriations for \$22 million.

Mr. CONFER. Quakers are not involved in the prison architecture at this point, as far as I know.

Mr. DRINAN. Would you admit or concede though that it is a pretty essential point? I mean, why do we build them in that form?

Mr. CONFER. Yes.

Mr. DRINAN. Well, you give the total figure of \$254 million for the entire Bureau of Prisons this year, and according to my old map that means that more than \$10,000 is spent to incarcerate each inmate. As you know, or as you may know, there is a GAO study coming out on this, and the preliminary conclusions that we have, and they are not public yet, although they are not secret either, they are not classified. indicates that the GAO seems to share your convictions that the Bureau of Prisons does not seem to have any rational analysis to evaluate the capacity or the effectiveness of the installations that they want to build.

Well, my time has run out I think and I thank you for your very helpful testimony.

Mr. CONFER. Thank you.

Mr. KASTENMEIER. The gentleman from New York, Mr. Pattison.

Mr. PATTISON. I am interested in this notion of integrating the State and Federal prisons and whether there is any real argument of why that should not be done. In other words, we know that the State prison systems have their own problems in terms of funding. Would it not make sense rather than to build new Federal prisons, which necessarily have to be regionalized, to provide funding for the States to build better prisons of their own and provide certain numbers of spaces in those prisons that would belong to the Federal Government, and they would have a continuing kind of arrangement so that they could put people in there?

Mr. CONFER. Right. To some extent this is already done. I think my intern would like to comment on this.

Mr. HONNOLD. There is a historical question about why the Federal Bureau of Prisons developed in the first place. It was kind of a gradual development that nobody planned, but which happened kind of inadvertently, and I think many persons close to the system now believe that States and localities could very well take back much of the jurisdiction over the Federal crime that they now have. Many persons who are in Federal prisons—

Mr. PATTISON. You mean Federal imprisonment, not jurisdiction?

Mr. HONNOLD. Well, many of the persons in Federal prisons now were convicted of crimes which were also State offense, and if the Federal prosecutor had not taken over on that case, the State prosecutor would have done so. And certainly it is true that the States and local governments could much better put the inmates close to the communities from which they come than a Federal system. And I think in many ways we would prefer to see a larger community role take place in the criminal justice system, and this would be a good place to begin.

Mr. PATTISON. I take it from your testimony that the closing of a prison is somewhat comparable to the closing of a military base in that everybody has come to rely upon it, and that the contrary is true also of the opening of a prison, it is kind of like opening of a sanitary landfill, nobody is interested in having that either. But there seems to be some inconsistency, and I wonder if any thought has been given to the notion of compensation if we are going to close a prison, that we

should rather than just simply close a prison, that we should have a plan that says this is what we are going to do with this facility, we are going to turn it into a factory, or whatever else, and provide some kind of alternate employment for those people.

Mr. CONFER. I think that would be very, very necessary.

Mr. PATTISON. And the other way around. Also the notion if we are going to put a prison, perhaps some compensation ought to be given to that community in terms of the taxability or something in lieu of taxes, or some other kind of community facilities in recognition of the normal kind of apprehension that people have when prisons are either taken out or put in.

Mr. CONFER. I guess that I find it very difficult to support making the building of new prisons in any way a lucrative thing for the community. That might be a bad social policy to follow.

Mr. DRINAN. Would the gentleman yield?

Mr. PATTISON. Yes.

Mr. DRINAN. In existing law there is already elaborate plans by which the phasing out of a military installation brings precisely those benefits. And I had that in an area that used to be in my district in Massachusetts, and the benefits are very substantial.

Mr. PATTISON. But not for prisons.

Mr. DRINAN. No; but for the population who are affected adversely, who lose their employment, and for the town that loses a part of its taxable base.

Mr. PATTISON. Is there a rule of thumb about what the cost of a prison space is, \$20,000 or something like that?

Mr. CONFER. You mean in terms of that actual construction?

Mr. PATTISON. Yes, new construction. What does it cost?

Mr. HONNOLD. It costs more than a hospital bed. The director presented statistics about that. I think it is something in the neighborhood of \$40,000 for the construction of a new—

Mr. PATTISON. Per inmate? Per space?

Mr. CONFER. Per cell.

Mr. HONNOLD. Cost of the new Northeast Adult Facility per bed or cell base.

Mr. PATTISON. Which also includes all of the other things, the facilities or whatever else?

Mr. HONNOLD. Right, it was to be \$46,000 for one prisoner, and the average cost for a hospital, just as a measure of comparison, is only \$35,000. So we are spending more for prisons than for hospitals.

Mr. PATTISON. We could send them all to Harvard.

Mr. HONNOLD. And the cost of keeping a person in a community is less, there is greater cost in keeping a person in an institution where it costs \$21 a day or more to keep a person in Federal prison and only \$12 or more slightly a day to keep a person in a community center.

Mr. PATTISON. Those costs may or may not include reasonable depreciation.

Mr. HONNOLD. May not.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. The gentleman from California, Mr. Wiggins.

Mr. WIGGINS. I have no questions, Mr. Chairman.

Mr. KASTENMEIER. In which case the Chair would like to express our thanks to the witnesses and to compliment Mr. Confer on his very fine and technically competent presentation.

Mr. CONFER. Thank you very much.

Mr. KASTENMEIER. Next the Chair would like to call William G. Nagel, executive director of the American Foundation in Philadelphia, and with him, Mr. Milton G. Rector, president of the National Council on Crime and Delinquency, and Dr. W. Walter Menninger, psychiatrist of Topeka State Hospital.

Gentlemen, I know you have substantial statements. Who would like to proceed first? Mr. Nagel?

**TESTIMONY OF WILLIAM G. NAGEL, EXECUTIVE DIRECTOR,
AMERICAN FOUNDATION, PHILADELPHIA, PA.**

Mr. NAGEL. Thank you. I am William Nagel.

I apologize for not having a statement. Since I received your invitation 2 weeks ago, my schedule has not permitted until yesterday my preparing one. So it is still in longhand. I will be glad to submit one to you after I leave here.

Just a very brief word about myself and my organization. I am the director of The American Foundation's Institute of Corrections. The American Foundation was endowed 50 years ago by the Philadelphia publisher, Edward Bok. One of its purposes was to help make representative government more responsive to the needs of the people.

Edward Bok's son, Curtis Bok, was a very distinguished supreme court justice of Pennsylvania, and while he was a Justice he became extraordinarily concerned with the problems with prisons in this country and traveled all over the world and looked at them, and as a result created within this foundation an institute of corrections of which I am the head. I myself have been in the prison system in one way or another for the last 30 years, having spent 12 of those years as a deputy warden of a major institution. And since then I have served in various other capacities, including executive secretary for human services in the administration of two Pennsylvania Governors.

Mr. KASTENMEIER. If the Chair may interrupt, I might add that you were also the author of a book entitled *The New Red Barn, A Critical Look At Modern American Prisons*, which I have in my office, and so I think that your own competence in the field is well established.

Mr. NAGEL. Thank you very much. For most of the 30 years that I have been in the prison business, I was an advocate of a strong Federal prison system. The reasons were essentially two:

First: Since the creation of the Bureau in 1930, it has been able to attract exceptional leadership. Sanford Bates, Austin McCornick, William Hammoch, James Bennett, Virginia McLaughlin, Myrl Alexander, Frank Loveland, Gus Moeller, and other people, and the present Director, Norman Carlson, who have all been men of quality, compassion and leadership. Moreover, this strong leadership, plus the Federal civil service system drew and held competent persons at lower levels of responsibility.

Second: The Federal Bureau was, and is somewhat insulated from the visceral level of the public's feelings toward the criminal, it has

been able, therefore, to draw from Congress greater financial and program support than the State and local systems have been able to attract from their legislatures or county commissioners. As a result, the Federal prisons over the years have had better plants, more adequate staff, a wider variety of programs and services, more professional management, and larger budgets. It would seem, therefore, that their prisons might be more effective—prisons alive with optimism and hope—prisons full of expectation. But they aren't.

There are at least two different qualities of arguments which lead me to oppose the Federal Prison System's repeated requests for more buildings. One of them has to do with the Federal's capacity to prognosticate future needs. This has already been brought out, so I will make it very brief.

In the past when hordes of Mexicans swarmed across the Rio Grande, the Bureau wanted new prisons to house these aliens. After several prisons were opened, the problem was only resolved by shipping most of them back to Mexico.

Prohibition caused the Bureau to build for a prison population that ceased to exist, of course, after repeal.

The passage of drug laws caused a temporary explosion in the Bureau's population which has been ameliorated by more rational attitudes and statutes toward the drug abuser.

Prison populations reflecting the resistance movement during the Vietnam war and the General Court Martial influx during and after World War II crested and fell.

A flood of youthful car thieves inundated the system after passage of the Dwyer Act. As Federal judges refer more and more youngsters to the State courts, the flood is being reduced to a trickle.

And, at a moment when the post-World War II baby boom has already peaked and youthful population projections are in sharp decline, the Bureau is asking for a network of new youth facilities.

In short, the projections of the Bureau over the years have always overanticipated the need for new prisons to handle spiral populations which did not materialize, or were but transitory.

I wish, however, not to dwell on these matters of demography, but to stress some basic flaws. The first one is endemic to all prisons, not just the federals. By the way, in preparation for my book I traveled to 106 new prisons throughout the United States, including several of the Federal facilities. There was one thing that I carried with me after that, reinforced by the 12 years spent in an institution myself, and that was that prison itself is not conducive to changing human beings for the better, however good the prison might be. The reason basically is in prisons large numbers of human beings are placed in a closed society in which the many inmates have to be controlled by a few officials. This creates almost insurmountable problems.

In the outside society, unity and a sense of community contribute to personal growth. In the society of prisoners, unity and a sense of community must be discouraged, lest the many overwhelm the few.

In the world outside, leadership is the ultimate virtue. In the world inside, leadership must be identified, isolated and blunted.

In the competitiveness of everyday living, assertiveness is a characteristic to be encouraged. In the reality of the prison, assertiveness is equated with aggression and suppressed.

Other qualities considered good on the outside—self-confidence, pride, individuality—are eroded by the prison experience into self-doubts, obsequiousness and lethargy. In short, individuality is obliterated and spirit of man is broken in the spiritlessness of obedience.

The second problem, almost inescapable in the Federal system, is isolation. Federal prisoners come from every city, State and county in the Nation, yet there cannot be, unless we go totally national, Federal prisons in every city, State and county of this vast Nation.

At present there are only a half dozen youth institutions in the Federal system. Youngsters who are committed must be sent hundreds of miles from their families, friends and ties. The situation for women is infinitely worse. Even for male adults it is bad after the score or more facilities are divided according to classification objectives. For example, an offender from North Dakota classified as a long-term adult would probably be confined at McNeil Island, a third of a continent away. A young adult from Maine could be handled no closer than Petersburg, Va. An offender from almost anywhere—Vermont, Florida, Texas or Oregon—must end up in Springfield, Mo., if he requires specialized medical or psychiatric attention.

It is this isolation from home and ties that helps to make the Federal prisons such places of alienation. And I felt this alienation as I traveled through those institutions a year or 3 years ago.

In the past, the prison was based upon the concept of isolation. Prisons were built to keep the prisoners in and the community out. It simply was not considered necessary to make provisions for visiting, family relations, community involvement or work release. Also, there was no need or effort to secure staffs that were professional and of a racial balance to match the racial makeup of the inmates.

In fact, the preference was for white rural staff, and prisons located in rural America ensured a flow of such staff. This practice might have been relatively unimportant when America was predominantly a farm country, and lifestyles, rural and urban, had not hardened into their contrasting roles.

Today Americans are increasingly adopting urban life styles. Value differences born not only of population diversity but of ethnic allegiances, have created understanding gaps wider than the miles which separate city dwellers from farmers. There is no understanding gap greater than that between the urban liberated black and his rural, white, protestant ethnic keeper. This is especially a problem in the Federal Bureau of Prisons, and I quote from my book here:

The location of institutions in rural America has had, it seemed to us, especially pervasive effects on the federal prison system. Senior officials in the federal institutions which we visited outlined the tradeoffs between rural and urban sites in the same terms as those already described. Their views as expressed to us were these: "In the rural areas you get the very best type of white, mid-American line staff; but it is admittedly more difficult to recruit blacks and professional staff which are available in the cities." They would settle for competent white guards every time. Because over the years this kind of reasoning has been prevalent in the Federal Bureau of Prisons, the whole system is dominated on every level—guards, lieutenants, captains, deputies, wardens, and central office staff—by rural white Americans. A major midwestern federal prison had, for example, at the time of our visit, five black staff persons in a complement that exceeded 200. Thirty percent of its inmates were black. To avoid a federal Attica, the Federal Bureau of Prisons is now feverishly attempting to recruit black staff, but its task is complicated by the remoteness of its facilities.

The National Advisory Commission on Criminal Justice Standards and Goals recognized that this isolation, and the alienation that is its by-product, must not be a part of tomorrow's prison system. In its Standard 11.1, entitled "Planning New Correctional Institutions," it said:

The location of the institution should be selected on the basis of its proximity to: (a) the community from which the inmates come; (b) areas capable of providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population.

The Federal system is rushing to do just that. It has built new jails for those awaiting trial in San Diego, Chicago and New York. Others are on the drawing boards. It is planning or building youth complexes, female facilities and other prisons that will serve regions of this vast Nation. But, unless this Congress is prepared to spend billions upon billions of dollars to build hundreds of new facilities, we will never have a Federal prison system that meets the requirements of standard 11.1.

Modern penology makes the Federal Bureau, regardless of the quality of its leadership and the size of its swelling budgets, obsolete.

I worked for several years as executive secretary for human services in the administration of two Pennsylvania governors, Governor Scranton and Governor Shafer. I now serve as vice chairman of the State Law Enforcement Planning Agency under a Democratic governor, Governor Shapp. I have forever been in contact with Federal agencies on human service matters. I came slowly to recognize a curious fact, that in the delivery of human services other than insurance programs a remarkable partnership existed in this country. Let me explain.

Employment services were mandated and largely funded by the Federal Government, but were operated by the States.

Vocational rehabilitation and public assistance services were mandated and largely funded by the Federal Government, but were operated by the State and local governments.

Medical assistance, mental health and mental retardation programs, educational activities, poverty programs, legal services and, through LEAA, law enforcement services, all became part of that precariously balanced system. Even interstate highways, largely the product of Federal standards and money, were built, owned, and operated by the States. This we know as federalism.

Why then, one must logically ask, must there be a separate network of correctional institutions to serve persons convicted of Federal rather than State offenses? Are such criminals so different?

They are men and women. They are from big cities and small. They are mostly, but not all, young. They are unmarried, married, divorced. They are white, black, Chicano, Indian. They are first offenders and multiple offenders.

And by far the majority, 88 percent of them, are confined for the same kinds of crimes which might have gotten them to State prisons—larceny, robbery, guns, auto theft, drugs, murder, and the like. Only a relative handful are confined for such esoteric crimes as income tax evasion, perjuring themselves before congressional committees, resisting the draft, et cetera.

What makes them so different? They committed Federal rather than State offenses.

What are Federal offenses? Federal offenses are those which the Congress declares to be Federal offenses. For example, a kid steals a car and drives it from Boston to Springfield, Mass., Father Drinan. That's a State crime and he goes to State prison. But if he drives it from Boston to Providence, R.I., that is a Federal crime and he goes to a Federal prison.

This Nation, since its origin, has been marked by a commitment to federalism. Its nature is triune.

The Federal Government should enable.

The State should administer and supervise.

The locality should operate.

This approach has worked well, as I noted early in this testimony, in scores of other human endeavors.

It has fostered the development of reasonable human services in several States.

It has insured local involvement and interest.

It has worked toward the deinstitutionalization of our alms houses, asylums, and colonies for the feebleminded.

And it has prevented a remote bureaucracy from playing fast and loose with precious freedoms.

Of all human services, should not the prison system be closest to public scrutiny and control? Could any other service more threaten our freedoms?

America has not always had a Federal prison system. In 1776 the Continental Congress, meeting in my city of Philadelphia, provided that prisoners convicted of violating Federal laws be confined in colonies and local institutions. The legislature of the new republic, meeting in 1879, continued this policy, and for the next 160 years the Federal Government boarded out its prisoners in State and local facilities. At the turn of this century Congress authorized the creation of three Federal prisons, those we have talked about so much today. Since 1930, when the Bureau was created, the Federal Prison System has grown—until now we find its appetite insatiable.

It is my view that this Nation should no longer sustain or support a vast system of confinement facilities additional to, and separate from, those operated by 50 States and the over 3,000 counties. The Federal prisons which now exist should become part of the woof and warp of our State systems. Persons convicted of Federal crimes should be confined in the States of their residence. The huge Federal prison budget should be channeled, as are public assistance, vocational rehabilitation, and employment security funds into the correctional apparatus of the 50 States. Our prisons, like our other human services, should be a part of the system of federalism and not part of a Federal Bureau of Prisons.

Thank you.

[The prepared statement of Mr. Nagel follows:]

STATEMENT OF WILLIAM G. NAGEL, EXECUTIVE VICE PRESIDENT,
THE AMERICAN FOUNDATION INSTITUTE OF CORRECTIONS

I am pleased that you have asked me to meet with you today to discuss the Federal Bureau of Prisons' facility construction plans, as well as the theory and practice behind those plans.

First, a brief word about myself and my organization. I am the head of the American Foundation's Institute of Corrections. The American Foundation was endowed fifty years ago by Edward Bok, a Philadelphia publisher. One of its purposes was to help "make representative government more responsive to the needs of the people."

Edward Bok's son, Curtis Bok, became a distinguished member of the Supreme Court of Pennsylvania. The conditions of prisons appalled him and caused him to found the "Institute of Corrections" within the Foundation. I am the third Director of this Institute. My predecessor, the late Frank Loveland, was a great human being who served a lifetime as an official within the Federal Bureau of Prisons. He retired as Assistant Director of the Bureau in 1963 when he joined the Foundation.

My prison career started in 1946 with the Pennsylvania Prison Society, the venerable organization which, in 1790, invented the American prison. I worked in New Jersey's Division of Corrections for many years, including several as the deputy superintendent of a major prison. The following years I was a lobbyist for correctional reform and for five subsequent years, Executive Secretary for Human Services in the Governor's Office of the Commonwealth of Pennsylvania. I have held my present position for six years.

Recently, at the request of LEAA, I visited 100 new correctional institutions, including federal facilities, across the country to evaluate modern prison architecture and programs. This resulted in a book entitled, *The New Red Barn*.

In short, I have been a part of the prison scene in America for thirty years and have observed it from many perspectives.

For most of those years I was an advocate of a strong Federal prison system. The reasons were essentially two:

First, since the creation of the Bureau in 1930, it has been able to attract exceptional leadership. Sanford Bates, Austin MacCormick, William Hammach, James Bennett, Virginia McLaughlin, Myrl Alexander, Frank Loveland, Gus Moeller, and the present Director, Norman Carlson all are men of quality, compassion, and leadership. Moreover, this strong leadership, plus the federal civil service system, drew and held competent persons at lower levels of responsibility.

And secondly, the Federal Bureau was, and is, somewhat insulated from the visceral level of the public's feeling toward the criminal. It has been able, therefore, to draw from Congress greater financial and program support than the state and local systems have been able to attract from their legislatures or county commissioners.

As a result, the Federal prisons have, over the years, had better plants, more adequate staff, a wider variety of programs and services, more professional management and larger budgets. It would seem, therefore, that their prisons might be more effective—prisons alive with optimism and hope—prisons full of expectation. But they aren't.

There are at least two different qualities of arguments which lead me to oppose the Federal Prison System's repeated requests for more buildings.

First, I join the many persons who have diagnosed the Bureau's problem in the following way. The Bureau has an edifice complex. Let me explain.

In the past when hordes of Mexicans swarmed across the Rio Grande, the Bureau wanted new prisons to house these aliens. After several prisons were opened, the problem was only resolved by shipping most of them back to Mexico.

Prohibition caused the Bureau to build for a prison population that ceased to exist after repeal.

The Bureau's population temporarily exploded with the passage of drug laws, whereas more rational attitudes toward the drug abuser might have circumvented this extreme growth in population.

Prison populations reflecting the resistance movement during the Vietnam War and the General Court Martial influx during and after World War II crested and fell.

A flood of youthful car thieves inundated the system after passage of the Dwyer Act. As federal judges refer more and more youngsters to the state courts, the flood is being reduced to a trickle.

And now, when the post World War II baby boom has already peaked and future youthful population projections are in sharp decline, the Bureau is asking for a network of new youth facilities.

In short, over the years, the projections of the Bureau have always overanticipated the need for new prisons to handle spiral populations which did not materialize, or were but transitory.

I wish, however, not to dwell on these matters of demography but to stress some basic laws. The first is endemic to all prisons.

In prisons, large numbers of human beings are placed in a closed society in which the many inmates have to be controlled by a few officials. This creates almost insurmountable problems.

In the outside society, unity and a sense of community contribute to personal growth. In the society of prisoners, unity and a sense of community must be discouraged lest the many overwhelm the few.

In the world outside, leadership is an ultimate virtue. In the world inside, leadership must be identified, isolated and blunted.

In the competitiveness of everyday living, assertiveness is a characteristic to be encouraged. In the reality of the prison, assertiveness is equated with aggression and suppressed.

Other qualities considered good on the outside—self-confidence, pride, individuality—are eroded by the prison experience into self-doubts, obsequiousness, and lethargy. In short, individuality is obliterated, and the spirit of man is broken in the spiritlessness of obedience.

A second problem, also inescapable in a federal system, is isolation. Federal prisoners come from every city, state, and county in the nation, yet there cannot, unless we go totally national, be federal prisons in every city, state, and county of this vast nation.

At present there are only half dozen youth institutions in the federal system. Youngsters who are committed must be sent hundreds of miles from their families, friends, and ties. The situation for women is infinitely worse. Even for male adults it is bad after the score or more facilities are divided according to classification objectives. For example, an offender from North Dakota classified as a long-term adult would probably be confined at McNeil Island, a third of a continent away. A young adult from Maine could be handled no closer than Petersburg, Virginia. An offender from almost anywhere—Vermont, Florida, Texas or Oregon—must end up in Springfield, Missouri if he required specialized medical or psychiatric care. It is this isolation from home and ties that helps to make federal prisons such places of alienation.

In the past the prison was based upon the concept of isolation. Prisons were built to keep the prisoner in and the community out. It simply was not considered necessary to make provisions for visiting, family relations, community involvement, or work release. Also, there was no need or effort to secure staffs that were professional and of a racial balance to match the racial make-up of the inmates. In fact, the preference was for white rural staff, and prisons located in rural America ensured a flow of such staff. This practice might have been relatively unimportant when America was predominantly a farm country and life styles—rural and urban—had not yet hardened into their contrasting roles.

Today Americans are increasingly adopting urban life styles. Value differences born not only of population diversity but of ethnic allegiances, have created understanding gaps wider than the miles which separate city dwellers from farmers. There is no understanding gap wider than that between the urban liberated black and his rural, white, protestant ethnic keeper.

This especially a problem in the Federal Bureau. I quote from my book: "The location of institutions in rural America has had, it seemed to us, especially pervasive effects on the federal prison system. Senior officials in federal institutions which we visited outlined the trade-offs between rural and urban sites in the same terms as those already described. Their views as expressed to us were these: 'In the rural areas you get the very best type of white, mid-American line staff; but it is admittedly more difficult to recruit blacks and professional staff which are available in the cities.' They would settle for competent white guards every time. Because over the years this kind of reasoning has been prevalent in the Federal Bureau of Prisons, the whole system is dominated on every level—guards, lieutenants, captains, deputies, wardens, and central office staff—by rural white Americans. A major Midwestern federal prison had, for example, at the time of our visit, five black staff persons in a complement that exceeded 200. Thirty percent of its inmates were black."

The National Advisory Commission on Criminal Justice Standards and Goals recognized that this isolation, and the alienation that is its by-product, must not be a part of tomorrow's prison system. In its Standard 11.1, titled "Planning New Correctional Institutions", it said:

"The location of the institution should be selected on the basis of its proximity to: (a) The community from which the inmates come. (b) Areas capable of

providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population."

The federal system is rushing to do just that. It has built new jails for those awaiting trial in San Diego, Chicago, and New York. Others are on the drawing boards. It is planning or building youth complexes, female facilities, and other prisons that will serve regions of this vast nation. But, unless this Congress is prepared to spend billions on billions of dollars to build hundreds of new facilities, we will never have a federal prison system that meets the requirements of Standard 11.1.

Modern penology makes the Federal Bureau, regardless of the quality of its leadership and the size of its swelling budgets, obsolete.

I worked for several years as Executive Secretary for Human Services in the administrations of two of Pennsylvania's Governors. I now serve as Vice Chairman of the State Law Enforcement Planning Agency. I have forever been in contact with the Federal agencies on human service matters. I came slowly to recognize a curious fact—that in the delivery of human services (other than insurance programs) a remarkable partnership existed. Let me explain.

Employment services were mandated and largely funded by the Federal government, but were operated by the states.

Vocational rehabilitation and public assistance services were mandated and largely funded by the Federal government, but were operated by the state and local governments.

Medical assistance, mental health and mental retardation programs, educational activities, poverty programs, legal services, and through LEAA, law enforcement services, all became part of that precariously balanced system. Even interstate highways, largely the product of Federal standards and money, were built, owned, and operated by the states. This we know as "Federalism."

"Why then," one must logically ask, "must there be a separate network of correctional institutions to serve persons convicted of a federal rather than state offense?" Are such criminals so different?

They are men and women. They are from big cities and small. They are mostly, but not all, young. They are unmarried, married, divorced. They are white, black, Chicano, Indian. They are first offenders and multiple offenders.

And by far the majority (88%) of them are confined for the same kinds of crimes which might have gotten them to state prisons—larceny, robbery, guns, auto theft, druggs, murder, and the like. Only a relative handful are confined for such esoteric crimes as income tax evasion, perjuring themselves before congressional committees, resisting the draft, or conspiring to deny psychiatrists of their civil rights.

What makes them so different? They committed Federal rather than state offenses.

What are Federal offenses? Federal offenses are those which the Federal Congress declares to be Federal offenses. For example, a kid steals a car and drives it from Boston to Springfield, Massachusetts. That's a state crime. He goes to a state prison. Another kid steals a car and drives it from Boston to Providence, Rhode Island. That's a Federal crime. He goes to a Federal prison. A bookkeeper steals from his employer, an insurance company. That's state law. He goes to a state prison. A bookkeeper steals from his employer, a bank. That's Federal law. He goes to a Federal prison.

This nation, since its origin, has been marked by a commitment to federalism. Its nature is trine.

The Federal Government should enable.

The State should administer and supervise.

The Locality should operate.

This approach has worked well, as I noted early in this testimony, in scores of other human endeavors.

It has fostered the development of reasonable human services in several states.

It has insured local involvement and interest.

It has worked toward the deinstitutionalization of our almshouses, asylums, and colonies for the feeble-minded.

And it has prevented a remote bureaucracy from playing fast and loose with precious freedoms.

Of all human services, should not the prison system be closest to public scrutiny and control? Could any other service more threaten our freedoms?

America has not always had a Federal Prison System. In 1776 the Continental Congress, meeting in my city of Philadelphia, provided that persons convicted of violating Federal Laws be confined in colonial and local institutions. The Legislature of the new republic, meeting in 1789, continued this policy; and for the next 100 years the federal government boarded out its prisoners in state and local facilities. At the turn of this century Congress authorized the creation of three federal prisons—Mt Leavenworth, Atlanta, and McNeil Island. Since 1930, when the Bureau was created, the Federal Prison System has grown until now, when we find its appetite insatiable.

It is my view that this nation should no longer sustain or support a vast system of confinement facilities additional to, and separate from, those operated by the fifty states and the over 3000 counties. The federal prisons which now exist should become part of the wool and warp of our state systems. Persons convicted of federal crimes should be confined in the states of their residence. The huge Federal Prison budget should be channeled, as are public assistance, vocational rehabilitation, and employment security funds, into the correctional apparatus of the fifty states.

Our prisons, like our other human services, should be part of a system of federalism, not part of a Federal Bureau of Prisons.

Mr. KASTENMEIER. Thank you, Mr. Nagel. If the members are willing to withhold the questions, I think we will proceed to Mr. Rector.

TESTIMONY OF MILTON G. RECTOR, PRESIDENT, NATIONAL COUNCIL ON CRIME AND DELINQUENCY

Mr. RECTOR. Mr. Chairman, my name is Milton G. Rector, president, chief executive officer of the National Council on Crime and Delinquency. This is a nongovernmental, basically citizen supported and citizen membership organization. I have had the privilege of serving as a staff member in various capacities with this organization for the past 30 years. That privilege, plus another of serving as representative for the United States to the United Nations in matters dealing with crime and delinquency, has given me an opportunity to travel throughout the world and to be an observer of correctional systems and criminal justice systems. Since 1959 when our organization changed its name from the National Probation and Parole Association where our concern was primarily with corrections, the National Council on Crime and Delinquency has addressed the entire field of juvenile and criminal justice in trying to see it as a system.

When I received the invitation for today's hearing, I had hoped that at more than any other time if I had one wish I might be extremely persuasive and articulate, because I view this as a landmark hearing in American criminal justice history. We stand at a time when our Federal Government is about to redefine Federal crimes, Federal criminal law, and that constitutes the definition of the intake system for the Federal prison system which is like the rain barrel at the end of a long drain spout.

Mr. KASTENMEIER. Mr. Rector, out of fairness to you, the Chair must reluctantly observe the presence of a vote on the House floor just as you are about to commence an important statement. I think we should recess for 10 minutes, or perhaps I'm a little optimistic, 15 minutes, until 11:55, at which time we will reconvene here to hear your statement in its entirety and that of Dr. Menninger.

The subcommittee will stand adjourned until 11:55.

[A brief recess was taken.]

Mr. KASTENMEIER. The committee will come to order. As we reconvene. When the committee recessed 15 minutes ago or so, we were

hearing from Mr. Milton Rector who just commenced his statement, and you may resume.

Mr. Rector. Thank you, Mr. Chairman. I have a 48-page statement which I would like to submit for the record, if I may, both on behalf of the National Council and the joint collaborative organization, the Universalist, Unitarian Service Committee, which has funded staff in our national capital office, who work with us nationally on the moratorium on prison construction. Their staff and our staff jointly put together the documentation for some of the points that I am going to make in this statement, if I may submit it for the record.

Mr. KASTENMEIER. I appreciate that background. Without objection, your 48-page statement with 2 pages of appendix, will be accepted and made a part of the record, and you may continue as you will.

[The prepared statement of Milton G. Rector follows:]

STATEMENT OF MILTON G. RECTOR, PRESIDENT, NATIONAL COUNCIL
ON CRIME AND DELINQUENCY

Mr. Chairman, Members of the Subcommittee: The National Council on Crime and Delinquency is grateful for the opportunity to discuss with you its thinking concerning the Federal Bureau of Prisons—its past, present, and promise.

We share with the Subcommittee a deep concern with the continuing problem of lawlessness that is besetting our nation. The problem is not going to go away without new insights, new approaches, and bold leadership at every level of government and the private sector.

Nowhere is the need for new directions more apparent than in our prisons. With their hidebound traditions, isolation, and overbearing walls, they are monuments to what has gone wrong and grim reminders of what must be done.

At the forefront of this problem is the Federal Bureau of Prisons. It occupies this position because of its history and its unique position in the correctional scheme.

The federal government was once in the forefront of the progressive corrections movement. Today, however, it is in dire distress. Through the years its leadership role has been lost to the corrosive factors of bureaucracy and institutional restraints of its own creation.

We believe that the leadership role of the federal government can be restored. We further believe that the federal government can move forward once again to become a model for the states. However, to do this there must be bold, imaginative leadership from the Congress.

In our discussion we will outline the deterioration of the monolith and propose a new federal role that is needed, tested, attainable, and desirable.

I. FEDERAL BUREAU OF PRISONS—PERSPECTIVE

From an historical perspective, institutional confinement is the oldest part of the correctional apparatus. Until the middle of the 18th century, execution and such corporal punishments as flogging and pillorying were the principal means by which society dealt with offenders. Their replacement by imprisonment arose from both the growing spirit of humanitarianism that accompanied the "Enlightenment" in Western Europe, and the effect of the philosophy of utilitarianism developed in the late 18th and early 19th centuries. Criminals were no longer seen as men and women possessed by evil demons that had to be exorcised by corporal punishment or death. They were persons who had deliberately chosen to violate the law because it gave them pleasure or profit.

Imprisonment was seen on the one hand as a punitive sanction to deter law-breaking by making it painful rather than pleasant. On the other hand, unlike corporal punishment and execution, it gave an offender an opportunity to reflect in solitude over his wrong choices and to mend his ways. Not incidentally, of course, incarceration also prevented an offender from committing further harm against the community, which corporal punishment short of execution did not.

By the latter part of the 19th century, authorities in most jurisdictions began to realize that mere restraint could not accomplish the purpose of corrections, and

that many of the features of prison life actually intensified the problems of offenders. The resulting determination to undertake more positive efforts at reformation was accompanied by the recognition that motivation was more than a matter of rational choice between good and evil, and that psychological treatment might thus be a necessary part of corrections. It was also recognized that the useful occupation of prisoners in shops, farms, classes, and recreation would ease institutional tensions and contribute to an atmosphere less detrimental to rehabilitation.

The reform model reshaped all roles in the correctional system. No longer was the offender regarded as a morally deficient person, to be controlled by a keeper. Instead he became, for some purposes at least, a "patient." The old rule—"Let the punishment fit the crime"—was replaced by a new maxim—"Let the treatment fit the needs of the individual offender."¹ Out of the reform model grew a far more complex approach to corrections than had ever existed before, the most notable of which was the origin of the Bureau of Prisons.

Until the last decade of the 19th century, the federal government had no prisons for persons convicted of federal law violation. In 1895, there were 2,500 federal prisoners confined in state prisons. This relatively small population can be attributed to a great extent to the unique relationship between the federal government and the states, which severely limited the role of criminal law in the federal system. Hence, federal crimes dealt only with protection of borders, the currency, and similar matters that affected the interest of the nation as a whole. In contrast, all other common law crimes were the concern of the states.

In 1895, the Department of Justice was authorized to use temporarily the military prison at Fort Leavenworth, because the state prisons were so overcrowded with the Irish, Italians, and other immigrants. Two years later, the Department authorized the building of a new prison at Fort Leavenworth to accommodate 1,200 inmates. That prison was opened in 1906 and was hailed as the greatest creation since the Pyramids. Today it remains a monument to man's shortness of vision, his inhumanity, and above all to his regression from integration to separation.

About the same time, a federal prison was authorized for Atlanta and the territorial jail on Puget Sound was developed into the McNeil Island Penitentiary. For three decades these three prisons constituted the sum total of federal government's prison operation.

During the 1920's several nation-shaking events took place, and two of these—the passage of the 18th amendment prohibiting the manufacture and sale of alcoholic liquors (1920), the establishment of the Federal Bureau of Investigation (1924), shook America's law enforcement apparatus. Prohibition brought with it massive and organized criminal activity. The establishment of the FBI brought J. Edgar Hoover, and an aggressive, efficient, and highly publicized national police force. Crimes which had hitherto been investigated by local police and prosecuted in the state courts became federal crimes, as Congress gave more and more responsibility to Hoover's organization. Kidnapping, bank robbery, transmission of extortion demands, transporting stolen property, and many other crimes were added to the federal list.

The three federal prisons and the tiny office of Superintendent of Prisons in the Department of Justice were hard pressed to meet this flood of new commitments. As a result the Federal Bureau of Prisons was established in 1930. An extensive building program was immediately undertaken, and during the 1930's and 1940's thirteen correctional facilities were built. Six more have subsequently been constructed. Prohibition was repealed shortly after the Bureau's establishment, but it had opened the gates for this new federal bureaucracy. Since then, its existence and growth have continued almost unchallenged by penologists or politicians.

In 1972 the Bureau started the nation again when it produced its Master Plan calling for thirty-five new institutions during the next decade. A bureaucracy which had existed with only three prisons during its first thirty years, and which had gradually increased to twenty-four facilities during its next four decades suddenly now planned to add thirty-five new correctional institutions costing over \$500 million. During a decade when people all over the country were seriously questioning—even rejecting—the desirability of creating any new correctional

¹ The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections*, 1967, pp. 102-103.

institutions at all, the Federal Bureau has decided to launch a major construction campaign.²

II. PRIMARY RELIANCE ON INSTITUTIONAL CORRECTIONS CANNOT BE JUSTIFIED

The penitentiary concept and its function within the criminal justice process remain today the object of a major reform effort, intensified by over a decade of judicial intervention that ends the long-held "hands off" doctrine.

As in the past, we hear a continuing cry for the building of new and more humane prisons. There are several reasons for this: (1) The apparent continuing rise in the crime rate focuses intense attention on the crime issue; (2) the prison population, burgeoning since the late 1960's; (3) the continued use of some antiquated jails and prisons built during the last large wave of prison building around the turn of the century; (4) the transformation—due to technology, cybernation, and the export of an increasing number of jobs—of laborers from racial and class minorities into socially useless beings; and (5) the continuing and apparently increasing disproportionate number of racial and class minorities serving as the objects of criminal justice selection and incarceration.

It is time to analyze the use of the penitentiary concept as a tool useful to maintain order and justice in our society. As a nearly 200 year-old experiment in the industrialized world's attempts at maintaining control and safety, it deserves such scrutiny. There is no clear evidence that incarceration has had positive or productive results. The National Council on Crime and Delinquency, in a May 1973 policy statement, "The Nondangerous Offender Should Not be Imprisoned," requests that prisons be judged by their actual functioning rather than by their stated objectives. In analyzing prisons, NCCD describes them as (1) ineffectual, (2) probably incapable of being operated constitutionally, (3) themselves productive of crime, and (4) destructive of both the keepers and the kept.

Incarceration within the separate federal system presents particular hardships. The Bureau, because it houses federal law violators, confines individuals from all 50 states and the District of Columbia. Not only have the institutions tended to be large, and geographically isolated, but it is obvious in serving a national clientele, that many "residents" will not be close to home or community contacts in any true sense. The recent acquisition of the Oxford, Wisconsin, prison, and the proposed sites for new federal prisons in Bastrop, Texas; Otisville, New York; Athens, Georgia; and Western Atlantic County, New Jersey, reminds us of the old prison solution, "out of sight, out of mind," which provides the illusion of, but not substance of, protection from law violators.

There appear to be inherent defects in the very institutionalization process itself. Even if the integrity of the selection process could be assumed, the aspects of interruption and isolation from normalcy, social criminalization, physical and attitudinal brutalization, and psychological dehumanization, for both keeper and kept present serious obstacles to reforms of the administration of penal institutions. And once a building is erected, it becomes a very permanent and inflexible physical structure that defies changing concepts of operation and size.

Let us turn to the further issue of confinement of non-dangerous versus dangerous offenders, focusing on Bureau practices. A review of Bureau statistics, listing of the offenses for all confines excluding detentioners, reveals 31% of the population confined for dangerous offenses.³ When attempting to isolate the dangerous offense categories, we show the following:

Burglary -----	142
Firearms -----	828
Kidnapping -----	275
Robbery -----	3,568
Hijacking -----	21
D.C. Local (assault 23, Burglary 37, Homicide 75, Robbery 118) -----	253
Government reservation (assault 112, Burglary 41, Homicide 251, Robbery 57) -----	461
31 percent of all offense categories reported -----	5,548

² William G. Nagel, *An American Archipelago: The United States Bureau of Prisons, 1974*, pp. 3-4.

³ See Appendix for List of Offenses, Jan. 13, 1975.

The question posed is whether the Bureau of Prisons can continue to play a passive role for the remaining 69%, non-dangerous, knowing that imprisonment accomplishes nothing in terms of restitution to the victim and little in terms of rehabilitation for the offender. However, the taxpayer is required to pay a tremendous amount of money for room, board, maintenance and security of such offenders. When considering the Administrative Office of the U.S. Courts' cost comparison of federal probationers versus federal confines (\$480 to \$6,194, respectively), one must wonder who is the real victim of this system. Incarceration of non-dangerous offenders, whether in national corrections generally or by the Federal Bureau, is needless and wasteful.

Recidivism is an additional eloquent accuser of institutional corrections. Rehabilitation was the subject of the massive study conducted by sociologist Robert Martinson, who attempted to review all assessments published in the English language between 1945 and 1967, of various treatment modalities used in community and institutional correctional settings. Martinson made the following bold summary of his findings: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." This study should cause harsh scrutiny of the whole role of, and methods for, social control. However, it is significant to note that Martinson also stated that there is a: ". . . strong suggestion that even if we can't 'treat' offenders so as to make them do better, a great many of the programs designed to rehabilitate them at least did not make them do worse. And if these programs did not show the advantages of actually rehabilitating, some of them did have the advantage of being less onerous to the offender himself without seeming to pose increased danger to the community. And some of these programs—especially those involving less restrictive custody, minimal supervision, and early release—simply cost fewer dollars to administer. The information on the dollar costs of these programs is just beginning to be developed but the implication is clear: that if we can't do more for (and to) offenders, at least we can safely do less."⁴

For the non-dangerous then, it seems inhumane and fiscally irresponsible to perpetuate a removal process that is terribly costly and apparently counterproductive. With less than one-third in the dangerous offense category, according to our figures, a maximum of 8,000 beds would be required rather than the 24,000 projected for FY 76.

The penal sanction, so accepted by our Federal Bureau and by national corrections generally, is wholly dysfunctional. The interruption, removal, and isolation process burdens the offending human being. The victim is not compensated in any real way for the harm done. The general public, the taxpayers, are asked to pay tremendous costs to incarcerate the offender, suspecting more and more that not only is it foolish and painful to pay such fees for the room and board of the inmate, but also knowing that fear of crime seems only to increase.

As to the nature of the confinement function itself, there is an increasing body of evidence and underlying sentiment questioning the validity of confinement as a useful tool for social control. The United States compared with other industrialized nations, has the highest crime rate, the highest per capita detention rate, and imposes the longest sentences among these nations as well. The correlation is between repressive sanctions and more crime, not the other way around. Thus the evidence does not indicate that prisons deter or inhibit crime, but in fact they seem to create it. And although they certainly incapacitate, virtually every inmate is returned to the community sooner or later, usually worse for the experience.

For example, the studies cited below have proved the fallacy of confinement and lend weight to the need to reduce the prison sentences:

A. The California Board of Corrections Commission found the current rise in the median sentence of prisoners a major contributing factor in the growth of prison populations. This study concluded that long sentences are not justified, and that to solve problems of overcrowding, "the best solution (and there is no second best) calls as a first step for the drastic reduction of prison terms . . . It is evident that long prison terms have not made California any more crime free."⁵

⁴ Martinson, Robert: "What Works?—Questions and Answers About Prison Reform." *The Public Interest*, 35 (Spring, 1974), 22, 48.

⁵ "The Correctional System Study Report" in *Institutions*, July 1971, p. 57.

B. The California Assembly Committee on Criminal Procedure concluded that the amount of time served has no measurable effect upon crime among released convicts and that time served can be reduced without increasing recidivism.

C. Don Gottfredson and others, in a study of parole, lent some weight to the idea that parolees who served longer terms do less well under supervision.⁸

D. Gerald Wheeler and D. Keith Nichols found that youth with the longest stay had the highest rate of return or parole revocation.⁷

E. A. P. Hopkins supported the position that incarceration had a positive effect on recidivism. He concluded that incarceration is not better than non-institutional treatment for the prevention of recidivism; it particularly increases recidivism among offenders who are least committed to criminal ways.⁹

F. An investigatory commission in Sweden (KAIK) charged with reporting on the correctional system, reported in 1971, its awareness of the ineffectiveness of incarceration as a method of correction, and pointed to the poor prognosis and high rates of recidivism among prisoners from the traditional "closed" institutions. At the same time it expressed the high cost to the community of maintaining prison populations and suggested that more open methods of treatment would be more effective in economic terms.

G. J. Robinson, in his studies, found that for all offense categories and in all follow-up periods, the percent of favorable outcome among the men who served less than the median times was greater than among those who served more than the median months. For example, in the matched samples of men who had been committed for robbery, those who served less than the median months had a much higher percent of favorable outcome in all three follow-up periods.¹⁰

H. Studies attest to the anti-rehabilitative effects of prisons and reformatories.¹⁰

I. A study of the Netherlands showed in 1965 that the average number of inmates in Dutch prisons was 3,400 persons a day. In 1973, it had decreased by 22% to about 2,650 a day, despite the fact that the number of known crimes had increased. This means that their per capita detention rate is less than 20 prisoners a day per 100,000 inhabitants, compared to about 200 for the United States. This decrease in the number of inmates is attributable primarily to shorter sentences, an increase in fines, and a heavier reliance on probation. Furthermore, criminological research in The Netherlands has clearly demonstrated the stigmatizing and dehumanizing effects of imprisonment and its futility. First offenders are rarely prosecuted, and there is a great reluctance to jail. Prisons are very small, with the largest holding 152 inmates.

J. Elbert W. Stewart found that in the United States, except possibly for "enemies of the state" in countries where people are sent to prison for political reasons, the American criminal on the average serves several times as long a sentence as his counterpart anywhere else in the world. The U.S. has one of the highest crime rates in the world, and among the industrialized nations has the highest per capita detention rate. Among all nations, it appears that there might be only a couple of African nations with a higher rate of imprisonment than that of the United States. When examining the international variations, it is unlikely that they are associated with any extra protection, reduction in crime, or retributive relief for the public. It is also unlikely that these disparities are the result of equal consideration before the law.¹¹

K. Thus, by cutting the average length of sentence served in half, the prison population is cut in half:

⁸ "A Study of Parole." *Four Thousand Lifetimes: A Study of Time Served and Parole Outcomes*, by Don Gottfredson and others, 1973.

⁷ *A Statistical Inquiry Into Length of Stay and the Revolving Door: The Case for a Modified Fixed Sentence for the Juvenile Offender*, for the Ohio Youth Commission, 1974.

⁹ *Return to Crime: A Quasi-Experimental Study of the Effects of Imprisonment and Its Alternatives*, 1974.

¹⁰ *The California Prison, Parole, and Probation System*, 1970, and in "The Effectiveness of Correctional Programs," *Crime and Delinquency*, January 1971.

¹¹ Sykes, *The Society of Captives* (1958); Clemmer, *The Prison Community* (1948); Cloward, "Social Control in Prison," Chapter 2, Cloward, et al., *Theoretical Studies in Social Organization of the Prison* (1960); Garrity, "The Prison as a Rehabilitation Agency," Chapter 9, and Glaser and Stratton, "Measuring Inmate Change in Prison," Chapter 10, Cressey, Ed., *The Prison: Studies in Institutional Organization and Change* (1961); Goffman, *Asylums* (1961); Ward and Kassebaum, *Women's Prison* (1965); Street, "The Inmate Group in Custodial and Treatment Settings," 30 *Amer. Soc. Rev.* 40-45 (1965); Berk, "Organizational Goals and Inmate Organization," 71 *Amer. J. Soc.* 522-534 (1966); and Gismonardo, *Society of Women: A Study of a Women's Prison* (1966).

¹² *The Troubled Land*.

Average daily intake	Average length of sentence = served (days)	Average count in prison
5.....	354	1, 820
5.....	182	910

From the available evidence we can conclude that the introduction of a variety of programmatic alternatives, including the systematic use of probation through the incentive of state subsidies, has shown that many individuals heretofore housed in prison can be kept out entirely. A logical corollary would seem to be that many individuals would benefit from less imprisonment. The gap now existing between no prison at all and several years of confinement seems indefensible. Size of prison populations are largely a function of the average length of time served.

Civil libertarians have recently drawn attention to discriminatory practices inherent in the correctional process. There is increasing sentiment that it is extremely difficult to operate prisons in a manner consistent with the Constitution.

Pre-trial detention occurs for the most part for those too poor to post money bail. Since this is a "jail for the poor, bail for the rich" reality, it seemingly violates the Constitutional prohibitions against excessive bail, infliction of cruel and unusual punishments, denial of the equal protection of the laws. Post-sentence incarceration has been increasingly scrutinized by the courts, and in some cases an individual penal facility or system has been declared cruel and unusual punishment. Additionally, the demographic analysis of prisoners and the workings of the criminal justice flow process, increasingly reveal an extension of the obvious dual system of justice manifested in pre-trial detention figures, i.e., jail for the poor, freedom for the wealthier.

The apparent discriminatory manner in which the criminal justice selection process operates, relates intrinsically to the theories of rationale for confinement, whether punitive, rehabilitative, or whatever. The ideology of treatment to fit the offender is being rejected because "hidden" crime studies, or undetected crime, in the past decade have challenged the historical distinction between criminals and non-criminals. These studies reveal that those selected to become official "criminals" are merely a small biased sample of the total universe of persons who commit crimes (probably over 90% of all citizens) selected to fulfill a societal scapegoat function. "Criminal" can be defined as not the fact one has committed a crime, since non-criminals have done that too, but the fact that one was apprehended, tried, and convicted. These "hidden" crime studies indicate that while persons of all social classes commit acts which are criminal in nature, those caught in the criminal justice process are primarily of particular socio-economic background. Thus, there is a crying need to divert our attention away from official "offender," who nearly always seems to be of a predictable class or race or sex, toward the process by which individuals are selected for arrest, prosecution, and punishment. Following this argument to its logical conclusion, treating the "offender" will never solve the crime problem since (a) "criminals" serve a useful purpose as scapegoats of the social system, (b) there is no individual sickness to treat, as the confines are only a minute biased number of the total number of law violators, which in fact approaches nearly 100% of the societal population, and (c) there is an inherent fallacy when the "sick" and the "doctor" are in conflict when the treatment does not produce a cure.

This latter fallacy has contributed to a serious problem of legal rights, safeguards, and the perpetuation of the myth of public safety, because of the absence of accurate treatment predictability, even if treatment were possible, and a frequent disproportion between the seriousness of a crime and the intensity of treatment. Preoccupation with the individual "offender" blinds society and its treatment agents to the existence of social as well as criminal injustices that are much more urgent targets for society's crime control and other social efforts. The treatment system tends to camouflage social injustices, criminal justice process injustices, including Constitutional standards and guarantees, and to delay more profound, yet needed, reforms. It would be far more significant to repeal obsolete and burdensome laws, and to eliminate arbitrary decision making which is revealed in the formula: Discretionary justice equals discriminatory injustice against the socially powerless.

Thus our analysis reveals the lack of integrity operating in the offender selection process. Selection is related to race, color, creed, sex, and class, and to the state of the political economy, as much as to behavior. An investigation by the House Committee on Health and Rehabilitation Services reports that "blacks * * * received sentences on the average more than two years longer than their white counterparts * * * [in counties with population over 50,000]. The heaviest populated counties of Florida seemed to discriminate the most against blacks over all crime categories."¹²

Another study, conducted by the Southeastern Correctional and Criminological Research Center of Florida State University and the Florida Division of Corrections in 1973, indicates that "blacks consistently receive longer than whites for crimes of personal violence, whereas no evidence of discrimination could be found in the sentencing of blacks for property crimes." Discrimination was more widespread, among all categories of crime analyzed, when only youthful offenders were studied. If youth was a leniency factor in the judges' eyes, it was more so for whites than blacks. Moreover, Dr. Waldo and his colleagues found that courts in the more urban counties "penalize blacks more harshly than whites for most offenses," although he did emphasize the possibility that socio-economic factors, rather than race bias, may be tilting the scales.¹³

The critical problem of sentencing disparities in Florida is only one example of a national issue. Evidence increasingly points to the existence of a small biased sample of confinees out of the total universe of persons who have participated in criminal or criminal-type acts. Thus, not only does virtually everyone who enters the confinement process return to the community, but most criminal law violators manage to elude the confinement process in the first instance. You could conclude that what we do when we place so much faith and dependence upon confinement is to perpetuate a myth about its ability to provide social protection.

Of course a discriminatory selection process such as this directly violates the constitutional concern for equal protection under the laws. As there seems to be an increasing proportion of racial and class minorities constituting the populations of our jails and prisons, there seems also to be a parallel awareness on the part of these confinees that they are fulfilling a social scapegoat function. Such ethnic awareness and solidarity can revolutionize, creating a potentially explosive atmosphere, especially for the keeper.

It is equally important to analyze the functioning of the criminal justice process and the rule of confinement as it relates to the economy, to the political nature of the times, and to the social attitudes about race, class, and sex. If confinement is more closely related to these factors than to behavior, then obviously the confinement process is truly politicized, as Erik Olin Wright states in *The Politics of Punishment*. A fresher and more accurate understanding of the workings of the criminal justice and confinement process would lead to a radical new approach concerning (1) what should be considered criminal in the first instance (political crimes of the state, such as homicides committed in the name of war, as well as homicide of one's own spouse); (2) how bias in apprehension and prosecution processes influence offense categories (tax evasion and price fixing as well as petty larceny and burglary); and (3) how the apprehension and prosecution processes discriminate among offenders (white middle class joy rider as well as lower class white or black joy rider).¹⁴

Since debasing the individual is intrinsic to penal sanctions, it is virtually impossible to administer humane treatment in a penal setting, no matter how enlightened or well-trained the staff. The Stanford Prison Experiment showed that under simulated prison conditions, in just a few days, normal middle class students, paid volunteers, developed into "brutal" guards and withdrawal prisoners. Some of the participants had to be "released" early due to emotional breakdown. Some switched roles thinking they could act more properly on the "other side." The same problems occurred. Thus, this study reveals new dimensions in the social psychology of imprisonment.

American corrections, and particularly the Federal Bureau, suffer from another malady—lack of comprehensive planning. It seems only rational and just that

¹² "Prison-Reform Bill Faces Major Bars to Passage," *St. Petersburg Times*, Mar. 18, 1974.

¹³ "Prison Report: Blacks Getting Longer Time," *St. Petersburg Times*, Feb. 18, 1973.

¹⁴ Richard Vogel.

the federal criminal justice process be in compliance with the same or a higher standard for development which was advocated for the states. As the Bureau of Prisons is only one isolated component of this federal process, as well as within the entire local-state-federal criminal justice continuum, it is obvious that the total systems planning concept is, without some creative mechanism, incapable of implementation.

The Bureau of Prisons Master Plan makes no reference to the future intentions of the federal probation service, the federal Board of Parole, or the Administrative Office of the U.S. Courts. The present and future construction of over half a billion dollars worth of numerous new federal prisons is planned without any consideration for a wide range of potentially varying conditions and contingencies that dramatically can affect who goes to jail, how many go to jail, and for how long. Certainly an analysis of past evidence of selective law enforcement, disparity in changing sentencing policies and release procedures indicate the tremendous variance that can be predicted over a future time period due to a variety of political and socio-economic, as well as personality, factors.

Discrepancies in sentences, as we discussed above, are a major fallacy within the criminal justice system. In the words of one judge, "A defendant who comes up for sentencing has no way of knowing or reliably predicting whether he will walk out of the courtroom on probation, or be locked up for a term of years that many consume the rest of his life, or something inbetween." The situation as it currently exists "is a wild array of sentencing judgments without any semblance of the consistency demanded by the ideal of equal justice. * * * The almost wholly unchecked and sweeping powers we give to judges in the fashioning of sentences are terrifying and intolerable to the role of law."¹⁵

In its 1973 Report on *Sentencing Practices in the Federal Courts in New York City*, the Committee on the Federal Courts of the Association of the Bar of the city of New York acknowledges the problem of sentence disparity and suggests some possible improvements of existing practices. The suggested reforms include a three-judge sentencing panel in which the trial judge would have to consult with two colleagues before imposing sentence; explanation of each sentence at the time it is imposed; and follow-up inquiries by judges to find out what has happened to the defendants they have sentenced.

There is no reason why the sentencing process cannot be governed by rules and standards, in the same manner as the trial process, in order to insure uniformity and due process for the defendant. One source suggests sentencing councils as an antidote to sentencing subjectivity, and also proposes making all sentences subject to appeal, so that the appellate courts may proceed to make law for this totally unregulated area. Finally, the creation of a commission to establish procedural rules and standards is advocated.¹⁶

Moreover, U.S. Attorneys, it is widely known, have a tremendous amount of prosecutorial discretion which in large part determines how large the Federal Bureau of Prisons population will be. It is the U.S. Attorney who decides whether or not a case should be brought to trial, and he who decides whether a case should be tried in a federal or state court, depending on the nature of the offense.

For the most part, it is the Assistant Attorney who does most of the work in the Attorney's office. The outcome of any given case depends on a number of variables: the office staff is often overworked; they do not always have a working knowledge of the alternatives and community services available; they do not like to prosecute cases that they are not likely to win, because their reputations ride on the conclusion of the case; they must not offend the U.S. Attorney because of his political power and sensitive public exposure; they sometimes decline a case they feel sure the jury will acquit; they are more likely to prosecute a case when they know the particular judge is predisposed to sentencing; they often will not prosecute a guilty person, if they feel that person can be used as a witness against another person. Geographical location and public sentiment play a large role in decisionmaking.

Further, prosecutors often, because of political realities, reflect "vote getting" law enforcement views rather than risk an unpopular or unfamiliar position. The appointments of prosecutor's assistants are also political in many areas, and the

¹⁵ M. E. Frankel in Willard Gaylin's *Partial Justice: A Study of Bias in Sentencing*, Alfred A. Knopf, New York, 1974.

¹⁶ M. E. Frankel, *Criminal Sentences: Law Without Order*.

assistants must bend to political pressure. If the U.S. Attorney would use his power to divert nondangerous offenders to community based corrections, and to process more cases in state courts, the population of the federal prisons would decrease substantially. No comprehensive study of the workings of the prosecutorial office exists. This is one area that cries for an in-depth investigation. At the very least, prosecutors should be subject to regulation, and the appointment of assistants should be made solely on merit.

This brings us then to a not insignificant question: should the federal, or for that matter, any prison system, play an active leadership—or passive—role in the flow process of offenders? Should the future of the type and number of prisons for the next 50 to 75 years be determined by any contemporary condition or contingency? Should the current Immigration and Naturalization Service's emphasis on arresting alleged aliens during times of high unemployment be determinative in any way for the prison policy of this country for the next five decades? Or the current arrest practices of the Drug Enforcement Administration? Does not the Bureau have a duty to lead the way to total systems planning if no one else takes the initiative? Is the only alternative the construction of forty new prisons costing over half a billion dollars?

Why not explore community alternatives? It is widely known that the federal system utilizes probation far less than that of most states. Has any operating or planning agency systematically analyzed this fact to discover reasons therefore, or attempted to examine the entire federal offender flow process to determine where our finite resources could most intelligently be applied in terms of intervention and alternatives? Again, reference to the *Corrections* report of the National Advisory Commission discloses another logically applicable recommendation: "Each correctional agency administering state institutions for juvenile or adult offenders should adopt immediately a policy of not building new major institutions for adults unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible." This recommendation seems to be one that recognizes in its reasoning, that time is needed for the development of planning mechanisms and programmatic and policy alternatives, and that so long as we build we will have neither the pressures nor the will to develop more appropriate and workable answers. Once a new facility is constructed, a permanence and inflexibility are inherent obstacles to subsequent changes in concept and philosophy that almost assuredly will occur, especially in an area that is undergoing careful scrutiny and analysis, and rapid programmatic introductions.

Furthermore, the fragmentation of the criminal justice process, the lack of public visibility of the various components of that process, the development of myths perpetuated by the almost complete dearth of qualitative facts as to what transpires in the process between defining the criminal act by the legislature to release by the parole board and discharge from control of an imposed sentence, and the total lack of comprehensive criminal justice systems planning, have all contributed to a process that remains today virtually unaccountable to the requirements and demands of this civilization. This lack of accountability and lack of system development have precluded any quick examination and evaluation of just what is happening. At least our examination has led to an evaluation: failure. Economically, it appears that much of the money spent on the process, including the whole institutional/correctional area, has been a rip-off against the taxpayers. Psychologically and practically, it has been a rip-off against the defendant and offender, and against the particular victims of criminal acts. Comprehensive cost-effectiveness analysis has been mostly unheard of, especially as to what alternatives to institutionalization might cost and produce.

In what planning the Bureau, in particular, does conduct, it seems isolated from any substantive communication with its sister agencies in the federal government, and the functionally related agencies in state and local governments. As William Nagel has indicated, this results in an antithesis of total systems planning, a mockery made of the term "community corrections," and an ignoring of the concept of federalism. Thus not only is there complete functional fragmentation within the federal criminal justice agencies, but cooperative fragmentation between the three levels of government. To make matters worse, the federal operating level defies and is divergent from the models that the national commission reports and LEAA are attempting to establish at the state and local levels.

In reviewing the Master Plans of 1970, 1972 and 1974, there is not even a mention of the relationship of the other components in the federal criminal justice system in planning the number of offenders ultimately incarcerated in the Federal Bureau of Prisons. But instead, there is a parochial reliance on institutions. If there were greater cooperation between the other federal components, we would venture to project that the prison population could be cut drastically.

First, greater use of probation will automatically reduce dependence on incarceration. In 1970, 40.4% of convicted persons were placed on probation; in 1974, this proportion jumped to 45.9%. Since nearly 70% of all offenders now in the Federal Bureau of Prisons have committed non-violent offenses, our position is that greater cooperation between the U.S. Probation Division of the Administrative Office of the U.S. Courts and the Federal Bureau of Prisons might be constructive, by keeping out of prison a large number of persons who today are needlessly incarcerated.

Second, parole releases also greatly affect the number of persons in federal institutions. In 1970, the U.S. Board of Parole heard 6,894 cases and released 45.5% (or 3,139). In 1973, the Board heard 8,672 cases and released 52.8% (or 4,576). From 1950 to 1965, the Board granted releases to over 60% of those who came before it. Moreover, recent recidivism studies begin to point the way to more reliable parole prediction. Far more work needs to be done in cooperation with the U.S. Board of Parole, so that each offender is released at the earliest possible date, consistent with community safety. It should be noted that if each of the approximately 8,000 persons granted parole each year were released thirty days early, 240,000 man-days would be eliminated, freeing about 650 beds. Therefore, we believe that before a 500-bed facility is planned, such creative approaches should be explored.

Third, although one of the Federal Bureau of Prisons' goals is to close the antiquated institutions at Atlanta, McNeil Island, and Leavenworth, current plans fail to reflect this; today these three maximum security institutions house about 4,500 inmates. Another stated goal is to place all released offenders in community treatment centers for the final ninety days of their period of incarceration. Based on its 1976 budget, the Bureau hopes to be able to accommodate 3,800 during one year. But if the Bureau expects to release 13,000 persons during that year to maintain the 90-day community treatment center plan, it would need a minimum capacity of 4,000 beds. This would be bed capacity not needed elsewhere. Nearly all of the population now held in these antiquated institutions could be removed to the then available facilities or contract institutions. In today's era of deficit financing, borrowing capital funds to finance construction entails the enormous additional cost of interest.

Fourth, discussions with the U.S. Attorneys might also facilitate better planning. A number of inmates serving time in federal institutions are on detainer for a state offense arising out of the same facts as the federal offense. For example, an offender apprehended with a stolen car has committed a federal offense if he moved the car over state lines. He has also committed a state violation in each of the states through which he drove the car. While it serves no custodial, punitive, or rehabilitative need to incarcerate an offender more than once for the same behavior, it is done. There is a need to explore creatively, formulating policy concerning when an inmate should be processed through the federal as opposed to the state system. It is our position that the federal system, in line with the new federalism, should only assume jurisdiction in cases that are uniquely federal. Our best estimate is that between 85 and 90% of those now housed in federal institutions committed acts that would also be considered state offenses.

Fifth, the 1970 Master Plan indicates a desire to return juvenile offenders to the states. We feel that most juveniles need not be incarcerated at all, and that there is no justification for holding them at great distances from the homes and families that are so important to their future success in the community. Yet, in fiscal year 1973, the Federal Bureau of Prisons housed 450 youths sentenced under the Federal Juvenile Delinquency Act; of these, 371 were sentenced offenders aged seventeen and under. While this figure is down from 499 the previous year, a firm policy of finding nearby home alternatives should be adopted to remove this population from the Federal Bureau of Prisons.

Sixth, the situation of women offenders is similar. Constituting less than 5% of the prison population, recent Bureau recidivism studies show that maintaining

family contacts may be far more related to success after incarceration than any experience in prison; yet, of approximately 800 women in the system on an average day, over 500 are kept in the State of West Virginia. Though these offenders' state of residence is not known, it is known that only 12% come from the Fourth Circuit, which comprises Virginia, Maryland, North Carolina, South Carolina, and West Virginia; one-third of the women were committed from the Fifth Circuit, which comprises Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

Seventh, many different approaches might be taken by a creative agency armed with the conviction that further reliance on prisons—no matter how attractively built and outfitted—is not only costly, but unwise. The National Council on Crime and Delinquency states this, not only out of conviction, but out of real experience. In 1958, Michigan was about to begin construction on a \$42 million prison. NCCD helped them expand probation and parole, at the same time maintaining manageable caseloads. After five years, persons committed to new probation services had a lower recidivism rate than those who went to prison. Not only was Michigan's crime rate cut, but citizens saved \$5.43 million. Inmates able to retain family ties and employment were taxpayers rather than tax expenditures during their period of supervision. Similar experiences occurred in Iowa and New Mexico.

Despite the Bureau's projected Master Plan, for the past decade there has been serious questioning, sometimes even rejection, of the desirability for creating any new correctional institutions at all. Unfortunately, the Bureau of Prisons and a minority of states have decided to proceed with the massive prison construction programs.

The 1967 President's Commission on Law Enforcement and Administration of Justice produced an objective for the development of a far broader range of alternatives for dealing with offenders, based on the belief that, while there are some who must be completely segregated from society, there are many instances in which segregation does more harm than good. They recommended the development of more extensive community programs as an alternative to institutionalization. In 1970, the Report of the President's Task Force on Prison Rehabilitation indicated that any offender who can safely be diverted from incarceration, should be. It stated that jails or prisons manifested an environment characterized as "authoritarian, monotonous, and, above all, artificial." The Task Force continued by remarking that "the way to learn how to solve the problems of community living is to tackle them where they exist. The way to learn to understand and appreciate community life is to become immersed in it." In 1971, the Advisory Commission on Intergovernmental Relations recommended in its report, *State-local Relations in the Criminal Justice System*, "that adequately financed, staffed, and supervised community-based treatment programs—including probation, work release, youth service bureaus, half-way houses, parole, and aftercare—can be more effective than institutional custody in rehabilitating most offenders and in facilitating their readjustment to society."

In recent years, our NCCD staff has worked hand in hand with the local and state officials who plan and operate the various components of the criminal justice system. Faced with rising crime and the rising costs for capital construction and salaries to operate and maintain institutions, NCCD hastened to develop alternatives to jail and prison construction. Though many of us were educated in the old school, with its heavy reliance on jails and longer termed institutions, our experience in such programs taught us that not only was reliance on incarceration expensive (over ten times as costly as the community treatment alternative), it was by any standard less effective. Consequently, in 1972, our Board adopted the following position: "No new detention or penal institution should be built before alternatives to incarceration are fully provided for. Specifically, the National Council on Crime and Delinquency calls for a halt on the construction of all prisons, jails, and juvenile training schools and detention homes until the maximum funding, staffing and utilization of non-institutional corrections have been attained."

More recently, the National Advisory Commission on Criminal Justice Standards and Goals, the Commission appointed by LEAA to assist in developing goals for spending grant money, adopted a similar position. In the report on *Corrections*, the Commission concluded that a ten-year moratorium on prison construction was needed to allow time to assess real construction needs. In the final report, *Corrections*, Standard 7.1, the Commission urges "each stage correc-

tional system or correctional system of other units of government * * * [to] begin immediately to analyze its needs, resources, and gaps in service and to develop by 1978 a systematic plan with timetable and scheme for implementing a range of alternatives to institutionalization." They conclude in the commentary that "such a plan and its results should achieve cost savings by reducing construction and operation costs of large institutions and by increasing use of existing community resources."

These official reports, though mostly directed to the states, have heightened awareness of the problems of confinement and crime control. They have consistently concluded that imprisonment should be used as a last resort, that community alternatives are less costly and more effective than confinement. There is no reason to believe that these recommendations are not applicable to the federal government as well.

Furthermore, the National Advisory Commission on Criminal Justice Standards and Goals, Standards 7.1, emphasizes not only the need to develop a plan for systematic provision of alternatives, but also the need for "state and local corrections systems and planning agencies [to] immediately undertake, on a cooperative basis, planning for community corrections based on a total system concept. * * *" In the commentary, the Commission remarks, " * * * the planning emphasis should be on development of a network of alternative means of solving correctional problems in which facilities play a supporting but secondary role. The total correctional environment should include interrelated components designed to solve specific problems and provide varying levels of support." Again, though the Commission was directed at states, the federal bureaucracy seems similarly vulnerable to the logic and conclusion.

The Law Enforcement Assistance Administration (LEAA) of the Department of Justice requires that all local and state jail money requests be funneled through the National Clearinghouse for Criminal Justice Planning and Architecture, located at the University of Illinois. The National Clearinghouse has issued a pamphlet, "To Build or Not to Build," in which it describes the initial ingredients of the "total systems planning" concept, which intends "to develop a mechanism which puts institutions into a proper perspective," and concludes that "only at the end of this process which explores the needs of offenders and measures these needs against a wide range of possible and extant resources can a new facility be justified."

Thus, although the major federal commission has itself recommended a halt in prison construction, we are here today to remember that recommendation and to ask Congress to reconsider and reject the massive federal prison program. It is ironic that the Federal Bureau of Prisons, so long considered a leader in this area, would become involved in a massive construction program to build a large number of institutions, at a projected cost exceeding \$500 million. We have long been a friend of the Bureau: for a number of years, the director of the Federal Bureau of Prisons was on our Board of Directors. But our organizations parted ways when the Bureau embarked on this program, because we believe that the new facilities are not justified by the present or reasonably projected population, and that with greater coordination between the federal criminal justice agencies, few non-dangerous offenders would need to be in institutions. The lack of coordination among criminal justice system components is part of a larger problem: a weakness of planning. It is scarcely necessary to describe the need in the administration of any complex system, for comprehensive planning. Why the Bureau has failed to use this tool is a genuine puzzle: evidence of rapid evolution of policy and models of rehabilitation may be a partial explanation.

Before we scrutinize more clearly the Bureau's program models, let us return once more to the national commission reports (1967 President's Commission, 1971 Advisory Commission on Intergovernmental Relations, and the 1973 National Advisory Commission). We find that they call for the development of genuine correctional *systems*, to facilitate the unification of correctional services. Again, though these recommendations are directed to the states, the argument for their conclusion is equally relevant to the federal government, and in some sense perhaps more important due to the inherent leadership role the federal government possesses. As the Bureau of Prisons is a 45-year-old administrative and operating agency for confinement facilities, rural and urban, large and small, old and new, the role seems a definitive one to build and operate prisons. Its success or failure is related directly with promoting "humane" institutional solu-

tions to crime control problems. It is interesting to note that the Assistant Director, Division of Planning and Development, is an architect.

Approximately two months ago, the Bureau of Prisons announced that more emphasis¹⁷ will be placed on viewing imprisonment as a means of retribution or punishment and deterrence. Such a position is a significant departure from the Bureau's previous commitment to rehabilitation.

This recent change in emphasis raises a number of questions. In the Federal Bureau of Prisons' Master Plans for 1970, 1972, and 1974, primary rationale for new construction was to facilitate new and improved rehabilitation programs. In their latest Master Plan for 1974, over 1,600 new bed spaces were being planned for youth, as the primary rationale for housing these persons was not their danger to the community but rather their need for "treatment." Their non-dangerousness can be seen by reviewing the categories of offenses. In order by number, of the 2,557 persons 21 and under for fiscal year ending June 30, 1973, 385 were immigration violators, 279 were under 18 and sentenced under the Federal Juvenile Delinquency Act, non-narcotic drug offenses with 294 offenders, and auto theft with 213, constituted the next largest categories. While some robberies may be classed as violent offenses, only 219 persons 21 and under or less than 10% of this age group committed this offense.

Also in the 1974 Master Plan, 2,000 new beds were planned for psychiatric treatment. While this assumes that nearly 10% of sentenced offenders need hospitalization in a psychiatric facility, the Director's statement that the medical model for the treatment of offenders is no longer valid would seem to rule out the expenditure for these six institutions.

Let us also address ourselves to the game of population projections, so often utilized by the Bureau to justify their construction plans. While it is admittedly difficult to project accurately future prison population, we believe that the Bureau's population miscalculations have been excessive. Since it has based its building plans largely on these projections, the error is crucial. In 1955, for example, the Bureau predicted an inmate population in 1965 of 25,000. Similarly, in 1960 the Bureau predicted that the inmate population would reach 30,000 by 1975. In 1975, however, the population remains at just 23,000, or 2,000 less than projected for 10 years ago and 7,000 less than projected for this year.

The 1970 Master Plan projected 28,500 inmates by 1980. Apparently this figure was based on the assumption that the population would increase by the same rate per year from 1970 to 1980. But, as inmate populations began to decrease, the 1972 Master Plan estimated about 27,000 by 1982, while the 1974 Master Plan estimated approximately 25,494 by 1983. Today's population is little more than 23,000, of whom about 21,500 are sentenced offenders. Looking at the downswing in the curve of criminal cases filed in federal court since 1972, and the potentially increased use of probation, it seems fair to conclude that the number of offenders sentenced to the Federal Bureau of Prisons has stabilized.

The Federal Bureau of Prisons further complicates population projections by its method of counting inmates. For years the Bureau has contracted with state and local facilities. For some reason, Bureau statistics at times include these contract offenders, while at other times they do not. In recent years, for example, the Bureau opened detention facilities that added new capacity for offenders not previously housed in the Federal Bureau of Prisons. But as the status of these persons is changed from contract inmates to Bureau inmates, the Bureau population appears to increase, when in fact only a shift in statistical categories has occurred. Since at any given time over 5,000 persons are in contract facilities, the movement of these inmates to a Bureau facility can appear to increase the total Bureau population whereas, in reality, there is no real increase in confined population. This problem, to which the Bureau has been insensitive in its statistical planning, frustrates any serious attempt to review population projections. It is a case in which careless practice, undisturbed by the requirements of comprehensive planning procedures, encourages those inside and outside the Bureau to miscalculate, a consequence harmful to the well-being of the Bureau. Sound management obliges that planning be rigorous, and that information about its functioning be clear and straightforward.

Even if the population should reach the 25,000 the Bureau projects for 1983, the recent addition of bed space and the opening of new space in prisons under construction should be adequate to accommodate it. The Bureau accommodated

¹⁷ *Washington Post*, May 13, 1975.

24,000 inmates in the early 1960s and though it has abandoned some beds, it has opened facilities for approximately 2,600 persons since 1970. In the Bureau's house organ, *Monday Morning Highlights*, the Bureau recently noted that it is now overpopulated by only 500. And since it already plans to open facilities with bed space in excess of 500 by the end of this year, it is clear that present population demands do not justify a new construction funding.

A review of the Bureau's population projections reveals another interesting factor. The number of federal prisoners in 1975 is nearly the same as in 1940. Over the years 1940-1975, the Bureau's population became fairly stable: while the U.S. population increased by more than 50% in that period, the Federal Bureau of Prisons' population increased less than 10%, from about 20,200 to 21,250. It reached a low of 16,539 in 1944 and a high of 24,925 in 1962. Thus the trend of Federal Bureau of Prisons population has not directly paralleled that of the general population; while there has been added emphasis on law enforcement since the middle 1960s, the prison population has not risen accordingly. Remarkably, according to Bureau statistics, the reported bulge in prison population that accompanied widespread war protests in the past decade is not reflected in the general population statistics.

In analyzing the Bureau's prison population from 1937 to 1975, we discover a peak period in 1941 when 20,345 was the count at the beginning of the year, with the second major peak period occurring in 1962, when 24,925 was the corresponding count. There was a national decline in prison population between 1962 and 1968, and then a rise began again which continued through at least 1974. Existence and accuracy of statistics on state prison and local jails counts, along with juvenile facility counts, have been precarious at best. But the Bureau, having a central administrative management, seems to present reasonably reliable figures. The average population comparing fiscal year 1975 with 1974, shows the average count for 1974 almost 300 inmates *higher than for 1975*. They project about 24,000 for fiscal year 1976, and have offered various estimates, but as high as 27,000 inmates by the early 1980s. Is there a particular cataclysmic social upheaval or other factors that indicate a dramatic increase in the ratio of admissions over releases different from the records of trends over the past thirty-eight years?

Three other factors that apparently have a significant effect on prison population are age, urbanization, and unemployment. The Bureau plans a number of new youth institutions. Another Bureau, that of the Census, has indicated the peak of youth population has passed. The estimate of the proportion of 15- to 24-year-olds in the national population will apparently be steadily declining through most of the remainder of this century. James Q. Wilson of Harvard University stated recently in the March 5, 1975, *Corrections Digest*, " * * * little population growth will occur over the next few decades and by 1990 the crime rate will probably be at its lowest level since the 1950s because the youthful component of the age population by that time will be at its lowest point since the 1950s."

The Census Bureau has also recently indicated that there is a remarkable new migration from urban and suburban settings to rural and small town areas. From 1970 to 1973, the population in non-metropolitan areas increased by 2.3 million people, or 4%. The fifteen largest metropolitan areas gained only .1%, due only to the fact that births exceeded deaths. Who knows how these demographic figures will relate to future prison populations?

In April of 1974, the Congressional Research Service found that there was a connection between unemployment and crime ("Prison Population and Costs—Illustrative Projections to 1980"). The study revealed that there was "an intriguingly close correspondence between the unemployment rate and the change in size of the prison population," and such correlation was found to be direct. Minimally such awareness of the correlation acknowledges the relationship of socio-economic and political conditions to the incidence of crime, or more accurately to the number and type of individuals selected out for apprehension, prosecution, conviction, and confinement. It must be emphatically stated here that even without going into any further analysis, the high rate of joblessness in 1975 and perhaps in 1976, described by the government as only a temporary problem, should not form the rationale for the quick construction of new jails and prisons, whether at the federal or any other level.

Thus the statements made by Colin Frank, administrator of mental health services in the Federal Bureau of Prisons, in the February 25, 1975, *Wall Street Journal* need to be tempered and placed in a more enlightened context. In that article, Frank is quoted as saying, "The message is very clear—come 1976, watch

out, brother * * * from all the data we have, (It appears) we're going to be bursting at the seams * * * the courts, the prisons—they'll be piling up come twelve to fifteen months from now, like the ninth wave, and that's the big one."

Such attitudes tend to promote an emotion of fear from rampant crime, increased arrests and subsequent prison commitments, thereby justifying an increase in bricks and mortar solutions to joblessness and the related political and socio-economic conditions related thereto. Richard Vogel revealed in his analysis of the increase in Texas prison populations the correlation between economic conditions and incarceration rates. Describing also the complications created by racism, Vogel claims that the Texas Department of Corrections has become increasingly sensitive to the state's economic conditions by providing a "dumping ground for marginal Texas citizens in times of economic dislocations." He concludes that "as long as this relationship is allowed to exist, the most carefully conceived and executed reform programs will have little chance of success. Incarceration practices will continue to be dictated by economic conditions rather than rational penal philosophy."¹⁵

The cost factor is yet another issue that should be seriously considered. The construction, construction financing, and maintenance of jails and prisons prove to be costly exercises indeed. Planning and site acquisition are costs frequently ignored in calculations. The building of new jails and prisons now costs from \$25,000 to \$50,000 per bed. Debt service is expensive, frequently costing more than the actual construction. Maintenance costs now average at least \$3,600 per bed per year and frequently are much more. A question emerges whether they are a taxpayers' rip-off, disguised by political opportunists, by emotionalism, and by an almost complete dearth of facts as to what works.

More importantly, how will the cost of prisons affect our future and the lives of our children? What increased burden will the schools, roads, hospitals, garbage and waste disposal, police and fire services, and other public services suffer because of the prison debt? How much local laud will be taken off the tax rolls? How carefully has the environmental impact statement discussed the effects on, and local capabilities for, handling changes in the environment in terms of sewage, water, sound, air emissions, and local aesthetics? And remember, the escalating costs of construction probably will never recede to a level we might have expected in previous times of affluence. We are in a new age requiring careful allocation of dollars for programs that can show proof of working for, not against, people. All this adds up to fantastic costs, indeed a very high price to pay, especially when considering the questionable at best, crime-producing at worst, benefits gained.

After having carefully analyzed the operations of the Bureau of Prisons, the question looms, in an era of new federalism, why do we require the operation of a separate network of penal institutions to serve persons convicted of a hodgepodge of federal offenses. The Bureau of Prisons, as it presently exists, has proven to be a failure. The lack of accountability, the lack of any socio-economic benefit analysis, the almost complete documented capability of the penitentiary experiment to produce only negative rather than positive social effects, the apparent myth of and actual abuse of the treatment model, and the insidious discriminatory nature of the entire criminal justice definition, flow, and control process, raise such profound questions about the very foundations for the use of penal institutions.

More significantly, the existing evidence leads only to the conclusion: until more questions are raised and issues resolved, there should be no further use of finite resources to build more of the same, if indeed, to continue its existence at all. This growing awareness prompted the National Council on Crime and Delinquency to issue a policy statement calling for a halt in construction of all prisons, jails, juvenile training schools, and detention homes until the maximum funding, staffing, and utilization of noninstitutional correction have been attained.¹⁶

William G. Nagel, a former prisoner administrator, asked that we "resist the pressures to build, or America will have delayed, and at great cost, the more reasonable solutions which must inevitably be worked out. We must, in the mean-

¹⁵ Richard Vogel, "Prison Reform in Social Perspective," *The Texas Observer*, Jan. 31, 1975.

¹⁶ See NCCD policy statement, "A Halt to Institutional Construction in Favor of Community Treatment."

time, keep the lid on our Pandora's box of supposed correctional construction requirements.²⁰

The National Advisory Commission on Criminal Justice Standards and Goals, a creation of the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice, also recommended a ten-year moratorium on construction of new institutions, unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible. Such analysis, the commission said, should conform generally to the "total systems planning" concept.

A number of other organizations and individuals have called for a moratorium on the construction of all adult and juvenile institutions, generally, to allow time and to provide a technique for forcing (1) study of the validity of the confinement concept, (2) comprehensive total systems planning and analysis of the entire criminal justice process, from definition of crimes through final release of the individual from authority, and (3) the development of a system of alternative programs, policies, procedures, and philosophies.

The implications of the moratorium issue should be recognized as a benchmark for the Bureau of Prisons. Whether the present crisis will radically change the system remains to be seen. Vogel claims that the present crisis can be turned to the advantage of reform. His prescription:

"To place a moratorium on the construction of new traditional institutions and to institute a community based correctional program at this time would force changes. The practice of exporting urban problems to the woods of East Texas can be brought to a halt and the large contributing communities forced to confront their problems on home ground.

"The issues here are bigger than the events behind the walls of TDC—facing the prison problems of Texas head-on entails confronting many of the problems of Texas as a community of people."

More profoundly, an analysis of the political economy of American society needs to be part of any solution to the crime problem. The system of distribution of income, power, and opportunities creates serious difficulties over the long haul for a significant number of American citizens. In a society that poses both problems and solutions in a highly individualistic and competitive way, the choice of illegal options will be a natural response to the socio-economic difficulties that people of all social and racial classes face. It is compelling, therefore, that we turn away from prisons as a panacea and look to new directions.

III. A NEW FEDERAL DIRECTION IS ATTAINABLE

The present federal role in the nation's corrections system is unsatisfactory. If America's corrections system is to be restored its integrity, a new, viable federal role is imperative.

The need for this new role has grown stronger under the new federalism. The new federalism seems built on a pattern of partnership between the federal government and the states in delivering a variety of services. The enablement by mandate and the financial and technical resources derive from the federal government; administration and overall supervision is conducted by the states; the detailed operation is frequently delegated to localities, under state supervision. Federal criminal justice programs and services operated by federal agencies are often regarded as models and trend setters for state and local government. The direct services of federal agencies are delivered at state and community levels. Deficiencies in planning and coordination within the federal system have an immediate impact on state and local systems. All serve the same people. If planning for federal law enforcement, courts, and corrections is not the responsibility of a federal criminal justice planning commission, it is difficult to justify federal legislation that mandates comprehensive criminal justice planning at the state and local levels of government. The National Advisory Commission recommends that corrections planning be integrated with planning for all other sectors of criminal justice. No one has yet addressed the need to integrate the planning for federal correction or other criminal justice services with state services.

That the federal government does have a role in the improvement of corrections nationally is implicit in the work of the National Advisory Commission itself. It

²⁰ William G. Nagel, Director of the American Foundation, presented in a paper, "The Anatomy of the Prison," before the National Symposium on the Planning and Design of Correctional Environments at the University of Illinois, December 1972. Also see *The New Red Barn: A Critical Look at the Modern American Prison*, 1973.

was appointed by a federal agency. Its purpose was to establish standards and goals to be recommended by LEAA, a federal agency, for state and local criminal justice systems, with priorities for their implementation. The standards and goals, in turn, are to provide recommended guidelines for the use of federal, as well as state and local funds, in the development of comprehensive state and local criminal justice systems.

The federal government now has other avenues through which to improve corrections nationally. For example, while LEAA has allocated the greatest amount of federal financial assistance, corrections has received considerable financial help for developing and testing new ideas and programs from OEO, the Department of Labor, and from IIEW's Office of Education, Social and Rehabilitation Service and Youth Development and Delinquency Prevention Administration.

Second, LEAA's National Institute of Law Enforcement and Criminal Justice and HEW's N.I.M.H. Center for Studies of Crime and Delinquency are national leaders in correctional research.

Third, technical assistance is offered to state and local corrections by LEAA, primarily through Bureau of Prisons personnel.

And finally, one must consider the federal role in training of corrections personnel, a role headed in the past by HEW's former Office of Juvenile Delinquency and Youth Development and by N.I.M.H., which continues grants for professional treatment personnel. More recently, enhanced training opportunities have been offered through funds from LEAA's Law Enforcement Education Program and by the new National Institute on Corrections being developed by LEAA and the Bureau of Prisons.

In addition to assuming and—since the establishment of LEAA—to strengthening its roles in financial assistance, research, technical assistance and training, the federal government has undertaken development of a ten-year plan for federal corrections reform that the Federal Bureau of Prisons hopes will serve as a model for state and local corrections systems.

A federal criminal justice plan is needed to correct problems that fester at federal, state, and local levels. The federal criminal courts, for example, still use probation in 30 to 40 percent fewer cases than do such states as Wisconsin, Rhode Island and California. Pre-trial intervention services and release on recognizance are still underdeveloped in the federal courts. If a federal corrections plan fails to project its detention, correctional institution, and community center needs upon a priority for the maximum expansion of such non-institutional corrections services, it will develop little but new names and facades for a new institutional system.

Fiscal decisions are another problem area. In 1967, a survey of corrections in the United States for the National Commission on Law Enforcement and the Administration of Justice found state and local government with plans to spend \$1.135 billion on new jails, detention centers and correctional institutions. Yet, even though two-thirds of all offenders were in the community, as much as one million dollars of expenditures were not planned to expand and improve community correction through more innovative probation and parole. Today—eight years later—we can add almost one billion dollars more to those plans for the new detention and confinement institutions. Included in this amount is over \$600 million planned for new federal institutions under the Federal Bureau of Prisons proposed model plan. Tens of millions of dollars in additional expenditures are planned to refurbish and improve existing state institutions. As was the case five years ago, a very small portion of the correctional dollar is yet designated for non-institutional and non-residential corrections. In fiscal year 1971, for example, although the number of federal probationers increased by more than 4,000, more than 10 percent, only one federal probation officer position was added to the already impossibly overloaded federal probation system. In fiscal year 1973, the federal probation system fared somewhat better, but still received only 163 new probation positions from the 348 positions requested.

A comprehensive criminal justice plan capable of resolving problems like these seems to await definition of a new federal role. One definition of the new federal corrections role has been articulated already in the National Advisory Commission recommendations. These recommend that the development of non-institutional corrections programs and services that will treat every possible offender within his own community be given priority. Calling for a shift away from our current institution-oriented correctional systems, the Commission recommends that no new institutions for juvenile offenders be constructed and that no new adult institutions be built until an analysis of the total criminal

justice system shows conclusively that no other alternative is possible. How sharply these recommendations differ from earlier calls for prison reform which, while decrying the failure of institutions, support a reform that is still bound to institutions.

Thus, the most important role the federal government can undertake at this time to improve corrections is to lead America away from its overreliance on prisons and institution confinement. We who contributed the prison to worldwide penology as the best alternative to the penalty of savage mutilation, exile or death, may lead the world in phasing out the prison and other cruel confinement institutions. Alternatives are already in use and others await discovery and testing.

To pursue this new leadership role will require a federal commitment to help expand non-institutional community correction to their maximum potential under state and local governmental auspices before allocating any further funds for experimental design or construction of new detention or confinement institutions.

If the recommendations of the National Advisory Commission for the improvement of corrections are to be implemented, the mandate for a model federal correctional system must be reconsidered now. We should be willing to ask whether the Federal Bureau of Prisons should be phased out. If the answer is affirmative, then the several hundred million dollars the Bureau of Prisons is planning to spend for a large number and variety of new institutions and residential facilities can be reallocated for the development of model state and local correctional systems.

If, on the other hand, the decision is that the federal government should continue to operate its own correctional system, then the ten-year model should be examined within the context of the recommended standards and goals developed by the National Advisory Commission. To develop a corrections system at the federal level that is inconsistent with recommendations to state and local governments is a contradiction unworthy of the federal government.

Nor is a separate system consistent with the new federalism. The separate network of penal institutions to serve persons convicted of a hodge-podge of federal offenses simply cannot fit in today's era of new federalism. Attitudes toward the delivery of human services have changed in recent decades. We have come to believe in the need for a small and personalized, versus large and remote, bureaucracy; the deinstitutionalization of people into their normal, local community; the assurance of local involvement and interest; and the development of personalized services. Federal institutions, at best, can only be regional institutions requiring the incarceration of many offenders great distances from their home communities. Without duplicating the services of state systems even more than at present, the best of the forward looking and progressive community corrections facilities of the Federal Bureau of Prisons must also house many offenders in cities far from their home communities. Consistent with the movement toward community corrections, each Governor's office has a probation and parole interstate compact administrator with services coordinated by the Council of State Governments. Procedures have been established whereby persons who violate the law in another state may be returned for supervision on probation or parole in their home communities. Soon, hopefully, all states will adopt compact legislation and procedures enabling such offenders who require periods of institution control and confinement to be returned to their states of residence to serve these terms also in correctional centers near their homes. Hence, continuing the federal operation of a separate correctional system impedes the movement toward community corrections.

As the leadership of the LEAA and its federal funding helps state correctional systems achieve and surpass the Commission's recommended standards, goals, and priorities, the federal government should gradually expand its present contracts for state and local corrections services until all offenders are cared for by correctional systems of their states of residence. The time may come when federal courts prefer to contract with state or local corrections for probation services. With only a fraction of the funds now allocated or planned for new federal detention and correctional institutions, the federal probation system should be expanded to the model federal corrections service for both pre-trial intervention and community non-institutional corrections. Federal probation staff could serve every eligible federal offender in his home community and could collaborate and contract with the state correctional system where detention, residential or institution is required.

The new federal leadership role would play an active part in encouraging reform through enlightened legislation. Senate 1, for example, is an attempt

to improve federal criminal law. But in its present form, the proposed revision would make more rather than fewer state crimes into federal crimes, and would increase rather than decrease the length of prison terms. The proposed revision would trail, rather than lead, state criminal law revision in the de-criminalization of immoral and asocial behavior that is not criminal (since there is no victim other than the offender himself).

In its new role, the federal government could lead states by enacting legislation to end restrictions on the civil rights, employment, and life styles of ex-offenders. The person should become truly an ex-offender, free of obstacles and stigma. It seems only too obvious that the oppressive control process should not continue once the individual returns to the community, if that community expects to be free of further illegal activity.

The federal government would perhaps be in the best position to conduct a major campaign to carefully analyze the limits of the criminal sanction and to narrow the scope of criminal or juvenile court jurisdiction. Legislation of morality rather than legislation of serious dangers to the public accounts for a great proportion of arrests. These arrests overburden the system at the expense of fair handling of more serious breaches. Minnesota estimated that, with de-criminalization of several so-called victimless crimes, it would reduce its prison population by 10 percent. This would constitute a major policy change.

Another far-ranging policy issue that falls within the purview of the federal government is parole. Due to its oppressive and arbitrary nature, parole should probably be abolished. This should be done only when and if sentences are reduced to a standardized short term, and all prosecutorial decisions affecting the nature and type of criminal charges are open to public scrutiny and hearing by the defendant. (See *Prison Without Walls* by Citizens' Inquiry on Parole and Criminal Justice [1975].)

Federal initiative could also bring the immediate diversion of juvenile and youthful offenders to the states by the United States Attorneys, while courts could negate current Bureau of Prisons plans to build new regional federal youth institutions such as are now planned for California, where state youth institutions have been emptied by the expansion of non-institutional community corrections.

The new federal role should stimulate study and assessment of criminal justice procedures. Certain key procedures demand careful review. First, consider the unconstitutionality of the bail and pre-trial detention systems. In January 1973, the Temporary Commission on the New York State Court System called for the total abolition of bail, mainly because it results in jail for the poor, and bail for the rich. On any day in this country nearly 100,000 people are detained pending final adjudication, either because bail has not been set or due to an inability to pay bail. Second, accountability in law enforcement and police activity must be assessed. The police are the initial selection agent, and wield a tremendous amount of discretionary power as to who will be apprehended for what. There has been an alarming increase in the rate of deaths of male citizens caused by, in the official terminology, "legal intervention of police," and recorded as "justifiable homicide." Police have killed black men some nine to ten times higher than white men. (See "A Garrison State In 'Democratic' Society," by Paul Takagi in Vol. 1 Spring-Summer 1974, *Crime and Social Justice*.) These figures merely indicate a tendency for the use of excessive police force directed toward a particular class or race of persons. Figures on arrest statistics reveal similar preponderance of class and race victims of police selection. Third, the Sixth Amendment contains a constitutional guaranty to legal counsel for criminal defense. In a recent National Legal Aid and Defender Association survey, "The Other Face of Justice," the data revealed gross disparities in indigent services across the country. In a substantial number of jurisdictions no more than token representation is being provided for the indigent citizen accused of crime. Thus a dual justice system exists—one for the poor and one for the rich. It is well known that incarceration is closely related to effectiveness of counsel at all stages of the pre-trial and trial process. Fourth, a speedy and public trial, especially crucial to a pre-trial detainee, is a constitutional guaranty. Of course, the longer the delay in trial, the longer the detention for the defendant, who is supposedly presumed innocent until proven guilty. Pre-trial detention serves to induce poor defendants to plead guilty quickly, whether in fact guilty or not.

Another policy area that must have attention is the impact of length of detention on crime control. Elbert Stewart, in his book, *The Troubled Land*, states that, except for certain political prisoners, "... the American criminal on the average serves several times as long a sentence as his counterpart anywhere else in the world." A report in the *Criminal Law Quarterly*, December 1974, on "Prison Use: A Canadian and International Comparison," that analyzes the imprisonment rates of fifteen selected industrialized nations ranked the United States first.

Federal research on dangerous offenders is needed. The relatively few dangerous, assaultive offenders who cannot be released back into the community call for federal attention, not only to sharpen the criteria for measuring dangerousness, but also to find the best agency and professional discipline for the long time care and rehabilitation of dangerous offenders. The principal response by the federal corrections system to these offenders has been to plan for increased security and human storage—even beyond that of traditional maximum security, to reduce the fear of their keepers, and underscores the problematic justification of corrections as the agency for the future custody, care and treatment of the small number of dangerous offenders in the current correction population.

Guided by the new federal role, policy studies must be conducted concerning disparity in sentencing. These disparities create tremendous problems among the confinees. Research done in sentencing institutes for judges, using real cases with changed names, revealed such variance as to shock the consciences of observers.

The federal role in improving corrections ought also to encourage states and localities to develop and test models of alternatives to incarceration and to existing criminal justice procedures. These might include:

- Arbitration as an alternative to the criminal warrant,
- Community dispute and reconciliation centers,
- Pre-trial release on personal promise: release with supervision,
- Massive expansion of probation (studies reveal little difference between results of small versus large caseloads),
- Volunteer support groups for victims, offenders, and ex-offenders,
- Use of restitution and fines,
- Use of community work and responsibility,
- Crisis intervention centers.

These ideas have something in common. They arise from the belief that community treatment enhances the well-being of the crime victim, the larger community, and the offender. Treatment, instead of isolating and harming the offender (while neglecting the victim and costing the community), becomes a process by, in, and for the community. The interrelationship between victim, offender, and community is strengthened through community treatment.

By turning away from the effort to set an example for state corrections through a federal institution system, a far more important federal role could be assumed in the national institute of corrections proposed by the National Advisory Commission. The proposed institute or academy could serve as the agency through which the federal government would coordinate the national effort to improve corrections through state model building and technical assistance, through research, training, and other forms of leadership and assistance to state and local corrections.

During the interim years envisioned for any national move away from institutions, the federal leadership role could be a creative one. The federal system could join California, Kentucky, Massachusetts, and Wisconsin, where planning for the phasing out of large congregate care institutions has already or soon will become a reality.

By a major investment in new diversion procedures and pre-trial intervention services, as recommended by the Commission, plans could be dropped immediately for new federal detention centers in San Francisco, Chicago, and other large cities. With the upgrading of local detention under the auspices of state corrections, the same local facilities could continue to detain federal as well as state offenders.

The new leadership ought certainly to mend its international fences. At the Fourth United Nations World Congress on Prevention of Crime and Treatment of Offenders in Kyoto, Japan, in 1970, the delegates from the United States joined in a resolution requesting that the United Nations convene an assembly or conference of the member nations' cabinet officers responsible for law enforcement and the administration of justice. Such a meeting of justice ministers should be given priority not only to discuss under appropriate United Nations auspices such international law enforcement problems as skyjacking and the extradition of fleeing criminals, but also to initiate international agreements whereby many

offenders could appropriately be returned to their own nations for correctional rehabilitation. The United States could assume leadership by requesting that the United Nations convene such a conference to proceed at once with such international agreements.

Under the leadership of the Council of Europe, some of the Council's member nations' correctional systems now reciprocate with each other through such international agreements. The United States does not. As a result, hundreds of American youths who are not confirmed criminals are serving destructively long sentences in foreign prisons while our federal government makes no effort to intervene in their behalf.

The real need, then, is for our federal government to assume this additional correctional leadership role for the official return of offenders from other nations. This attention would indeed elevate American corrections to one of leadership, not only within the nation but for the world.

The list of ideas is unending; nor is there a dearth of zeal. In summary, it is clear that the real obstacle to assuming a new federal role in corrections is one of will, not the lack of understanding, of historical precedent, or of technical capability. Can anyone disagree that corrections, the very foundation of criminal justice, demands the most serious attention of decision makers, in a nation predicated on the rule of law?

CONCLUSION

America's federal prison system began a century ago as the earnestly proposed concept of humanitarian correctional treatment. Since then, the concept has been institutionalized, and has developed into an unwieldy national artifact, gigantic in scale, cost, and harm.

Evaluated against any measure of effectiveness, the federal penitentiary system is a stunning failure. Worse still, blind to its own failures, the Bureau is incapable of righting its own course. It hinders onward and onward and further and further from the mainstream of American thought.

The Congress, in these Bicentennial years, must act decisively to redirect the federal correctional effort to make it compatible with the trends of today and the future.

The Congress must bring the criminal justice system back to the control of its citizens and their communities. Plainly, the separate federal correctional system is far beyond the control of the citizens. This accountability must be restored.

We believe the concepts we have discussed today will begin this movement. And with this movement, there will be a concurrent response from the communities.

APPENDIX

SENTENCED FEDERAL BUREAU OF PRISONS POPULATION, BY OFFENSE CATEGORIES, JAN. 13, 1975

Offense description	Number	Percent of reported	Estimate
Kidnaping.....	275	1.5	328
Liquor law violations.....	121	.7	144
Larceny, postal.....	546	3.1	651
National Motor Vehicle Theft Act.....	1,499	8.4	1,788
National Stolen Property Act.....	215	1.2	256
Theft from interstate commerce.....	251	1.4	299
All other larceny, theft.....	168	.9	200
Subtotal.....	2,679	15.1	3,195
Robbery:			
Postal.....	72	.4	85
Bank.....	3,372	19.0	4,022
Other.....	124	.7	147
Subtotal.....	3,568	20.1	4,256
Securities, transport false/forged.....	444	2.5	529
Hijacking commercial plane.....	21	.1	25
White slavery violations.....	47	.3	56
Selective Service and Training Act:			
Refusal to be inducted.....	2	0	2
Failure to register.....	1	0	1
Failure to report for induction.....	3	0	3
Forced or fraudulent SSA.....	0	0	0
Failure to submit questionnaire.....	0	0	0
Other.....	6	0	7
Subtotal.....	12	.1	14

APPENDIX—Continued

SENTENCED FEDERAL BUREAU OF PRISONS POPULATION, BY OFFENSE CATEGORIES, JAN. 13, 1975—Continued

Offense description	Number	Percent of reported	Estimate
Juvenile delinquency	363	2.0	433
Other Federal law violations	1,667	9.4	1,988
District of Columbia, local cases:			
Assault	23	.1	27
Auto theft	5	0	6
Burglary	37	.2	44
Forgery	6	0	7
Homicide	75	.4	89
Larceny-theft	26	.1	31
Prostitution	0	0	
Robbery	118	.7	140
Other	52	.3	62
Subtotal	342	1.9	408
Burglary:			
Postal	65	.4	77
Other	77	.4	91
Subtotal	142	.8	169
Counterfeiting:			
Postal	2	0	2
Money or U.S. securities	324	1.8	396
Subtotal	326	1.8	398
Drug laws:			
Nonnarcotics	955	5.4	1,139
Narcotics	3,629	20.4	4,328
Controlled substance	433	2.4	516
Subtotal	5,017	28.2	5,984
Embezzlement:			
Postal	16	.1	19
Bank	61	.3	72
Other	33	.2	39
Subtotal	110	.6	131
Firearms:			
Federal Firearms Act	42	.2	50
National Firearms Act	721	4.1	860
Gun Control Act	65	.4	77
Subtotal	828	4.7	987
Forgery:			
Postal	33	.2	39
Trans. forged checks money order	15	.1	17
Other (Treasury checks, U.S. bond, credit cards)	557	3.1	664
Subtotal	605	3.4	721
Immigration	564	2.8	601
Government reservation, high seas, and territorial cases:			
Assault	112	.6	133
Auto theft	4	0	4
Burglary	41	.2	48
Forgery	3	0	3
Homicide	251	1.4	299
Larceny-theft	77	.4	91
Prostitution	0	0	
Robbery	57	.3	68
Other	107	.6	127
Subtotal	652	3.7	777
Military court martial cases	67	.4	79
Reported total	17,790	100.0	21,221
Not reported	3,431	16.2	
Grand total	21,221		

Mr. RECTOR. Thank you. I will avoid repeating data given by Mr. Confer and Mr. Nagel.

I would like to address just primarily three issues. One, and this I believe is the first congressional look which is certain to find a total absence of comprehensive criminal justice planning on the part of the Federal establishment. This is why I stated that this is a landmark hearing. It is rather significant that the Omnibus Crime bill, which I feel will historically have introduced into American criminal justice the concept of comprehensive planning. The Omnibus Crime Act mandates that every State and metropolitan area submitting a request for its share of LEAA funds must submit a comprehensive plan, and each Governor and mayor must appoint a comprehensive planning body. That act, and no other act, has required a similar kind of comprehensive planning at the Federal level.

I have tried as a representative of my organization to raise for public debate around the Nation, as we approach criminal justice in the seventies, whether or not we should have a Federal Bureau of Prisons at all. I have tried to avoid that as an attack on the Federal Bureau of Prisons.

Before we took the issue to committees of our board, and then our board of directors, I met with Mr. Carlson soon after, then Attorney General John Mitchell asked that he and the Bureau develop a model correctional plan which might be replicated by the States to ask how the Federal prison system could develop a correctional model. It is not the Federal correctional system. Probation and parole field services are administered by the administrative office of the United States Courts under the presiding district judge of each district. The Federal Parole Board with its releasing authority is a separate agency. I guess if there is any faulting that we would find with the current Director of the Federal Bureau of Prisons, it is his failure to give the same kind of outspoken leadership that used to be given by Mr. James Bennett.

Mr. KASTENMEIER. I regret to interrupt to say we have another vote. However, we will not recess until you have completed your statement.

Mr. RECTOR. Thank you, sir. I will make it very brief.

Mr. Bennett in his annual budget used to budget for what he thought the U.S. prosecutors and courts would send to him for care. That was his responsibility. But in the area of planning, he was on the Hill repeatedly in terms of the Federal criminal law, in terms of Federal sentencing, in terms of the need for training judges in sentencing, recognizing that he was getting into the Federal prisons people who should not be there. Mr. Bennett came to our National Board of Directors and opposed our position which we present to you that the Federal Bureau of Prisons should be phased out along the lines suggested by Mr. Nagel. He asked how are you going to leave Federal prisoners in inhuman prisons such as in Cummings Prison in Arkansas and Raiford Prison in Florida. Our Board response was: What leadership role is it for the Federal Government to select a few people who happen to come into Federal courts and transport them thousands of miles sometimes from their State and their family when its role should be a new role. And we are not just against the Bureau of Prisons, but we are suggesting in our statement a new Federal leadership role in criminal justice, not just planning

for Federal law enforcement, court and correctional systems per se, but in the area of corrections to help the States develop models.

The Federal system has, as has been pointed out, only about 25 percent who would really probably come in the category of dangerous offenders. We have seen no research or classification work which would show criteria as to who are and who are not the dangerous. This kind of work and leadership needs to be given to help the States phase out old, antiquated institutions by keeping them for the dangerous few and getting others into more economical, local programs. Our argument is based on the need for public schools, community crisis centers, community mental health centers and so on which are finding a great shortage of funds. We find that since the Omnibus Crime bill passed in 1968 and money for criminal justice has gone up sharply, that money for education, community mental health services, and so forth, has gone down equally as sharply.

With the increase in funding for Federal criminal justice having gone from \$4.5 billion in 1967 to almost \$15 billion by the end of 1974, and still going up, we wonder if Congress would not want to look at not only a new role for corrections that would be standard setting, training, research, the kind of help that is in the Juvenile Justice Act to help the States and communities in the juvenile delinquency area also in the adult criminal area. We suggest that Congress also question whether in terms of reducing crime and reducing violence in America we are putting our money into the kinds of services; namely, law enforcement and criminal justice services, that are really going to reduce the crime problem.

Mr. Chairman, I think it would be presumptuous in terms of your pressure to take additional time. I think those are the main court arguments that I would present today.

Mr. KASTENMEIER. Thank you, Mr. Rector. I know we cannot now commence with Dr. Menninger. I think we will have to again recess. We have two votes so close together, but I suspect following this vote we will have a period of uninterrupted time in which we can certainly conclude this panel if not our next panel. So we will recess again for 15 minutes in order to go to the floor to vote on whether or not we shall agree to a Senate amendment on the Voting Rights Act extension. Therefore, until 12:25 p.m. we stand in recess.

[A brief recess was taken.]

Mr. KASTENMEIER. The committee will come to order. When the committee recessed we had just completed hearing from Mr. Milton Rector, and we are ready to greet Dr. Walter Menninger for his statement.

TESTIMONY OF W. WALTER MENNINGER, CLINICAL DIRECTOR, TOPEKA STATE HOSPITAL, TOPEKA, KANS.

Dr. MENNINGER. Thank you, Mr. Chairman. I have prepared a 7-page statement which you have, and I thought what I would do rather than read that directly, is roughly go over it with some references to some other points which have been brought up.

[The prepared statement of W. Walter Menninger follows:]

STATEMENT OF W. WALTER MENNINGER, M.D., CLINICAL DIRECTOR, TOPEKA (KANSAS) STATE HOSPITAL, SENIOR STAFF PSYCHIATRIST, MENNINGER FOUNDATION, MEMBER, ADVISORY BOARD, NATIONAL INSTITUTE OF CORRECTIONS

INTRODUCTION

It is an honor and a privilege to appear before you, in response to Chairman Kastenmeier's request, to present my views on the effectiveness of the Federal Bureau of Prisons' use of incarceration and the wisdom of the plans to construct additional institutions.

My views result not only from my psychiatric orientation, but also from professional experience working in and closely with the Federal Prison System in several capacities. From 1961 to 1963, I was a USPHS Commissioned Officer assigned to the Federal Prison Medical Service, serving as the Chief Medical Officer and Psychiatrist for the Federal Reformatory, El Reno, Oklahoma.

Subsequently, in 1965 and 1966, at the request of Myrl Alexander, then Director of the Bureau of Prisons, I was a member of a Bureau of Prisons-Public Health Service Program Study Group to review the prison medical services. (Our report, "A Study of the Federal Prisons Health Services," was published in December, 1966, by the Bureau.)

In July, 1968, I was appointed by President Lyndon Johnson to the National Commission on the Causes and Prevention of Violence. That Commission was chaired by Dr. Milton Eisenhower, and was extended in 1969 by President Richard Nixon. The mandate of the Commission was broad in terms of the study of violence in our society from many aspects, and our final report, "To Establish Justice, To Insure Domestic Tranquility," was issued in December 1969.

In 1970, I was asked by the present Director, Norman Carlson, to participate on an advisory panel for prison facilities planning. In the years immediately following, I was an active member of that panel which regularly met with the Bureau planning staff and helped develop new concepts in prison planning and architecture.

Finally, last fall it was my honor to be named by the Attorney General as one of five non-corrections members of the first Advisory Board of the newly established National Institute of Corrections, created by Public Law 93-415 (93d Congress, S. 821, September 7, 1974).

QUESTION OF EFFECTIVENESS

When we speak of effectiveness of prisons, it is necessary to ask effectiveness for what? The prison is but part of a complicated system which has the ultimate goal of social control of criminal offenders. As noted by the National Commission on the Causes and Prevention of Violence, the "system" of criminal justice is not really a system in the literal sense. There is little effective integration of the services of the various component agencies—law enforcement, courts, prisons, parole. All are challenged with part of the responsibility for the control of criminal behavior in this country, and each has a different and limited handle. It is of note that the Federal Bureau of Prisons, in attempting to fulfill its part of the responsibility, has made consistent efforts to communicate and maintain effective working relationships with the Federal Judiciary and the U.S. Board of Parole.

Part of the difficulty, also, is that society has mixed expectations of the various criminal justice institutions; and there are conflicting ideas as to just how crime can be most effectively controlled. Traditionally the goals of prisons as set by society have been characterized as: (1) punishment or retribution toward offenders; (2) control or custody of offenders; (3) rehabilitation and change of offenders; and (4) deterrence of additional criminal behavior. In the public sector, there is considerable difference of opinion about the primacy of the various objectives. Most people endorse the concept of rehabilitation in abstract and ideal terms; but when the chips are down, most concern is that offenders be put "away," and be made to "pay" for the hurt they have inflicted on others.

Effectiveness of the correctional process is generally measured by recidivism, or the degree to which offenders repeat their criminal behavior. Yet, if studies of recidivism are to be used as a measure of prison effectiveness, they must take into account the nature of the prison population. That is, in the criminal justice process, those offenders who are eventually remanded to prison are the minority of offenders, those with generally the least assets, those with little or nothing going for them, those with the worst prognosis. Offenders with good prognoses, i.e., as reflected by less severe crime, good legal counsel, better judgment, resources, etc., are likely to avoid prosecution or conviction or be placed on probation. Only those who appear to be most hopeless, for whatever reason, are sent to prison.

Using a medical analogy, it is as if the cases remanded to prison are the equivalent of more severely incapacitated patients with severe or chronic diseases. Indeed, individuals who have had repetitive offenses and who have not responded to previous social controls are persons with a significant disorder of character or personality. Their character defects often preclude a good prognosis, similar to persons handicapped by a debilitating disease.

Under these circumstances, expectations must be guarded for prison effectiveness as measured by post-prison adjustment. Bureau of Prisons' studies have found a 67 per cent two-year success rate overall, 57 per cent after four years, i.e., releases with no repeated offense sufficient to prompt parole revocation or a sentence of 60 days or more. Granted the many limitations and realities of the offender population, and given our present knowledge of what may be expected of these personalities, these results are not unreasonable.

In this context, a word is in order regarding alternatives to prison. Clearly, the ideal correctional program provides a full range of facilities from the secure facility for offenders who need the ultimate in structure, to community facilities for lesser offenders and those ready to return to society. Until recent years, corrections generally had only the secure prisons to meet all correctional needs, and the development of community facilities has met a clear need. Some people have seen the community facility as a means to bypass and eliminate the need for the large prisons. Indeed, some early reports touted exceptional results of community treatment programs. However, careful evaluation has shown these programs have their limitations for certain offenders, and they are not always either better or cheaper than traditional prison facilities.

One additional special problem with regard to utilization of prisons as opposed to community facilities is related to the heterogeneity of the offender population in the United States. This heterogeneity parallels the heterogeneity of the overall population in this country, a mix of many contrasting, and at times conflicting cultural heritages. These characteristics of our population present a contrast to the small rather homogeneous populations of some European countries where there has been some remarkable success in community based correctional programs.

In this country, most studies have repeatedly found that factors with the highest correlation with successful offender outcome have nothing to do with the location or nature of their incarceration. Rather, they are the age of the offender (better outcome from older offenders), the support of relatives (better outcome when there is an involved and interested family), and work (better outcome when there is a steady job and work record).

PRISON CONSTRUCTION PLANS

Because of my participation on the advisory panel on federal prison facility planning in the early 70's, I am aware of the considerable and thoughtful effort which has gone into this operation. In my judgment, the Bureau's program has been enlightened, flexible, realistic, and very much in the interests of the American public. Efforts have been consistently made to involve a range of advisors in the planning, from law, social science, construction, corrections, as well as the Federal Judiciary and the U.S. Board of Parole. Indeed, while I have served as a consultant or panel member with several governmental departments, in no instance have I experienced more effective utilization of consultation than with the Bureau of Prisons.

The necessity for an effective plan for facilities utilization and planning by the Bureau of Prisons has been dictated by the reality of a continuing demand to house more than 23,000 inmates in facilities not designed to hold that number. Further, as the Director has reported elsewhere, 22 per cent of the total population must still be housed in institutions at least 70 years old—penitentiaries at McNeil Island, Atlanta and Leavenworth. These are large, dehumanizing institutions which have been overcrowded because of the increasing commitments of recent years, and they are not designed for modern correctional operations.

At the same time the Bureau is concerned about these antiquated facilities, it is also challenged to develop modern facilities which are closer to the metropolitan centers from which the highest proportion of federal offenders originate. Of special note are the metropolitan correctional centers newly opened in San Diego and soon to open in New York City and Chicago. These institutions are designed for flexible and effective utilization and humanizing incarceration, like no prisons in recent history.

Similarly, the Bureau has encouraged architects to open other new vistas in correctional institution planning, exemplified in the Pleasanton, California, facility and the newly planned correctional treatment facility in Miami. I am proud to have been a part of the development of these new directions—directions which would not have been possible without the support of Congress for the Bureau's facility planning to date. It would be unfortunate to dampen the efforts of the Bureau of Prisons to move in these new directions by withdrawal of continuing Congressional support.

We all wish that we did not need prisons, but there is no question that society will continue to need some secure facilities for the control and management of many convicted offenders. There is no correctional agency in the country with a greater capacity to forge the way with new developments in correctional design than the Federal Bureau of Prisons. And I know of no more careful approach to that challenge than that prepared under the direction of Norman Carlson.

It is easy for some people to stand on the sidelines, in the absence of direct experience with the correctional process, and criticize the efforts of the Federal Bureau of Prisons. I cannot do that. I know too well what they are trying to do, and I heartily endorse their efforts. I sincerely hope you will do likewise, once you are fully apprised of the program.

Thank you.

DR. MENNINGER. As it indicates, my involvement in the area of corrections has ranged from serving as chief medical officer and psychiatrist in a Federal prison to a study group that has reviewed the medical program for the Bureau of Prisons, to a member of the National Commission on the Causes and Prevention of Violence, to being a participant and a member of the Advisory Panel for Prison Facilities Planning established by the present Director of the Federal Bureau of Prisons, Mr. Carlson, in 1970.

I am also now a member of the First Advisory Board of the newly-established National Institute of Corrections which has hopefully as one of its charges helping to develop a more appropriate national response to the area of corrections. I also have had some involvement at the State level as secretary of a Governor's Penal Planning Council in Kansas.

When I received your inquiry asking about the views on effectiveness, I then struggled with the question of effectiveness for what, because this is a problem in the whole area of corrections. It is a problem with regard to the lack of integration of the various aspects of the criminal justice system. And I have been impressed in my own contact with the Federal Bureau of Prisons that at least it has attempted to try to go beyond the strict boundaries in developing a response to the challenge presented to it, namely, whether its involvement with the Federal judiciary or with the U.S. Board of Parole, or the like in maintaining close relationships in orientation of Federal judges and the like.

Another one of the problems in looking at the effectiveness is just what the public expects, because as I cite the traditional goals that have been identified over the years, ranging from punishment to custody to rehabilitation to deterrence, that most everybody thinks that rehabilitation is a good idea, but when it comes down to the nitty-gritty, the public says put those bad guys away and keep them there. They have to pay for what they have done to me.

If you try to measure effectiveness by the traditional measure of recidivism there is another special problem now. At least in looking at the role that prisons play, and this has to do with the bias that is introduced in any studies of recidivism which result from the kinds

of individuals who get to prison. The prison is the end of sieve, of a series of sieves for which there is a selection out of people who have nothing going for them, and that whether it is because of the nature of the offense or what other aspects, the people who finally get remanded to prison are the ones for whom there is no hope. They are the bottom of the barrel, so that to expect great results of corrections in dealing with a very biased population is a tall order, and I compare it in my paper with the medical aspects of expecting great prognostic results when you are dealing with only chronic diseases. There are certain diseases. There are certain diseases that we cannot do a lot for, no matter how much modern medical knowledge and technology we apply. The same may be expected for many of the individuals who go into the prison system, and to damn the prisons because of their inability to resolve and correct the behavior of some of these individuals is, I think, looking at the wrong place for the problem solving.

I have sometimes thought of trying to compare the 5-year survival of cancer cases with some of the 5-year rates on recidivism, and I do not believe that the recidivism rates are than unreasonable.

Now, the question of alternatives to prison is one of the major issues which certainly you are considering and which others have mentioned. I think one of the problems is to not get locked into the all or nothing phenomena, to assume that all the answers are in one place or the other. The ideal program has the full range of facilities which are available and recognizes that there are going to be some people who need a lot of structure and maybe only can be handled in the tight structure of the secure, traditional type prison setting. And others will be able to function reasonably well in the more loosely structured community programs.

I think it is important to note that community programs have their limitations, and they are not always either better or cheaper than traditional facilities. They can be, but not necessarily so. So that you can find the figures to support whatever you want to.

You are due to hear from a representative from Minnesota, and I assume that he will call to your attention a study by the Evaluation Unit of the Governor's Commission on Crime Prevention and Control in Minnesota dated April 1975, that concluded that they wanted a moratorium on any new funding of new residential community corrections programs because of concerns that they had about costs and about effectiveness. So there is no one panacea, and it does involve an effective mix.

I think one of the other problems that needs to be remembered in our population in looking at community treatment facilities is both the problems of heterogeneity of our culture and some of the resistance of our communities to the whole area of corrections, whether it is trying to put in a new halfway house facility and all of the neighbors in the block get upset and proceed to go to the zoning commission, or whether it is the community at large that expresses great distress that somehow this is a blight upon the community. I think that it must be recognized that some of the resistance to putting facilities closer to the population centers does not lie in the Federal Bureau of Prisons. It lies in the communities themselves. The limitations that most communities want to put on the location is part of what drives facilities out into the country.

I think it is also important to note that most of the studies of recidivism have repeatedly found that the factors with the highest correlation with successful offender outcome have nothing to do with the location or the nature of their incarceration. It has to do with the age of the offender. The older they are, the better the outcome. The support of relatives, those who have an interested family or interested relatives are better at getting roots and getting established afterwards. If they can be established in a steady job and work record, then that is a valuable resource.

Now again, one other comment on the community-based aspect. Those people who thought community mental health centers were going to solve the problems of mental illness, and now more sober reflection shows they have not solved it, and they are not going to solve it alone, an ideal program in the area of mental health is going to involve a mix of the operation of community-based facilities and some hospital facilities to handle some of the more difficult problems that the community cannot manage.

Now, I want to then comment in response to your question of the wisdom of the Bureau's planning program, in part because of my role on the Advisory Panel in the early seventies. I was very much impressed with the invitation I got and the nature of the individuals asked to participate in that panel. I must confess I have been a little distressed in some of what I have heard this morning with the application being that somehow there are a number of people closeted in some building whose main goal is an appetite for new facilities and who are developing some program without regard to either modern neurological thought or the realities of politics or whatever.

In my judgment, the Bureau's program has been enlightened, flexible, realistic, and very much in the interest of the American public. The advisors have included lawyers who are very much interested in corrections, social scientists, people from construction, people from corrections, representatives from the Federal judicial center, from the U.S. Board of Parole, in an effort to try to get the thinking of all on a realistic and a thoughtful and a modern approach. I have been impressed that when I participated with that, out of the various experiences I have had in Federal advisory panels, in HEW, OEO, Justice, and so forth, this panel, without parallel, was the one that was the most responsive to the input of the advisory board. Most of the Federal panels I find, at least advisory panels, do not really want the advice of the citizens. They go through the motions, but they sort of have their minds made up as to what they want to do. There was not a single meeting in which the input we made was not reflected in some modification or approaches that they were making.

It goes without saying that there needs to be an effective plan for facility utilization by the Bureau of Prisons. They do have the responsibility for looking after some 23,000 inmates, and the facilities are nowhere designed to comfortably and reasonably handle that. And particularly I would again cite what has been cited before, the problems at Leavenworth and Atlanta and McNeil Island. And one of the striking things about this panel and the efforts of the Bureau of Prisons' facilities planning is that they are not seeking to establish just more bastions. Rather, Congressman Drinan, some of the brightest, the newest ideas in terms of flexible, humanized prison facilities are

coming out of the planning efforts. And I know some of you, I believe, have been to Pleasanton and have seen what a radical kind of departure that is, in the same way as the new Metropolitan Correction Centers in San Diego, and soon to open in Chicago and New York are a new design in an effort to bring in flexibility and human characteristics in corrections in the centers where the offenders are located.

One of my major commitments in the panel was to try and keep the architects thinking of flexibility and the fact that future needs are not likely to be the same as today, so that the facilities be designed with the potential for changing to meet new pictures. And I feel that was significantly done. I think that the Federal Bureau of Prisons has been particularly able to respond to the challenge of developing new and encouraging new designs. I am proud to have been a part of it. I know it would not have been possible without the congressional support to date, and I think it would be unfortunate to dampen the efforts of the Bureau of Prisons to continue to move in these new directions by the withdrawal of continuing congressional support.

We all wish we did not need prisons, but there is no question that society will continue to need some secure facilities for the control and the management of many convicted offenders. There is no correctional agency in the country with a greater capacity to forge the way to new developments in correctional design than the Federal Bureau of Prisons, and I know of no more careful approach than that which has been made by the Bureau in response to this problem.

It is easy to stand on the sidelines sometimes, with the absence of direct experience with the correctional process, and criticize the efforts that the Bureau is undertaking. I cannot do that. I know too well what they are trying to do. I heartily endorse their efforts, and I sincerely hope you will do likewise once you are fully apprised of the program.

Thank you.

Mr. KASTENMEIER. Thank you, Dr. Menninger. I have several questions.

Dr. Menninger, you indicated that you participated in the advisory panel on the Federal prisons in the early 1970's. Did this advisory panel precede the present building program commenced in 1970, or did it come along thereafter?

Dr. MENNINGER. It was brought in at the point, from my understanding, at which the Bureau had moved a certain direction in developing some plans, and it pulled together information in looking at where the Federal commitment had come from, where the population centers were, and how this would all fit together. And they had developed a number of proposals, and some projects were already well underway. Some were not so far underway, and we were called together to help critique and advise in the further development of it.

One of the projects that still is not complete, but which was subject to all kinds of conflict and controversy was the facility at Buckner, the proposed research and psychiatric facility there. We were involved in time to have substantial impact, I feel, on some of the design aspects there, meeting with architects and planners, visiting the site, and in the same way we were very much involved with the design of the metropolitan correctional centers. We were put in the position of the Bureau saying look, here is the way we see things are going, and we

are sort of trying to draw a long-range plan, and here are what we think are major areas of support, and we want feedback.

Mr. KASTENMEIER. I think I understand. The long-range building program had started, and the advisory panel was brought in to advise them particularly on the design of the facilities.

Mr. MENNINGER. I would also like to say it was my impression that while they developed the original plan, it became a flexible operation in the sense that they, as they recognized certain facilities were not going to be needed, they could change the plan accordingly. The plan of 1970 is not the plan of 1975.

Mr. KASTENMEIER. Were you consulted on whether certain old facilities, such as Leavenworth and Atlanta and McNeil Island, would be continued or would be terminated for further use? They did not consult you on that, did they?

Dr. MENNINGER. It was not that we were not consulted, but not in terms I think directly of those questions. The general idea was as certain existing institutions which might be better able to handle the penitentiary type of population could be freed of some youthful offenders, and a major area in terms of youthful offenders, if they could build some youthful offenders centers, then they could free up areas that would allow that to take place. So, for instance, a current design of a building, a youth facility in the San Diego area which would free up an institution in the Federal system, which would free an area to allow McNeil Island to be closed.

Mr. KASTENMEIER. Whether you participated directly or indirectly in such considerations, have you not observed during the last 4 or 5 years the number of changes in policies, such as what reliance, or what effect the Start program would be put to, and who, under what philosophy, might head the Butner, N.C., facility, or whether or not the rehabilitation model of the past would be followed as assiduously by the director? In these respects you have seen, variations in policy develop?

Dr. MENNINGER. Yes.

Mr. KASTENMEIER. Has policy developed as you have advised?

Dr. MENNINGER. What I have experienced is a concerted attempt to try and find some answers to some very tough problems, whether it is the Start program or some of the thoughts, original thoughts, about Butner which are not the same thoughts today. But what do you do about certain kinds of offenders who are very serious problems in behavior, and what is the responsibility of the Bureau of Prisons to develop some program to prompt a change, or what is the right of society to force people to change? This is what is underlying it.

I have had occasion to testify in at least two court trials on some of these issues, and it is a very tough nut.

Mr. KASTENMEIER. I think there is general agreement that certain facilities, so far as we can see in the future, will be required, whatever we call them, for the separation of certain individuals who are dangerous to society. We may put them in what we call prisons or some other institution which will have the same effect.

I would like to ask Mr. Rector; would not the phasing out the Federal Bureau of Prisons as a policy to be achieved, perhaps cause us to rely on an obsolete facility in Arkansas or elsewhere. Would not the problem be one of both physical facilities, and the difference in philos-

ophy of the State systems? For example, if you were to commit to incarceration individuals in say State X, you might find that they had already decided in their State to get away from a prison system, experimentally, and in another State you would find an entirely different philosophy operating. Therefore, the Federal authorities, in committing individuals sentenced under Federal law, would find a variety of State systems to which they might assign these individuals, which might pose some problems, would it not?

Mr. RECTOR. I am sure it would, as it does now, Mr. Chairman. But I think that has been a unique thing about the United States. I think the differences between States is why some States and their correctional systems are far superior in terms of moving from and/or a reliance on an institutional service for corrections than is the Federal Government.

Mr. KASTENMEIER. We would need to become far more directing in our Federal program in terms of the guidelines to the States; saying that we want some uniformity or adherence to minimum standards to which we would be free to commit Federal prisoners. Now, I am making one assumption. I think part of your suggestion was that we should defederalize the criminal justice system to some extent. Therefore, potential violators would be handled in State courts, presumably, rather than in Federal courts, and then the Federal Bureau of Prisons' system would not be needed in that connection. But to the extent that we have not defederalized all of our criminal laws, and there are areas which are really exclusively Federal in character, although perhaps not accounting for many offenders, to that extent would you see us continuing the Federal Bureau of Prisons, or would you see us contracting with States and localities for the keeping of the prisoners sentenced under Federal law?

Mr. RECTOR. The Federal Government in some parts of the country has a long experience with contracting at the present time, and more so in the past, for the care of Federal prisoners with the States and local communities. What we would suggest is a gradual phasing as the States came up to standards, phasing out of the Federal system toward the contract system. The people in cities and States who come into the Federal courts are still the same people who come into the city and State courts. And well, our own State, Mr. Chairman, which at any one time has about 90 percent of its felony offenders on the street, close to 85 percent of them on probation, and the remainder on parole and after-care, and your State came through with a Governor's commission report assessing the residual population of the institution suggesting that even a minority of them were really the dangerous offenders who should be incarcerated, and that it was irresponsible knowing what we do today about the research, much of which I have documented in my statement, about the disabling effects of cages and incarceration, that it was irresponsible not to try to find sanctions for the nondangerous. We were impressed earlier in the Federal plan with the leadership of the State of California under Gov. Ronald Reagan and the director of the California Youth Authority, Mr. Alvin Bree, whom your staff may want to contact, who made the suggestion that the Federal Bureau, before it built any youth institutions in California, which at that time had three standing empty because of what we are suggesting as a Federal model, a State phasing out State plans

by putting State money into local communities, if these communities would develop the kind of service which is known to work at the community level, the youth authority director suggested trying 200 Federal youth offenders, contracted to show that the youth authority could handle any Federal youthful offender in the State system. And for some reason, after they got their first 20, the plan to go ahead with the youth institution as a part of the Federal system in California proceeded.

Mr. KASTENMEIER. To the extent that this country, that the Federal Government ought to consider defederalizing criminal laws, this is an extraordinarily difficult road to undertake without considerable education and public debate. I say this because I do not think we are anywhere near that. Another subcommittee of the Judiciary Committee is considering revision of the Federal Criminal Code, total Federal revision, including restructuring of sentencing, and I think you are quite familiar with that. I think all of you are. None of this really presumes any defederalization of the Federal criminal laws and, therefore, it seems that at this point in history we may look forward to another generation before that is in the process of being achieved. At least I do not see it coming from the Congress or the President at least in the present time.

I also think it would be, excepting some small particulars, difficult to massively achieve this in a short period of years, but I would appreciate, Mr. Nagel or Mr. Rector, your comment on how this might be achieved expeditiously.

Mr. RECTOR. Mr. Chairman, this administration appointed its own advisory commission on the standards and goals of criminal justice. I served on that commission. Its findings and recommendations were no different from previous commissions, except that it set them in a sort of ordered priorities which we thought, had reason to think, would reduce violent crime in America by 50 percent within a decade. I think if the American public received from Congress a comparative analysis of the recommendations of this various commissions which have been nonpolitical, they have had both parties, they have had top expertise not necessarily on the commissions, but on the multihundred member advisory and task forces to the commission, if they could compare those recommendations with the recommendations of Senate bill 1, and I have not seen the House proposed revision of the Federal criminal law. I think the American people would be rather shocked, because Senate bill 1, the proposed recodification of the code, would increase the outreach of Federal law enforcement, of Federal court jurisdiction over crimes which are State crimes and city crimes. And I think with the revelations coming out of the congressional hearings on Federal law enforcement, the American people might at this Bicentennial time welcome recommendations from Congress which would begin to reduce the outreach of the Federal criminal law to provide a different kind of leadership and enhancement of support of local law enforcement, and local criminal justice systems versus a separate, parallel in the Federal criminal justice system.

Mr. KASTENMEIER. Mr. Nagel?

Mr. NAGEL. I was just thinking relative to the growth of the Federal outreach and suggested increase by Senate 1 that I hear about, as you look at the history of the Federal Bureau of Prisons you cannot help

but be impressed by the parallel between its growth and the growth of the Federal Bureau of Investigation. In 1923, I think it was, the Federal Bureau was formed, the Federal Bureau of Investigation, and 7 years later the Federal Bureau of Prisons was formed. There was a connection between the two it occurs to me, and the charisma of Mr. Hoover and the FBI convinced many Members of the Congress of the United States that crime was, indeed, no longer a local issue, but it was a national issue, and the best police enforcement in the country was done at the Federal level. So more and more crimes were brought within the Federal purview, and more and more the Federal courts began to move from essentially courts of civil jurisdiction to courts of criminal jurisdiction.

I think that I hear all the time the words that crime is a local problem, and that it should be handled locally, and yet the rather significant success of the Federal Bureau of Investigation has followed in my mind with an increased overreach of the Federal Criminal Code, overreach of the Federal judiciary, and now residual backup in the Federal Bureau of Prisons which we talk about. Those two things are very closely related.

May I speak to a rather similar issue, but not quite that, for a moment? I could not help but hear the testimony of Dr. Menninger, and I felt some disappointment that we do not recognize here in this panel today, that a prison system is nothing more than putting buckets under dripping pipes. We are a very creative people, Americans. We are problem-solving people, and yet we refuse to do anything more than put buckets under dripping pipes. That is what we are doing with our prison system.

Dr. Menninger said we will always have a series of dangerous offenders that have to be confined. We have more dangerous offenders in our prisons in our country than any other western nation, and one reason we have them is because we do not deal with basic issues.

Just one thing. In 1970, and this is related to the need of the Federal Bureau of Prisons, and the needs of all of the prisons in this country, in 1970 there were in England, Germany, and Japan together a combination of 214 million people, there were 242 gun murderers, and we had 11,000 the same year. Now, just project that by an average 10-year sentence and figure out how many cells you have to have for 11,000 murderers for an average of something like 10 years, and how fewer cells you have to have for 242 gun murderers. And yet, we will not deal with that problem, and so the result is that we do have a superabundance of the so-called dangerous offenders, and anybody who so handles a gun is a dangerous offender in our society, and rightly so. And we cannot deal with these issues, and there are many, many issues.

I was talking just a few minutes ago to a gentleman from the Federal Bureau of Prisons, and their great increase in the Federal Bureau of Prisons is in their black population, a very great increase in the black population and a decrease in their white population in the Federal Bureau of Prisons. And yet there are two major issues there that we just cannot deal with. It seems to me that many of the vetoes that I have seen in the last 6 months are directly related. I mean directly interfere with some of the basic issues that we have to deal with, with our black population in this country, but we do not want to deal with them, and we are going to have to deal with crime if we do not deal with those issues.

The other thing that I want to talk about in regard to the black population which has a great effect on the Federal Bureau of Prisons population is that the black population in the Federal Bureau of Prisons is disproportionate because the sentences that black people get, in terms of crimes committed, in terms of whether they are first offenders, second offenders, third offenders, or fourth offenders, in terms of any criteria that you use in measuring the length of sentencing that black people serve in Federal prisons, and you find that the black first offender serves longer, the black larcenist serves longer, the black selective service violator serves longer, and so forth. Now, these are things that have to be dealt with, and that issue alone, if it were dealt with equity, if equity was brought in the sentencing procedure relative to black and white offenders, if equity were brought to that alone, you would have 3,000 or 4,000 cells in the Federal Bureau of Prisons that are being occupied today. That is what I mean a little bit about we are dealing with putting buckets under dripping pipes. We are not dealing with the basic issues, and the prison is nothing more than a series of buckets put under dripping waters. And we have to be better than that in the United States.

Mr. RECTOR. Mr. Chairman, may I make one brief addendum?

Mr. KASTENMEIER. Yes, brief.

Mr. RECTOR. What Mr. Nagel is talking about is the issue of planning. I wish Congress would have before it, let us say, a set of four options for it to consider, one in which that if the Federal courts used probation as much as Wisconsin, Rhode Island, the State of Washington, what impact would that have upon the Federal institution program. If the Federal correctional system used noninstitutional community correctional programs as adjuncts to probation and pretrial intervention programs, which many cities use currently, what impact would that have upon the present jail construction program of the Federal system? If the Federal system as a test decided to utilize a few States which might say we will work out a coordinated planning, utilization contract role both for detention and trial, pretrial intervention, supervision, and contract for commitment, then what, with those options in place, and costed out by fiscal and manpower resources, what impact would that have? And then take all of the best models of the institutions, community residence, community nonresidence, pretrial intervention, diversion at the prosecutor's level, at the police level, at the court level, and so on, put those in the model, all these programs which have been found by LEAA to work, and they have assessed, and then the Federal system could have developed a plan utilizing those, and then what options would there be in terms of construction? We just finished opting out a construction cost for the State of Delaware. The institution costs are \$40,000. The Office of Management and Budget says the Federal is closer to \$51,000 per cell. If Delaware paid off \$40,000 per cell construction in a 20-year bond issue, that adds up to \$138,000 per cell at the end of 20 years, plus to \$15,000 per offender per year of care in those cells.

Now, that must say to someone if there are other options for the nondangerous, the American public has to know it, and it has to know that it has options for putting the money elsewhere.

Mr. KASTENMEIER. Of course, I appreciate that statement. A number of options or alternatives would, of course, affect the construction pro-

gram. I suppose if the Congress, fearful of increasing crime statistics, somehow mandated a sentencing system which would produce 50 percent more people sentenced in the Federal system, they would also have some alternative building problems to consider. And so it is important to reach out to determine what philosophy or what the law requires of the Bureau of Prisons in terms of these construction plans.

I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Well, I want to simply say that I could listen all day, and I think we are very lucky to have the three of you.

Let me just do something that Mr. Danielson, who is a member of our subcommittee, sometimes does, and I almost feel impelled to do this, because I feel so strongly about this subject. When I give a talk to a group about prisons, or prison reform, or juvenile delinquency, I find myself just getting extremely critical, critical about where we are locating facilities, the fact that we do not separate juveniles from adults, and the fact that we are not paying prisoners any kind of a prison minimum wage. We are not giving, in some places, any education, we do not have a meaningful job placement program and, even if we train inmates, we have irrelevant prison industries.

But having said that, Mr. Nagel, I think I am inclined to do exactly what I think you are doing, which is to blame everybody and everything. The truth of the matter is that most of the prison administrators are fairly compassionate, in my judgment. Most of them are well-motivated, and well-intentioned. I think that when I analyze it, the real blame for all of this comes back to the American public, the fact that we have not done a selling job. Right in the area of Illinois, there is probably a 99 percent favorable furlough record. In other words, people have been furloughed and not committed a crime or crimes once furloughed or paroled. But when you have one or two or three who go out and commit a heinous crime and that just throws us back another 5 years.

Dr. Menninger, frankly, I was pleased with your realism, and your practicality. It is tough to sell these things. But how can we determine initially what kind of diagnostic facilities are needed to separate a nonviolent person, without dangerous propensities, so that we do not incarcerate two-thirds of a prison population that do not need to be incarcerated? Now, I would just like to ask your estimate as to how many people are behind prison bars that really should be or could be kept elsewhere, and perhaps sent back to society? I know that is a big question.

Dr. MENNINGER. Really it is hard to say, because what happens is that there are so many factors that go into the behavior of certain people as to get them into prison. We think in terms of violence. It has been demonstrated again and again that we are very inadequate at predicting dangerousness, at predicting violence. We try to set up certain guidelines, but it is a very difficult thing, and the problem is you make one error and you are stuck, as you know.

I think others could give you a better estimate in terms of the number of people who are nondangerous, who are really in institutions, and I am reluctant to hazard even a percentage.

Could I just comment on one other thing. What I am aware of is many times individuals get themselves put into prison because for

one reason or another, psychologically they need that structure, and so that whether it is the attitude they present to the judge in sentencing, or the way that they strike somebody along the way, even though they may not have a major, dangerous offense, sometimes they will get remanded to prison. And there are some who will then, having been in prison, have found an existence which is predictable as they have never experienced it before in their lives, with three square meals a day, with a structured existence, find a kind of security that when they go back out they are reluctant, and it is very hard for them to make it outside.

Now, part of the issue, you know, prisons then get blamed as though they are at fault for institutionalizing people or allowing dependent sanctuaries, but there are some people who are going to keep forcing society to do something. And if you say no, we are not going to send you to prison, you go out here, then they may behave in such a way that they will find where the limits are and just transgress to the limits.

Mr. RAILSBACK. Let me get even more specific. I remember visiting Solidad, and they had a prison psychiatrist, and that psychiatrist resigned, firing off a blast at the administrators. It seems to me that this is not really on point as far as budget for construction, except maybe diagnostic facilities. It would seem to me beneficial, even crucial, before we can sell a furlough program, or a pretrial diversion program, or an enlightened parole bill, that we at least make an effort to professionally determine if some man has dangerous propensities. And as I have traveled the prison circuit, I am convinced that many facilities do not have good psychiatrists and part of it is because they are out in the country. But how can we improve that? We will have to pay more money for better facilities. In other words, how do we get better qualified psychologists and psychiatrists?

Dr. MENNINGER. First, I am not sure that you can count on the psychiatrists or the psychologists to give you the answers to the questions that you are asking. You really have to go back and say are they really going to have the answer for you, because that has not been necessarily so. We can do our best to try and determine what propensities people have for disruption in their controls, but even so, people will then get outside, and there will be reality circumstances that will preclude, you know, and I cannot—somebody may have pneumonia once or twice and I cannot predict that they will not get it, pneumonia, again under certain circumstances, or I cannot predict that some other event might happen. We have to constantly keep searching, but I cannot really give you the kind of answer that I wish I had. I wish I had that magical solution.

Mr. RAILSBACK. Well, I just happen to think that it is very, very important that we improve that initial diagnosis, whether or not it is done by better testing or what, I know we are never going to be able to be 100 percent accurate but, at the same time, we are going to have difficulty selling the American public on these enlightened programs until we can show that we have done everything to separate the violent from the nonviolent.

Mr. NAGEL. Could I speak to that just for a second?

Mr. RAILSBACK. No. Let me just finish because I think I have used up my time. I happen to be very interested in your particular area.

I really believe that most of the State systems are, right now anyway, less enlightened than the Federal system. Maybe I am wrong. We could argue about that I suppose. But some of them I think, have been very, very bad. And before we do that I would certainly hope that we should make a commitment to help them improve, which we would have to do because the States do not have money either. They are fighting for general revenue sharing funds, and I really question whether State legislators and administrators are willing to bite the bullet to invest in reforming prison systems. That is just one problem that I believe exists.

I will now, after asking those questions, I will yield back. Thank you.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. I want to thank all of you. I have some questions for Dr. Menninger first.

Doctor, I would assume that you would not agree with the policy statement in 1973 of the National Council on Crime and Delinquency, which is cited here in the paper by Milton Rector. They said in a policy statement, to which everybody in corrections contributed, that the nondangerous offender should not be imprisoned and that four purposes of the corrections process have failed in the prisons: That prisons are ineffectual, are probably incapable of being operated constitutionally, are producers of crime, and are destructive of both the keepers and the kept. And I assume that you would have difficulty accepting that?

Dr. MENNINGER. Totally, yes.

Mr. DRINAN. You are rejecting their policy statement?

Dr. MENNINGER. I have difficulty accepting it totally. But the problem is that one gets in again a kind of an all or nothing position. Prisons do harm.

Mr. DRINAN. You are in sympathy with the objectives that the nearly 200-year-old experiment in the industrialized world's attempts at maintaining control and safety deserves the closest scrutiny, and there is no clear evidence that incarceration has had positive or productive effects?

Dr. MENNINGER. I would not buy that. I think that there are instances where incarceration has helped.

Mr. DRINAN. There are people that were in NCCD on the policy advisory committee where you served.

Dr. MENNINGER. Well, the advisory committee no longer exists as such.

Mr. DRINAN. What do you mean as such?

Dr. MENNINGER. When Congress passed the law changing the requirements for establishing advisory councils and the like, the advisory committee was disbanded. But I do not know that anybody held it as such. It included Mr. Bob Quetac who was a lawyer from Omaha who is now chairman of the National Institute of Corrections Advisory Board and Herbert Quay—

Mr. DRINAN. Doctor, if it is obsolete and you no longer serve there, I do not know why you made such a big point of it in your testimony. I had no knowledge that this thing was obsolete or gone. I was just going to ask about this advisory committee: How were its members chosen, does Congress have any input, and so on. You turn up with the

conclusion that all of the recommendations of this advisory committee were followed.

Dr. MENNINGER. No.

Mr. DRINAN. It is a little startling to me, because going back to a point I made earlier, that at least 50 percent of all prisons that have been constructed over the last decade are out in, far and away, rural areas, contrary to everything I think that the corrections people would be saying. How long did you serve on that committee?

Dr. MENNINGER. From about 1970 to 1973, roughly.

Mr. DRINAN. How can you say that all of the recommendations were followed?

Dr. MENNINGER. Let me clarify the role in which we served. The Bureau had developed a plan. They brought various proposals, sometimes specific architectural designs, to have the advisory groups react and respond to it, to which they went back and changed or modified or whatever their plans. It was never a kind of a formal recommendation, A, B, C, D, but rather it was a sounding group which they used in the development of their planning.

And let me say in terms of the efforts, too, one of the major commitments of that group, and continuing commitment of the Bureau of Prisons was to try and get facilities as close to academic centers and population centers as possible. But the incredible efforts to try to get communities to allow this was one of the things that we inevitably got involved with, so that the fact that an institution is outside, 30 miles outside of Athens, Ga., I understand, is because the citizens of Athens would not allow it to be on land available within the city limits, and the location there in terms of trying to utilize the academic community, so this is one way to get professional people involved and upgrade the quality.

Mr. DRINAN. Doctor, perhaps something more fundamental in your paper that I just do not understand is what you are trying to tell us on page 4. You skipped over the rate of recidivism. You said that the Bureau of Prisons studies found that there was a 67-percent, 2-year success rate overall, and 57 percent after 4 years. You apparently say that these results are not unreasonable. I just could not understand what you are trying to tell us there, and that follows from your major premise that the losers get to Federal prison, and the most hopeless people and that apparently they have such character defects and personalities that they cannot be altered very much. I have great difficulty in accepting your conclusion that these results are not unreasonable, because I question your premises, and I question what you mean by these statistics.

Now, I have only 5 minutes here, and I would like to know, and if you want to supplement, I want to know what you are talking about on page 4, and what you are seeking to prove. And I try to be sympathetic to your view. But this excellent panel has presented this particular subcommittee with a choice. We have to choose either the NCCD philosophy or something of your philosophy, whatever that might be. And I frankly feel guilty that I have been on the subcommittee for 4 years and I never recall a time when we were confronted with it more sharply, in more contrast, and all I can say is that we have a lot of studying to do. But, I do not know how it is really going to come out.

Now, I would like to ask questions of other people, because I have

problems with Dr. Menninger. Do you want to say anything to conclude this colloquy?

Mr. MENNINGER. Well, only in terms of the figures. These figures were figures which I got from the Bureau of Prisons, the point being that in the same way a certain cancer, if we have a 50-percent survival rate, we think we are doing well.

Mr. DRINAN. That is your field. But, I do not feel that people who get to prison have some incurable disease. I think they have had some unfortunate things in their life. But, I do not think that character disorder is something like a mastitis or a cancer, and I reject the analogy. I think everybody there can be brought along to be a better human being.

Now, that is not superidealistic, that is just a fact. And if they have such poor intelligence or background, at least they can be brought to have some decency.

Dr. MENNINGER. I think this would just have to be a point of disagreement. My view is some of these people are so scarred in terms of their personality development that the expectation of what might be expected of them later on may not, should not necessarily be as great as some people might like.

Mr. DRINAN. Well, tied in with that, I say that the older institutions are dehumanizing, and the three institutions that are over 70 years old have 22 percent of the total population. And why are not the other institutions dehumanizing, because they have better architecture or what?

Dr. MENNINGER. Well, there are a lot of factors that go into it. But, I think the most dramatic way is for you to have an opportunity to go through one of those new institutions.

Mr. DRINAN. We have been through them all over the country, and I have been in penology for 15 years.

Dr. MENNINGER. Have you seen the new metropolitan correctional facilities in the cities.

Mr. DRINAN. Yes, in New York City. You should not say that in the absence of direct experience in the correctional process, because this committee and everybody who serves on it, present and past, have been to every type of correctional institution. We were out to see Operation Start out in Kansas, and I recall that you testified on behalf of Start.

Dr. MENNINGER. I testified on behalf of the principle that the Federal Bureau of Prisons has a responsibility to try to develop programs that will bring about some change in offenders who are a serious risk and danger to society.

Mr. DRINAN. Do you disagree with the Federal court that nullified the program as unconstitutional?

Dr. MENNINGER. I have not seen the final Federal court decision. I might, I do not know.

Mr. DRINAN. All right. Thank you very much.

Mr. KASTENMEIER. The gentleman from New York, Mr. Pattison.

Mr. PATTISON. It seems to me that the one thing that we all agree on is that there are a whole range of different kinds of answers, and no one has any real confidence that there are any particular answers that would be good all the way across the spectrum. Would that not indicate that before we commit ourselves to some kind of a major construction program which would determine, to a great extent, the pro-

gram, that we do some pretty extensive experimentation over a period of 10 or 15 years before we build things that later on we find out are simply not going to work, or are counterproductive?

Dr. MENNINGER. Are you asking me?

Mr. PATTISON. Anybody.

Mr. RECTOR. Yes. I very much agree with your approach. I think these kinds of approaches could be in a plan with feasible options. The thing that worries me about going for community correctional centers the way the Federal Bureau of Prisons is, that by suggesting to judges that the community correctional center is there for additional support, for probationers, which is being done, I think it will reduce the already too little use of probation. A facility has a great attraction when the official placing people there has to run for election and wants it to be represented that he has done something about crime.

In the State of Washington, they never had more than 50 women in prison at one time. Then they built the most beautiful women's prison in the world outside of Takoma, but unfortunately, for over 150 women, and it has been overcrowded ever since. These kinds of facilities, if they come first, and Congressman Drinan, this is the core of our board of directors' position, that if we do not do the other experimentations first, and we build the facilities first, then we are going to fill the facilities with people who could go into other alternatives.

Mr. NAGEL. May I speak just to that?

Mr. PATTISON. Yes.

Mr. NAGEL. We were speaking of, talking about the dangerousness of offenders and how many are in institutions. It just occurred to me, I went over to get some papers, but I could not find them quickly, so I will ignore them, but for the last year, 1,700 of the commitments to the Federal Bureau were for larceny of a motor vehicle, and I would rather guess after having worked in a prison for many years, and since hundreds and hundreds of motor vehicles larcenists come in, that not many of them are dangerous. Yet, it is a very interesting point that a Federal court sentenced 71 percent of all larceny for motor vehicle people convicted last year to prison. 71 percent.

Now, as Mr. Rector has pointed out, if you want to, because these people are dangerous offenders, all right, call them, but 71 percent were sentenced to prison rather than to other things. And when you consider Wisconsin, your State, or Washington, Rhode Island, they all handle 80 percent of their people on probation, and you consider that only 29 percent of the larceny of motor vehicles, nondangerous types of offenders in the Federal system, were handled on probation, you have to have some question.

I think I wanted to talk about the flexibility that you mentioned, you know, we should wait. The whole Federal system, the institution is designed for one thing, 1 year, and the fad has gone by 4 years later, and it is used for another purpose.

Mr. PATTISON. To what extent has any research been conducted using control groups, and comparing prisons, and perhaps the standards, standard approach, and new approach, in some way, so that we can in any way measure results and determine what techniques work for different people? To what extent has that gone on in the Bureau of Prisons? Does anybody know?

Mr. RECTOR. Congressman, with the foundation of the Michigan correctional system, throughout center, we developed a project over 4 years ago where the criminal court in Oakland County, Mich., serving a large black population, high crime area, about 1½ million population, for screening out the dangerous, looking at criteria, and I will send some of our research data on this critical issue of dangerousness. It amounted to about screening out about 1½ percent of violence related to drug addiction and alcoholism, and all second felons and more sentenced to prison. The criminal court agreed that all persons with two felonies or more, dangerous, would be screened out and would go to a pool from which our research center would take three random groups and one-third went to prison, one-third into the Pontiac Probation Department on regular probation with no identification, and the other third into a special program. The interesting thing is it had full media visibility. Sunday supplement coverage in the paper, talk shows on television and radio, multiple felons, some with seven and eight felonies, who were community losers who were placed in boarding homes, in rented rooms, always with the volunteer at the neighborhood attached. The research has been separate. It is about in its 4th year, and the loss is not yet 15 percent of some 185 losers placed in this program, and the expected loss of those who are now beginning to come out of prison is about 45 percent.

Now, there are other such projects, and we can make the data, plus the LEAA Information Center, to make some of their projects available, too. But it does prove that sometimes we are wrong in trying to foster upon a community a residence to which to sentence people in lieu of prison.

I was in Salt Lake City, and the director of Corrections, having read about the findings of our Oakland County, Mich., project, said they had three neighborhoods in which they had money to lease residences for people sentenced to a residence in that neighborhood in lieu of going to prison, carefully screened, low-risk cases. They had three committees with petitions saying we think it is a good idea, but do not do it here. I said, why do you not try one of those committees as a home finder, that you will not lease or build a residential center if you can place them one by one. In my last contact, several months ago, with the director of Corrections of Utah, they had placed every offender sentenced to community in lieu of prison, but placed them one by one in private homes and boardinghouses, rather than in a residential center.

Mr. PATTISON. That research really is not concluded yet, that program you were talking about, the 4-year one?

Mr. RECTOR. We have some reports on the Oakland County, Mich., as of 4 years. We have to wait until ultimately all of the other third sample come out of prison to be complete. But, it is very complete in terms of the first 4 years of those who went right back into the community under special programming.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. On behalf of the committee, I would like to thank all three of the panelists, Mr. Menninger, Mr. Rector, and Mr. Nagel, for your contributions to the committee on this very perplexing subject here this morning.

Mr. RECTOR. Thank you, sir.

Mr. KASTENMEIER. And now I understand the hour is late, and I think we can conclude before long, and, therefore, I will ask to come forward Mr. David Fogel, director of the Illinois Law Enforcement Commission, Mr. Pat McManus, Minnesota Department of Corrections, and Mr. John Conrad, Academy for Contemporary Problems, Columbus, Ohio.

Mr. Fogel, would you like to begin?

**TESTIMONY OF DAVID FOGEL, EXECUTIVE DIRECTOR, ILLINOIS
LAW ENFORCEMENT COMMISSION**

Mr. FOGEL. Thank you, Mr. Chairman. I want to express my sense of pleasure for your invitation for me to comment on the future development of the Federal Bureau of Prisons.

I had asked the staff before putting this testimony together whether my perspective on the Federal Bureau might not be a waste of your time, because frankly, I had long ago despaired at Congress being interested in my perspective in linking the Federal Bureau of Prisons with the criminal justice system. But, the staff was kind enough to encourage me to make this statement, and I hope they were right.

My perspective in a nutshell is that the FBP in its present form and mission should be phased out in an orderly but decisive manner. Let me hasten to add that I believe the FBP to be among the best two or three systems in the Nation. I don't mean this testimony to denigrate the FBP, its progressive Director, or its dedicated staff. I do mean to simply question its existence and perhaps more significantly its intended rapid proliferation.

Historically, the FBP is simply a rather aimless response to the uncodified growth of the Federal criminal law from roughly the beginning of this century until the late 1960's. There were Federal laws and violations of them before there was an FBP. Prisoners were sent to State prisons on a boarding basis until about 1895. At the beginning of this century, a series of Federal criminal law enactments produced a flood of new Federal prisoners. We have now experienced a ten-fold increase of Federal prisoners from 1895 to 1975—roughly from 2,500 to about 25,000—while the State's prison population went up four-fold—roughly from 50,000 to roughly 200,000. While the States' systems experienced an actual drop of some 12 percent between 1961 and 1972, the Federal system showed a net stable population at the end of that same decade. Further, the FBP estimates a 20-percent increase in their population in the decade from 1972 to 1982. This means the population moved from 2,500 in 1895 to about 3,000 in 1920 and thereafter. In response to new Federal legislation, picked up an additional 5,000 inmates every decade including the projected 1982 count in their own master plan. If one continues this projection until the end of the century, the FBP will have a population approaching 40,000 or 20 times the 1895 figure and 20 percent of the current total U.S. State prison population. That estimate is taken in a stable legislative environment. In other words, the estimate anticipates no new congressional enactments further criminalizing larger segments of the U.S. population beyond 1975. Not a plausible prediction, I would suggest. Where will it end?

Between 1913 and 1969 the following Federal laws, and I list them in the prepared testimony, some 19 Federal acts that have caused an explosion in the prisoner population to the point where, in 1930, a Federal Bureau of Prisons was organized, beginning with the White Slave Act and ending with the Omnibus Crime Control Act.

Mandatory sentencing is now under serious consideration and the President has talked about it. If passed, it may have a more serious prisoner population consequence than all the previously cited acts. This thought leads me to my major criticism of the FBP's long range master plan and to my major suggestion to this committee which is justifiably interested in the future of the FBP. I will suggest a perspective which the committee may want to consider when it reviews FBP plans.

The Federal Government is creating a revolution in criminal justice in America which is having international spinoffs. Since the discovery of a criminal justice system by President Lyndon Johnson's Commission in 1967 and the inception of the LEAA a few years later, components of the so-called system have, on the State level, been enticed into talking to each other as if they were really a part of an identifiable operational system. Without speaking to the effect of the billions of dollars poured into the so-called war on crime, I do strongly believe that the greater legacy of LEAA will be recorded in the impetus it gave us, in the criminal justice establishment, to understand our interdependence upon each other. Remember that it has only been 5 or 6 years since LEAA gave birth to a new profession—called criminal justice planning. The development of such a new breed of professionals is the first since the birth of the Republic. In the various States we are learning more about this area every day. At the meeting of the State Planning Agency Directors—they are part of the Federal Safe Streets Act—in Idaho 2 weeks ago, it was reported that the SPA Directors are beginning to assume a new more forceful role within their States to coordinate criminal justice State agencies.

In a soon-to-be published study I did under an LEAA grant last summer at the Harvard Law School, I concluded that the two key problems which lead to prison unrest are how you get in and how you get out—sentencing and parole. Sometimes the least fruitful way to deal with a problem is to meet it head on. It may be more fruitful to understand the environment in which your problem lives. It's like stepping on a balloon—you force the air out of the part that's directly under your foot but you blow up the other part of the balloon. It's with this sort of perspective I would like to raise some questions about the future proliferation of the FBP.

How can the FBP make a long-range plan about prison population without reference to the impact of new legislation?

How can the FBP project its population without reference to sentencing laws which are now in the hopper?

How can additional prison building space be projected without reference to Advisory Commission on Criminal Justice Standards and Goals (1973) call for a moratorium on construction? Also the National Council on Crime and Delinquency and other groups? I see no response to that.

Has the FBP consulted with the judiciary, probation, Attorney General and/or the Nation's leading academic and/or practitioners be-

fore projecting a 27,000 to 28,000 prisoner population when the actual population seems to have stabilized at considerably below that figure?

How can one arm of the Department of Justice—the LEAA—have so much of an impact on the States in curtailing their new prison building programs while the same policy is disregarded by another branch of the same Department of Justice—the FBP?

What mitigating circumstances were projected by the FBP which might have altered their projected population downward, such as the expanded use of the following initiatives which LEAA has successfully gotten the States to implement:

(1) Diversion programs; (2) restitution programs; (3) decriminalization legislation; (4) expansion of probation; (5) shorter sentences; (6) work release; (7) deinstitutionalization initiatives.

Why is the FBP long-range plan silent on all of the above initiatives?

Why were no alternatives to incarceration projected? Where is there a statement of integrated planning with the other elements of the Federal criminal justice system, which incidentally, are made justifiably incumbent upon the States before LEAA will approve their block grants? Maybe there should be a State planning agency type of organization for the Federal system itself.

Why did the FBP plan to relieve itself of juvenile prisoners, but not adult prisoners, in the future?

Finally, why didn't the FBP project any other role for itself but linear expansion?

These are a few of the questions I suggest the Congress raise in relation to the FBP long-range plan. I work for a planning agency. We do have a capacity now in the States for integrated planning. And frankly, if a student of mine handed me the Federal Bureau of Prisons long range planning for a paper in a planning seminar, I would give him a C-minus or a D, and if a member of my staff handed me the same thing as a comprehensive plan in Illinois, I would fire him. One could conceive of several different, diminished, or even totally different roles for the FBP.

One. What would the future Federal prisoner population look like immediately if car thieves were deinstitutionalized or kept in their home State prison on a contract?

Two. What would happen to the FBP prison population if the nondangerous property criminal, probably 75 percent of the population, was deinstitutionalized through offender restitution programs or kept in prisons in their home State?

Three. What effect would equal treatment have on vacant cells? Blacks, for example, get sentenced longer and actually do more time in the FBP than whites. The argument they need more treatment is ludicrous, because any black cons I know have already removed any credibility from the treatment model. That has been rampant over the years, and as a matter of fact, Norman Carlson already stated a few years ago that we are giving up the notion of rehabilitation and treatment, and we are getting back to the punishment, and it is simply the cost of being a criminal.

Four. What if all prisoners, save the few high-level politicians, racketeers and, white-collar types, were kept out of the FBP entirely—that is, contracted to the States where they and their families come

from. It was astounding to me to hear that we have to help people, to hear a psychiatrist say we have to help people by taking them thousands of miles from their family, and then bringing them back at some later date and get them into a good job.

Quite apart from these diminished roles, I would like to suggest a wholly different perspective. There is no identifiable level of American corrections. That is true. The States are very unevenly divided into very uneven levels of development and practice. Some States have tried, and are now abandoning, the medical model of rehabilitation, others are just beginning to build central diagnostic centers to undertake what has already been discarded, while others are just getting a glimmer in their eyes for employing social workers. At this point in history with the great amount of public information and concern the citizenry has about corrections, the Federal Government could play a significant new role in moving the entire field broadly ahead.

I am talking about using the FBP as a standard-setting agency, with teeth, to minimally standardize correctional practice in the United States rather than continuing to use it simply to house Federal prisoners and make incremental cellhouse additions every time Congress criminalizes a new segment of the public. I do not think we have to de-Federalize the criminal laws. I am just talking about the Federal Bureau of Prisons, a Federal judge sentencing somebody, that sentencing can be executed in a State system just as well.

If Federal prisoners were housed by the State's prison systems then a Federal bureau could have a stake in food, medical, space, recreation, visiting, housing, training, public health, et cetera, all sorts of matters. American hospitals experienced a quiet revolution through the Hill-Burton Act. This should be used here, too, perhaps. This could be accomplished through a similar law for the prisons and perhaps even more importantly for the jails which are the worst blight on American corrections. The Federal Government does not have to be directly involved in delivering prison services anymore than it is in medical, mental health, retardation, education, or many other services.

In prison service, the Government, I think, has a special responsibility. When under the color of law a person is deprived of his liberty, there should be a Federal interest to assure a lawful and minimally standardized period of incarceration. The FBP does pretty well with its own prison operations. I'm suggesting that its know-how would be better used if it was authorized to do so for all of the Nation's prisoners. I want to commend you. I did not know that Mr. Nagel was going to be here today, but I want to commend to you the 9-page booklet entitled "An American Archipelago" published by the NCCD, which is the best statement about the aimless development of the Federal Bureau and a call for a different direction, said much more eloquently than my testimony says it.

Thank you very much for this invitation.

Mr. KASTENMEIER. Thank you, Mr. Fogel. Again, it is with regret that I must announce that there is a vote on the House floor, and accordingly, the subcommittee will recess, hopefully for 10 minutes, and then resume. Until 2 p.m. the committee will stand in recess.

[Short recess.]

Mr. KASTENMEIER. The committee will come to order. When the committee recessed, we had just concluded hearing from Mr. David Fogel. We would now like to call on Mr. Pat McManus of the Minnesota Department of Corrections.

**TESTIMONY OF PATRICK D. McMANUS, DEPUTY COMMISSIONER,
MINNESOTA DEPARTMENT OF CORRECTIONS**

Mr. McMANUS. Thank you, Mr. Chairman. Might I add that I am very honored to be here before this group, and particularly in the company of my distinguished colleagues. I would like to compliment the committee on selecting probably the best minds in corrections in this country today, myself excepted in this blanket endorsement.

While I am here today I would like to make one point at the suggestion of the National Moratorium on Prison Construction. I want to emphasize that my remarks are not directed against the Federal Bureau of Prisons. I have great respect for the Bureau and the fine leadership it has shown through the years in the field of corrections. Rather, I would hope I might be able to share with this subcommittee some of the experiences we have had in Minnesota as they relate to the issues now facing this subcommittee.

I currently serve as the Deputy Commission for Planning in the Minnesota Department of Corrections. In that capacity, one of my major responsibilities is to oversee the implementation of the Minnesota Community Corrections Act. Since this piece of State legislation has such a high degree of relevance to the issues at question here, I should like to take a few minutes to describe how the act works and the assumptions underlying it. The 1973 Session of the Minnesota State Legislature enacted the Community Corrections Act in an attempt to provide incentives for retaining offenders at the local, community level. The Minnesota Act is a subsidy program designed to encourage local counties to divert offenders from State correctional institutions by offering rather substantial financial incentives. Subsidy grants are made to a county or a group of counties who elect to provide a full range of correctional services at the local level. These include probation, parole, pretrial programs, residential facilities, detention programs, and so on. In passing this legislation, the legislators have the explicit intention of moving the responsibility for the delivery of correctional services to the local, county level. The intent is clearly one of decentralization of service delivery and the development of a wide range of correctional options at the local level.

In addition, the act calls for the development at the county level of a criminal justice advisory board composed of local law enforcement officials, judges, public defenders and county attorneys, parole or probation officers, corrections administrators, ex-offenders and lay citizens. This board is responsible for the development of a comprehensive corrections strategy for the particular county or region and becomes the vehicle whereby ownership of the programs developed is spread among the various components of the criminal justice system as well as the community at large.

I might digress from the written statement just to indicate our experience has been that this kind of board involvement, citizen involvement at the community level, has been absolutely critical to the

success of the programs. Many of the issues that have been raised in testimony here this morning and this afternoon relate to the difficulty of educating people and selling them on the idea of local delivery of correctional services. This board concept really directs itself to that issue and its resolution.

Besides the positive, financial incentive for counties to come under the Community Corrections Act, there are provisions in the act which serve to deter counties from unnecessary use of incarceration in State institutions. Once under the act, counties are required to pay actual per diem costs for use of State facilities for all juveniles committed to the State and for those adult offenders who are committed with statutory sentences of 5 years or less. No charge back is made to the county for the more serious offender who can probably not be dealt with appropriately at the local level.

Thus the effect of the act is twofold: Moneys are made available for developing alternatives to incarceration at the local level and, second, the State prison system becomes one of many options available to sentencing judges who can make a selection with both program and economic considerations in mind.

Under the provisions of this act the State's role in the delivery of correctional services is increasingly altered. As local units of government increase their capacity to deliver a range of correctional services at the community level the role of the State Department of Corrections becomes one of providing subsidy grants, setting and enforcing of standards, developing model programs, and providing research, evaluation, training, and technical assistance to the counties.

Mr. Chairman, members of the subcommittee, I am not here to suggest that the Minnesota Community Corrections Act is a panacea or any kind of ultimate solution to the increasingly alarming problem of crime and delinquency in our country. Reform of the correctional apparatus is an elusive thing. What appears to be progress and be—and often has been—simply business as usual in disguise or worse, regressive. If there is anything particularly significant about the Minnesota experience it is this: We are attempting a systemic change. We are looking at the basic concept of corrections, its mechanisms, and its limitations. The Community Corrections Act attempts to provide a framework in law whereby we can get more effectively at those issues, institutions, and dynamics which seem to correlate highly with crime and delinquency. We are, in short, attempting to get more of the correctional apparatus in place where the problems are generated, namely at the community level.

Crime and delinquency can be viewed as symptoms of failure and disorganization at the community level as well as at the level of the individual offender. From this perspective, the task of community corrections becomes one of defining needs at the local level and development of solid ties between the offender and the community. The Minnesota Community Corrections Act assumes that local communities are in the best positions to define needs and, in partnership with the State, develop solutions. Handling offenders closer to home provides more opportunity for maintaining family and community ties and facilitates reintegration into community life.

I should like to emphasize this point, Mr. Chairman, that the Minnesota Community Corrections Act is not an antiprison piece of legis-

lation per se. We, in Minnesota, do not hold any Pollyanna notions that prisons and incarcerations will in any way become obsolete during our lifetimes at least. The incarceration (i.e., incapacitation) of some people will remain necessary if we are to protect the public safety of our citizens. This is quite clearly the primary and overriding task of corrections. The dangerous offender, the serious and incorrigible offender, and the "professional" offender who simply chooses a life outside the law must be restrained from pursuing their predatory behavior at the expense of others. The Minnesota system, however, reserves prison, if you will, for those individuals in our society who need it.

What about the results of the Community Corrections Act?

The act has been operational in five pilot counties in Minnesota for a little over a year and I would caution that any results we can speak of here today have to be viewed as preliminary and somewhat tentative.

First of all, based on limited data available thus far, it would appear that the act is now having its desired effect of increasing the number of correctional options at the lower level and decreasing pilot counties' reliance on incarceration in State institutions. The commitment rates for juveniles have been reduced dramatically and the commitment rate for adult offenders has been reduced to a lesser but still significant degree.

Second, the involvement of persons other than corrections professions in the planning and development process of new local delivery systems has resulted in a high level of determination to make programs work at all levels of the criminal justice system in the communities involved.

Third, our experience thus far has demonstrated that it is possible to radically alter the structure of long-standing correctional delivery systems. It has also shown us that such changes are extremely difficult and require a great deal of effort to accomplish.

Quite frankly, I would be suspicious of any attempt at substantive correctional reform that did not generate a number of problems because such placid acceptance of change would probably indicate that nothing very important was happening.

I would like to point out, however, that we have encountered no problems thus far that have not been resolved and are overwhelmingly convinced that the Minnesota Community Corrections Act is workable and potentially one of the most significant legislative attempts at correctional reform in this country today. The apparent success of the Minnesota Community Corrections Act thus far was sufficient to move an otherwise stingy legislative session this year to appropriate \$71½ million to implement the act in an additional 20 counties over the coming biennium. At the end of this 2-year period, we will have 25 counties representing nearly 70 percent of Minnesota's population operating under the act.

The fact that there is in place and operating a system which emphasizes decentralization and encourages the assumption of responsibility for correctional services at a more local level is the reason why I am before you today. It occurs to me that the arguments against removing offenders long distances from their home communities to which most will ultimately return, is applicable in some kind of multiplied way

when one discusses the future of the Federal system of prisons. Certainly the arguments in favor of applying the remedies to crime at a locus somewhere near their origin are appropriate issues for this subcommittee's consideration.

In light of our experiences and the fact that brick-and-mortar decisions tend to close future options, I would make the following recommendations for this subcommittee's consideration:

1. That further study and consideration be given to the Minnesota experience to determine whether it might represent a working model on which to pattern a Federal strategy to improve corrections.

2. That serious consideration be given to the role of the Federal Bureau of Prisons relative to State and local correctional systems. This reappraisal should consider carefully the possibility of returning to the States the primary responsibility for the delivery of correctional services and an orderly and systematic process for accomplishing that end.

3. That a Federal subsidy or revenue-sharing system be adopted that would encourage the State to eliminate inhuman and unsafe fortress type correctional facilities and replace them with smaller, more manageable institutions and non-institutional programs. An equitable and effective distribution of Federal dollars could be effected through a formula that would consider both correctional need and a State's willingness to deal vigorously with the causes as well as the symptoms of crime in a comprehensive manner.

4. That no new funds be appropriated for the expansion of the Federal prison system until and unless it can be demonstrated that these same correctional services cannot be provided as effectively and efficiently by State and local systems in partnership with the Federal Government.

Mr. Chairman, this concludes my testimony. Thank you for your kind attention. I should be happy to respond to any questions you might have.

Mr. KASTENMEIER. Thank you, Mr. McManus. Before we ask questions, we would like to call our last witness today, Mr. John Conrad.

TESTIMONY OF JOHN P. CONRAD, THE ACADEMY FOR CONTEMPORARY PROBLEMS, COLUMBUS, OHIO

Mr. CONRAD. Thank you, Mr. Chairman.

1. It is a pleasant privilege to testify before this subcommittee today concerning the future of the U.S. Bureau of Prisons. As a fellow of The Academy for Contemporary Problems of Columbus, I represent an institutional commitment to the use of knowledge in the interest of improving public administration.

For the last 3 years, our academy has been deeply engaged in disentangling myth and wishful thinking from the realities of crime and the administration of criminal justice. My colleagues and I have been especially concerned with the use of reason and experience in the protection of the public from crime and fair treatment of the violator of the laws. We have consulted with a group of progressive penal administrators, designated as the Group for the Advancement of Corrections, who have joined in a statement of principles entitled, "To-

ward a New Corrections Policy." Copies of this statement have been furnished to you with this statement.

At the present time, I am engaged in a major study of the Dangerous Offender, funded by the Lilly Endowment of Indianapolis, as a project of the academy. Our objective is to reconsider social and legal policy with respect to those classes of offenders from whom the public requires maximum physical protection.

2. I think it is appropriate, as a stranger to your earlier deliberations, to indicate my qualifications. I began my correctional career in 1946 as a parole officer of the California Youth Authority. I rose through the California correctional bureaucracy as successively a prison sociologist, an administrator and finally the chief of research of the California Department of Corrections, a position I occupied from 1964 to 1967. My career was enlivened by a Fulbright Fellowship at the London School of Economics, in which I had the opportunity to spend a year in close observation of the British prison system. I also conducted a study of European prisons for the Ford Foundation, the findings of which were published in 1965 under the title of "Crime and Its Correction."

In 1967, I was appointed Chief of Research of the Bureau of Prisons, from which I migrated in 1969 to the National Institute of Law Enforcement and Criminal Justice as Chief of the Center for Crime Prevention and Rehabilitation. I left that Institute in 1972 to assume my present duties with the Academy for Contemporary Problems.

3. In the nearly 50 years of its existence, the Bureau of Prisons has played an honored and honorable role in the setting of standards for prison administration throughout the country. Under a succession of four distinguished Directors—Sanford Bates, James Bennett, Myrl Alexander, and Norman Carlson—there has been a consistent compliance with the best traditions of American public administration. Insistence on professionalism, receptivity to new ideas, and the maintenance of humane standards of conduct have characterized the management of the Bureau's affairs from the first. Although I have differed with Bureau policy in the past, and still do on many issues, I think it is important to recognize that these policies have been invariably intended to serve the best interests of the administration of criminal justice.

The example of the Bureau has been and still is tremendously influential in setting policy and standards in the correctional departments of the 50 States. Because its influence is so great, the Bureau's future policies become matters of transcendent importance for the future of correctional standards of practice throughout the country and, indeed, throughout the civilized world. Your interest today in the affairs of the Bureau should be seen as not restricted to the policy problems of a relatively small Federal bureau, but rather as concerned with the resolution of issues affecting every aspect of the administration of criminal justice in this country.

4. During the 30 years of my experience in corrections, optimism about its potentialities has eroded after systematic examination of the results of our efforts. Disillusion of high hopes held out for correctional treatment programs has led to a penological pessimism which pervades most discourse on the subject. We have tried psychiatric

treatment, remedial education, vocational training, and various approaches to counseling. None have succeeded in reducing the recidivism of offenders committed to prisons.

In the hope of increasing effectiveness in the achievement of this objective, most of our recent attention has been given to the "deinstitutionalization" of corrections through the exploration of alternatives to incarceration. The Bureau of Prisons and the Federal probation system have done more than any other correctional agencies in the country to experiment with the improvement of parole services, community correctional centers, halfway houses, and work-release programs.

At the same time, a determined effort has been made by the Board of Parole to improve the quality of its parole decisionmaking procedures through systematic attention to the consequences of decisions made. It is an impressive record of altruistic effort, but the results which were sought have not materialized. Recidivism has not been significantly affected by any of these programs. Its fluctuations have been more consistent with the general crime rates and other indicators of social conditions.

And this leads up to the central point on which all the data converge. There is simply no reason to believe that prison programs, as now administered, can produce consistent improvement in prisoners which will be reflected in lower rates of postrelease criminality.

The reasons are clear. The education and training the released convict has received behind the walls, the psychological insights he has gained from counseling, the distress he has experienced from confinement all pass into marginal significance in the face of the social conditions confronting him on the streets. The occasional opportunities to better himself may sometimes produce an unexpected success of the unlikeliest human material, but the disabilities with which all released prisoners must cope will often defeat the best intentions. Influences of the moment will vitiate well laid plans for restoration to good citizenship. I think that the implication is clear. The intuitive maxim of the famous prison reformer, Sir Alexander Paterson, is correct: you cannot train a man for freedom in conditions of captivity.

5. The meaning of this bleak conclusion for the future of penal policy is a topic of uncertain debate. Some argue that it clearly means that the use of the prison as a sanction of the criminal law is futile and should therefore be abandoned. Others arrive at the diametrically opposite conclusion: we should lock up criminals to incapacitate them for further criminal activity, not to rehabilitate them or even to deter them from further crime.

Between these two extremes are a variety of positions taken by persons like myself who hold that the complexities of our crime problem cannot be reached by simple solutions. We will have to continue to maintain prisons and lock up some kinds of criminals in them, a few of them at least, for longer periods of time than we do now. Some of the kinds of people we now keep in custody will have to be handled by other means. But we must be clear about our objectives. For most of the people to be confined, we are concerned with deterrence; that is, to deter both the offender himself and the public at large from the commission of crime. And there is little evidence that this works very well.

For these purposes, a brief but much more certain sentence will accomplish all that can be done. For the few whose record of violence is such as to indicate that society must be protected from them, substantial sentences should be imposed for the entirely distinct purpose of incapacitation.

Our Groups for the Advancement of Corrections thought that 2 years would be enough for all but the exceptionally dangerous offender whose record might justify a much longer term. But whatever our purposes in confining the offender, we should be clear that rehabilitation is an incidental benefit, to be hoped for, but never expected. It would be fundamental—but it certainly is not in the minds of most correctional decisionmakers—that no one is to be sentenced until the indeterminate time when he can be pronounced fully rehabilitated.

To be blunt, the criminal justice system must lower its sights. Just as the policeman on the beat can do little to prevent crimes from happening, the prison must not be seen as the cure for the disease of criminality. The task of the correctional institution is to carry out the sentences of the court humanely, doing as little harm as possible to its inmates as is possible in the unnatural conditions in which it must keep them.

We used to argue that prisons should be like hospitals, not warehouses; indeed, this pair of extremes from which society might choose is still common in the rhetoric of criminology. But as the years have gone by in the attempt to create a clinical milieu in the penitentiary, we have learned to think better of the warehouse. After all, a good warehouse might be a sufficient challenge for the contemporary prison warden. Its principal criterion is that the goods stored will not deteriorate or be damaged during the time of storage. Few prison wardens can make such a claim about the men and women assigned to them.

6. These considerations lead to a new appraisal of the Bureau of Prisons in our criminal justice apparatus. You will hear persuasive arguments that it should continue on its present course. New prisons will be built to accommodate an expanding population and to make possible the inactivation and possible demolition of such archaic monstrosities as Atlanta and Leavenworth. It will be argued that the Bureau has an essential role as a standard setter, that it can and will continue to play a useful part in training correctional personnel in State services to reach the high standards of competence which characterize the Bureau's staff.

All these arguments are impressive: none of them are entirely without validity. But I will suggest a different course, based on different inferences for criminal justice policymaking, drawn from the prevailing estimate of the limits of the prison's role in the administration of justice. For if the most we can do with the prison is to keep offenders out of harm's way for a period of time, what are the implications for further correctional development?

7. The answer is that in the prison of the future, offenders should live as normally as possible, given the nature of custodial conditions. They should be kept as near to family and friends as can be arranged. As soon as they can be allowed to live and work in the community, they should be expected to do so as a matter of course.

The fragile interpersonal supports on which the prisoner must rely when he returns to independent life in the community should be shored

up by maintenance of close contact; separation from family and friends over both time and distance is never to the advantage of good relationship, and makes impossible the mending of impaired ties. An offender who is locked up must be as close as possible to the community to which he must return. I think these axioms argue for confinement in State prisons. I do not think it is possible for the programs of the Federal prisons, no matter how well carried out, to offset the disadvantage of remoteness from the real world from which the prisoner came and to which he will return.

A woman confined at the Federal Reformatory in Alderson, W. Va., is living in the most unnatural and discouraging circumstances, regardless of the efforts of an excellent staff to offset the remoteness of the location. The situation at Alderson is an extreme, but few male prisoners of the Bureau are better off during the time of their exile. There is too little to be gained by Federal custody to justify its continuance.

8. So the alternative to the Bureau of Prisons is a plan to demobilize its population, dispersing it to the State from which it came. I do not propose a sudden death for the Bureau. Rather, the change in its role can and should be phased gradually to assure a smooth and natural transition. A beginning has already been made; we do not have to start at square 1. It is already apparent that the large population of auto thieves which used to constitute the Bureau's principal offender group, up to 50 percent at one time, has dwindled to minor proportions with the prosecution under State laws of many such persons—our information is it is under 10 percent now—who are technically violators of the Dyer Act.

I think we can continue this process. Where offenders can be prosecuted under either Federal or State law, the latter should be chosen. The results will further reduce the Bureau population. The next step should be a policy of sentencing all Federal prisoners serving short terms to confinement in State custody, gradually increasing the length of the maximum sentence of prisoners eligible for such transfers. Over a period of 10 years, the process of demobilization can be completed, and the Bureau staff can devote themselves to more important work.

9. This task is the renovation of our American prison plant. All over the country are "fortress-prisons" as my distinguished colleague, Dr. Fogel, designates them, which are excessively large, obsolete, and inhumane. Their replacement is difficult for any State, and impossible for many. They cannot be managed as safe, decent places for the confinement of prisoners.

The inactivation of the Bureau will release funds for cleaning up the State prison systems. Some Federal facilities can be turned over to the States in which they are located to the great advantage of the State's system. Where this is not possible through accidents of the distribution of the Federal prison system, subventions from a Federal trust fund for the reconstruction of State facilities should be possible.

Such grants should, of course, be contingent on State compliance with construction and operating standards to be specified by a civilian board and monitored by the Bureau staff. In this way, the Federal role in corrections would be transformed into the standardizing function which is proper to the National Government leaving to the States the administration of direct services.

10. The details of a plan like the one I have sketched will be difficult to work out, to say the least. Inertia and the natural bureaucratic preference for stability will increase the difficulty. But institutions should not be allowed to outlive their usefulness. The Federal Government does not need to operate prisons or to provide direct correctional services of any kind. The State and local governments have no choice; they must persevere in the administration of prisons, and should receive far more help in the improvement of both services and facilities.

A national effort of this kind is overdue; anyone who compares the small but orderly prisons of Europe and Japan with our tumultuous, dangerous, and obsolete facilities must recognize that dramatic action is urgent. What I have proposed in these remarks will not produce a penological Utopia, but it will at least make possible a fundamental change in the administration of justice. We can be quite sure that if we drift along as we have done for generations, nothing will improve and the chances for a continuing succession of prison tragedies will increase every year.

Thank you very much, Mr. Chairman.

MR. KASTENMEIER. Thank you very much, Mr. Conrad.

I am going to yield first to the gentleman from Illinois, Mr. Railsback.

MR. RAILSBACK. Thank you, Mr. Chairman. I again feel that we are very fortunate to have three distinguished witnesses.

Have any of you had a chance to study the proposals under the budget that we are concerned with?

MR. CONRAD. No, sir. I have not. I believe Dr. Fogel, my colleague, has a complete stand, but I have not had a chance to study them in detail.

MR. FOGEL. I have seen the master plan, and I do not know. Some 15 have emerged from looking at the master plan, which I think is simply a mathematical and hotel problem. They project X number of people going into Federal prison without asking the right questions, and they simply come up with X number of beds will, therefore, be necessary. Not a bad outcome, except they have not asked the series of right questions.

MR. RAILSBACK. I see.

MR. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

MR. DRINAN. I want to thank all three witnesses. I want to ask this of Mr. McManus.

What are the objectives and so on of the National Moratorium on Prison Construction, and at whose suggestion did you come here to testify so ably?

MR. McMANUS. What are the objectives?

MR. DRINAN. Yes.

MR. McMANUS. I think the immediate objective is to preclude any funding now of new construction that would jeopardize the opportunity for changes in the whole view of what the role of the Federal Bureau of Prisons is.

MR. DRINAN. Would you tell us how this came about, who is involved, and so on?

MR. McMANUS. My first contact was Bryan Wilson, who was the national coordinator for the National Moratorium, and visited Minnesota last winter during a blizzard, as I recall, and became somewhat

intrigued with what we were doing in Minnesota, and saw that as a possible model for the kind of action I would like to see the Federal Government involved in, as to how they relate to the States and have the greatest impact in providing correctional services.

Mr. DRINAN. Do they research their own information, or do they rely on the research of others?

Mr. McMANUS. I am really not that familiar, and I really could not speak for them. I cannot answer that question.

Mr. DRINAN. Would you say they have some support from the best people in the corrections community?

Mr. McMANUS. I think they have, as witnessed by the kind of testimony that you have received here today, and the kind of people that have come.

Mr. DRINAN. How old would this National Moratorium be?

Mr. McMANUS. Again, I do not know, because I am not that intimately connected with it. I really cannot respond.

Mr. DRINAN. Well, on a broader base, Mr. McManus, how old is the feeling within the corrections community that perhaps we should have a moratorium on prison construction?

Mr. McMANUS. I think the feeling goes back many years, and with the more farsighted people I suspect having the feeling first, but I think it is rather prevalent in what I would like to characterize as a thinking sector of corrections people that prisons, in fact, had they ever had a real purpose, have outlived that purpose at this point, and really major modification in the whole concept of how we deal with offenders is needed.

Mr. DRINAN. Well, I am very sympathetic to everything that the three of you have said. But, I am just asking you to react to the common view that punishment and deterrence are required in corrections. As a matter of fact, President Ford just last month recommended a mandatory sentence in certain cases on the theory that this is punishment and this is deterrence. How would you respond to that particular viewpoint?

Mr. McMANUS. In terms of punishment, I guess it really depends on what a society defines, and I think there is schizophrenia in terms of what the common person expects corrections to do. They do expect the punishment be there, and unfortunately also expect rehabilitation will occur.

Mr. DRINAN. Is that really so, though? I keep wondering: Does the common person expect that? We say that, and we think of "Archie Bunker" types, but is that really so? Is there any research on that?

Mr. FOGEL. I doubt it very much, that there is an expectation that rehabilitation was going to take place. I had occasion for the Department of Justice last summer to do a study on that, which will be out shortly in the form of a book, and I think also Mr. Conrad has shown you, you know, he has been in this field for a full generation at every level, including the international scene, and there has been, there has been a slow erosion of this whole thing among top administrators.

For example, Richard McGee, who is the head of the California system, who many credit with having been the inventor of the prevention model, and which for many years was the most respected system, has now come out and said that we had better give this idea up. And if we are, people will still grow regardless of the fact, and I

think he is 78 now and one of the few men I know who is still growing, and we had better do it ourselves and let the correctional administrators themselves say that this does not work, and let us not become over-protective, and let us not take a beating one at a time in the courts, and then resist even what the courts do. But, let us take hold of this field ourselves.

One of the problems has been that corrections is like this master plan, it is only worried about how many beds do we need rather than the impact of legislation, getting involved, for example, in sentencing legislation, which is much more significant than counting beds.

The President, unfortunately, has asked for mandatory sentencing. My suggestion, and a lot of my colleagues, Mr. Conrad included, is that we go to flat-time sentencing, which is very different, where you simply know, after you leave the courtroom when you are getting out. You do not have to go to prison and be confused by the so-called rehabilitation rhetoric and then have to show "clinical progress" before you can be released, because nobody knows how to assess that anyhow. And I am not one. As a sideline, I worked in this field, and used to run the department in the State of Minnesota, and it becomes obvious after a while that it is a big con job, the whole thing. And in Chicago, a distinguished criminologist has put it another way by saying that rehabilitation, parole, and sentencing patterns that we have has turned American prisons into great centers for drama, where the prisoners are the actors and the parole board is the academy holding the Oscars. This would impact on the possible population projections made by the Department, if they understood it.

My problem with their principle is not that they are not good practitioners, they are not very good planners. Why do they not bring that before you and show you a simulation on a computer, for example? I think you would be interested in that, and that would have much more of an impact.

Mr. DRINAN. Thank you very much.

Mr. CONRAD, do you have anything to add?

Mr. CONRAD. I do not think I could add anything to Mr. Fogel's eloquent statement. I think it deserves a somewhat fuller statement. Although it is hardly relevant to the future of the Bureau of Prisons, I think Dr. Fogel has been the principal exponent of flat-term sentencing, and I think this might be an opportunity for him to explain a little further this difference between that and the mandatory sentencing, which I think is bound to get us into a great deal of trouble.

Mr. DRINAN. I guess that what you distinguished gentlemen are saying is that out of all of your experience this will not be agreed to readily, emotionally, and psychologically by a lot of people. It is almost like telling them that America should not contain communism, that our foreign policy was wrong for a long period of time. And what you are saying is most welcome by me. I hope that you will continue to inform this committee, because we have the very difficult responsibility of saying yes or no to this moratorium that is projected.

Mr. FOGEL. I would like to make one more observation. I do not think that the American people, and particularly at the local level, practitioners of criminal justice, are uneducated about this. We just finished a sequence of getting to every population center in the State

of Illinois with this message, a legislative program based on flat time, automatic review of sentences, vested good time, and an evolution of the parole board, and it all sounds kind of very revolutionary. But, the first group to come out in favor of it, after looking at it, has been the Illinois Police Chiefs Association, because we find that this, with the kind of fairness and certainty in this program, it is much more plausible. And groups that you might expect are looking for retribution and justice settle for certainty rather than for length of sentence, because nobody does the length. One to twenty people get out in 1 or 2 or 3 years, and if the police were assured the guy would be off the street for so long, they would settle for that, and then they will not have to go for claims of 20-year sentences and no parole, and the death sentence and so on. But, if everyone is searching for a plausible rhetoric that will bring the actors in the criminal justice system together, instead of this very cannibalistic struggle for tax dollars.

Mr. DRINAN. If you know some police chiefs that will buttress your case, we would like to hear from them. Thank you.

Mr. KASTENMEIER. Before I yield to the gentleman from New York, Mr. McMANUS, I think you were answering Mr. Drinan. Does the organization for moratorium, is that addressed to Federal facilities or State facilities?

Mr. McMANUS. I believe they are addressed only to Federal facilities.

Mr. KASTENMEIER. They do not feel the same way about the State facilities?

Mr. McMANUS. They may feel the same way. I think the ad hoc nature of the group is that they are dealing with this particular issue at this time.

Mr. FOGEL. Mr. Chairman, there is an obvious reason in that there is no building going on in the State systems of the magnitude of the Federal system. There is no one large prison going up any more, nothing on the drawing boards.

Mr. CONRAD. I think it should be added that many States, including Minnesota, are experiencing a very rapid rise in commitment rates which are going to present them with far more serious problems which the Federal Bureau of Prisons can be anticipated to experience for many years.

Mr. KASTENMEIER. I would observe that this may perhaps be isolated to the extent to which State and local government is faced with the demand for new facilities, but very often county and local governments are confronted, in the boom of an area, with whether or not to commit significant resources to a correctional institution for local purposes. And the argument is almost always the same; that is, the same reasons are raised for this opposition to such a commitment of resources locally. That is why I was wondering about the nature of the organization with respect to those.

Mr. McMANUS. Maybe just a point in terms of Minnesota experience, and also in terms of Congressman Drinan's question about the deterrent value of incarceration. We have taken a position for those who are going to do long periods of time, and we really have got that pretty well defined as the dangerous offender, that this is a proper functioning of State government because of the simple factor that

most county governments do not have the numbers to be able to operate programs for those kinds of people. However, we have discovered, and I think our experience continues to bear this out, that whatever deterrent value incarceration has, it is linked to the certainty with which the sanctions will occur, and the immediacy of it much more than the length of time, so that we are finding judges now who previously would have sentenced people off for a State institution for relatively longer periods of time using local facilities, jails and workhouses, regional institutional facilities, for very short, high-impact kinds of sentences. And I am not sure whether the jury is in as to whether this will deter or not, but certainly it involves much less expense of money and much less intervention in that person's life. And according to all of the information we have, it has as much deterrent value as a long incarceration in a State institution would have.

Mr. KASTENMEIER. The gentleman from New York.

Mr. PATTISON. That is the question I wanted to follow up, on the question of mandatory sentencing. If you modify that to make the mandatory a sometime for every offense sentenced, primarily short sentences, would that make sense? With that kind of philosophy, would that make sense?

Mr. CONRAD. We are experimenting with that in Ohio, Mr. Pattison. The experiment is too recent to evaluate with any degree of certainty. The Ohio law now provides, and I think rather uniquely, for an experience which is referred to as a shock probation and shock parole, whereby a judge can commit a man to prison with the understanding that he will be eligible for release during 90 days if he gets a favorable recommendation from the prison ward and shock parole is a variant on this, whereby first offenders can be committed to prison and released by the parole board within 90 days in the event that there is a favorable recommendation.

The difficulties with this are not obvious, but serious. It does appear to be leniency. And in some cases, some of the men who have been released under the provisions of the Shock Parole Act have been inappropriate releases resulting in a movement in the Ohio Legislature to restrict the provisions of the shock parole to a very small minority of the prison population.

Now, I would suggest that this program, which is difficult to administer in Ohio because of the very large number of violent, and volatile offenders that the State prison system has to cope with, might well be much more appropriate for the Federal system, which contends with a population which is at least 75 percent nonviolent, at least 75 percent consists of men, men and women whose offenses are well, not trivial, but do not deal with very many who are anything more serious than theft of property or similar kinds of actions. The violent offender is a much smaller minority in the Federal system than it is in the State system, a fact which is insufficiently appreciated, it seems to me.

Mr. PATTISON. Is it not true that in the evolution of the prison system that incarceration after trial is rather new? In history, and in fact, incarceration was something that was always pretrial and after trial—well, I mean—

Mr. CONRAD. Historically, the prison was a substitute for capital punishment, torture, and banishment to such places as Australia, New Zealand, and some of the southern colonies of this country.

Mr. FOGEL. Or to the United States by the English.

Mr. PATTISON. Or to the United States, right. How about other forms of certain punishment in certain cases? I suppose it is not speakable to talk about corporal punishment, but has anybody done any thinking about that?

Mr. FOGEL. I think Minnesota a couple of years ago started a program which is now 3½ years old, I believe, and the last I saw of it, it works about four out of five times, and that is pretty good for baseball or corrections or anything else. Canada is going to base a series of community programs on it, and it is called offender restitution. I happened to be the commissioner in that State when it began. We did it with LEAA funds, but we did not make it available to the courts, so in a sense, the response was to the first question you had. So, part of the sentence was incarceration and we took people right out of prison as property offenders, but not professionals, no one used a gun or anything like that, and on a random basis, so that we could get hard data, and we found a downtown YMCA who gave us a floor to fit their rhetoric, too, because they needed more money from the Community Chest and they had a 40-percent vacancy rate, but anyhow, there was not any immediate neighborhood, and the downtown does not have a residential center, and we sat the prisoner down, and now this was all voluntary, and it could only work if the victim of the crime would agree, so they sat down across the table and worked out a contract to be repaid. And we had an advisory board to it, and the deputy chief of Minneapolis was on it, and he found a new perspective in it. And he said what the hell, with the others who get parole, I do not even know where they are, but I know that they sign in four times a day on this one. And we found a whole new constituency for prison reform, mainly victims who never figured on getting paid back. There may be other things, interesting byproducts, like reconciliation, but I do not think anybody is worried about that at this moment with the alarming rate. But, it would be a nice byproduct to see come out of that.

Mr. PATTISON. That was going to be my next question, about the restitution program, of how they work that. Of course, it implies you have to find some sort of work for these people, and if they steal your car and do \$365 worth of damage on it they have got to pay you back, and I presume maybe they even, while they are working, will have to pay off some to society for feeding and housing them.

Mr. FOGEL. They pay for their stay, their money is banked and they keep their kids probably in school, and the family is intact. They are taxpayers rather than drains on the taxpayers in prison. It makes imminent sense. For those who are in the dangerous category, you have to be very careful about that. We are not, you are not talking about violent criminals, but in the Federal system we are talking about 75 percent of the inmates being nonviolent.

Mr. PATTISON. I am very interested. Mr. McManus, in your Community Correction Act, because it is almost as if it were identical to the New York State program in the area of mental services, in the unified services plan which does exactly the same thing with community services and makes funds available, rewards the community for doing the things in the community, and then it starts to charge you for sending people outside of the community, and involves a lot, all of the community agencies and a lot of people in the community, citizen people.

active people in various kinds of services, voluntary services. And it is just brand new, but it happens to be that we got that started in my county. It is the only county in New York that did that last year. And I would be very interested in seeing how that works out, because it makes a lot of sense.

Mr. McMANUS. We have a similar, more comprehensive act also operative, called the Human Services Act, which attempts to deal not only with corrections but with health—with welfare and mental health—in a coordinated way. There are a lot of problems because you are plowing a lot of new ground and asking for a lot of new alliances where there was mistrust before. But I think it is not only possible, but absolutely necessary if we are going to get a handle on that kind of service.

Mr. PATTISON. Nobody on the panel wants to come out in favor of spanking or whipping?

Mr. FOGEL. I mean, suppose we were able to show you conclusively that branding a "B" on your forehead for burglar would work? Well, I do not think society would want it anyhow, not at that cost. In fact, somebody once pointed out to me, a teacher, that in the criminal justice system, one of the saving graces is that it does not work too efficiently. What if we did have a 100 percent efficient law enforcement and conviction and such? We would be having a whole different kind of a conversation today.

Mr. PATTISON. Different people.

Mr. FOGEL. Wall to wall.

Mr. PATTISON. No further questions.

Mr. KASTENMEIER. I yield again to the gentleman from Illinois.

Mr. RAILSBACK. Do I understand that all of you favor trying to shift from the Federal to the State?

Mr. CONRAD. Certainly. Certainly.

Mr. FOGEL. Except for some offenders.

Mr. RAILSBACK. Yes.

Mr. FOGEL. I really do think there are some offenders in the Federal system, and it is a small proportion. I understand, but I do not think they could survive in most State institutions, as I know the State institutions, and some have to be separated. I think, you know, high level racketeers, and I do not think a Congressman could make it. I think that those people who are going into these little country clubs around for them would get pretty demolished in the system we have now, and they are treated differently even in the Federal system, as you probably know; and I am talking really about people that do not, I mean, just do not come from any kind of culture, do not have anything in their background that would permit them to survive. I believe the same thing for people that get churned up in the State system—there ought to be a separate facility for squares, as they call them.

Mr. RAILSBACK. Would you agree that right now there is a great diversity within the State systems, and some are much better than others, and much more progressive?

Mr. CONRAD. Mr. Railsback, I would like to differ with my colleague, Mr. Fogel. During my years in the California Department of Corrections, we handled organized racketeers with no trouble. They are quite easy prisoners to deal with. Even in the Bureau of Prisons—with the exception of a celebrity like Mr. Valente—the difficulties are

minor in handling them. As far as the distinguished middle, upper middle-class type of offender is concerned, we handled them quite well in California, too. They can be protected, they can survive, at least in a fairly large system like California's. And I hardly think they are comparable in difficulty to the kinds of offenders which make it hideous and you need segregation in maximum security.

Mr. FOGEL. It is just when they remain locally in New Jersey, Chicago, and other places, there are always situations where they seem to buy everybody off. Joe Dobnus never went to the chow hall in a year, and he also did not miss a meal.

Mr. RAILSBACK. Do you also agree that it is very important to improve our ability to ascertain who we can take a chance with, and who needs to be placed under maximum security? Do you have any ideas?

Mr. FOGEL. Yes; but I do not think—and I think Dr. Menninger pointed this out—I do not think you can look to the psychiatric profession for that. I no longer think that is credible to the American public. And what I would look to determine that is the police rap sheet. If this fellow has been using a gun serially for three or four felonies, let us make a commonsense judgment that this is bad news, and he ought to be identified as a dangerous offender. To look at the multiphasic personalities score and see a 49, which is an incurable psychopath or something, just does not make sense anymore. Besides, parole boards are usually not trained to understand that anyway. But, we should not become more and more a Nation of psychologists. I think. The criminal law ought to be unencumbered with all of the changing psychology, psychiatrists, social work, and a lot of others. Now, we have the behavior modifiers and, you know, the horror scene, and that is a scary prospect, too. The criminal law ought to simply be the cost that an outraged community believes an offender should have to bear for committing a crime. Sometimes it is imprisonment.

Mr. McMANUS. I do not have a solution to that question either, other than to say we are involved in that very process with our own institutions as we are getting legislative mandates, or close to legislative mandates, to close down our large, less maximum security institutions, and we are having to look at the same issue from a somewhat different perspective. And that is to determine the kind of security needs people have in institutions. And the one thing that seems to be coming clear—which would support Dr. Fogel's position—the rap sheet as a source of information. When we look at the offenses for which a person has been convicted, has committed multiple offenses, or a past record, and couple that with behavior in terms of the institution, in terms of assaultive behavior, then we end up with a fairly clearly defined group of people that obviously need maximum security from each other as well as escaping, and on the other end we have a fairly clear picture of people who do not really pose a serious danger to anyone. And there is a smaller group in the middle, and I guess the task is to narrow that group down so that we can be a little more scientific about it.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. Did I not understand you, Mr. Conrad, to say Minnesota was getting more commitments?

Mr. CONRAD. I should let the representative from Minnesota speak to that. I am between two of them, really. My last understanding is that there has been a steady increase in commitments in Minnesota, which is true of most States. It is escalating very alarmingly in Ohio, which is a State which I know a great deal more about. I think the situation in State prisons is of great seriousness. The condition of the Federal Bureau of Prisons is one which would cause veritable alarm to most State corrections administrators if they had to face it.

Mr. KASTENMEIER. The reason I asked that is in connection with the general proposition that the prison population of those under Federal commitment, the prison population of the Federal Bureau of Prisons, could be diverted to the State institutions. This tends to suggest that there may be some other complications for the States in this connection. The States themselves do have problems. They are going in many directions, not all in the same direction. Some of them have financial problems, some of them have increasing commitments, or problems of whether they want to get out of the prison business or build new institutions themselves. In the frame of reference of all of that, the proposal is to divert our Federal prison population back to the States under these variegated, varied situations. When one considers that States already have problems, including fiscal problems. I am not necessarily persuaded we understand all of the implications of this proposal.

Mr. CONRAD. Mr. Chairman, my advocacy of this position takes into explicit recognition the complexity of the task to be undertaken. If this objective is to be carried out, it certainly cannot be carried out overnight, or next year or within 5 years. I think at the minimum it is a 10-year plan, but a 10-year plan ought to exist. And I think we are now drifting into a situation in our state prisons which well may be a national calamity. I think the Federal Bureau of Prisons is in a situation where it is irrelevant to the correctional systems of the whole country and where it would be very desirable for the Federal role to be rather concentrated on standard setting and, therefore, the States, rather than attempting to administer the correctional system for a few specialized offenders, the States need the kind of leadership which they are not getting and which they could get from a Federal system, which could afford it.

Mr. KASTENMEIER. I think I understand your position, and really the basic position of this panel, and perhaps two of the three which preceded on the other panel. That is, that you all feel the Federal Bureau of Prisons has had excellent leadership, personnel and sometimes resources, that it should continue to play a role in this country, that it might be mutually beneficial if it diverted its population to the State system for a number of reasons, that it continue to play a primary leadership role by setting guidelines for the state and local facilities, and that this would be mutually beneficial. You believe this would end up aiding the States and also unburdening the Federal Bureau of Prisons from a task, a costly task.

Mr. CONRAD. That is the issue, part of the issue.

Mr. KASTENMEIER. Yes, that is only part of your statement.

Mr. FOGEL. I just want to add one other note of caution. I think you put the question very well. It is a troublesome one, and Mr. Conrad

says very complex, but if you look at two tracks for the next 10 years, the Federal Bureau of Prisons could, for example, not have to divert anybody, but also not build anything for the next 10 years, for the moment, because, remember, what you build today you are locking in for about 150 years once you put that steel and concrete up. It is good for a century and a half, and maybe you are building resources for longer than that in some cases, and you lock yourself in.

But, if there was congressional intent on the Federal side for these next 10 years and the message were given very forcefully for the State that we will not build and in 10 years we will start diverting, but in this 10-year period we would like to see a Hill-Burton type resolution as was produced for hospitals for the prison system, and then we might really move all the American corrections ahead. But, if we just aimlessly build the Federal system while the State system is really dealing with the greatest number of people and in the greatest number of people for revenue and less commitment, frankly less commitment, you get a much better sensibility in this kind of a forum in the 40 or 50 States perhaps, and that is why it is terribly important that the Federal Bureau set up some leadership in this country rather than counting heads and building cells based on that count.

Mr. KASTENMEIER. Thank you gentlemen, for a most provocative and stimulating presentation. Your collective commitment to corrections in America is not unknown to this committee and to Americans generally. We will continue the dialogue.

This terminates today's hearing. On Wednesday, we will continue the hearing with the Director of the Federal Bureau of Prisons, Mr. Norman Carlson, and with two Federal judges as witnesses on the questions which we have opened up this morning. Thank you very much.

The committee stands adjourned.

[Whereupon, at 3:10 p.m., the committee adjourned, subject to the call of the Chair.]

PRISON CONSTRUCTION PLANS AND POLICY

WEDNESDAY, JULY 30, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:25 a.m. in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Badillo, Pattison, and Railsback.

Also present: Bruce A. Lehman, counsel; and Timothy A. Boggs, Professional Staff Member; and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will come to order this morning for the purpose of the second day of oversight hearings on the Federal Bureau of Prisons institution construction plans and policy.

Today we are very pleased to greet a friend who has been before us many times, the Director of the Federal Bureau of Prisons, Norman Carlson, with his Assistant Director, Gary Mote, who will be joined later, I understand, by a member of the Department of Justice who has not yet arrived.

So, I will call on Director Carlson now. We have your statement, it is not a lengthy statement, so I invite you to proceed from it, if you wish.

TESTIMONY OF NORMAN CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS, ACCOMPANIED BY HAROLD TYLER, DEPUTY ATTORNEY GENERAL

Mr. CARLSON. Thank you, Mr. Chairman, and members of the committee. I have a prepared statement, which I would like to submit for the record and to summarize, if I may.

The Deputy Attorney General, Mr. Harold Tyler, had another meeting this morning but he will be joining us shortly.

Mr. KASTENMEIER. We will be happy to greet him when he arrives. Without objection, then, your statement in its entirety will be received as part of the record.

[The prepared statement of Norman A. Carlson is as follows:]

STATEMENT OF NORMAN A. CARLSON, DIRECTOR, BUREAU OF PRISONS

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to review the plans and goals of the Federal Bureau of Prisons.

I understand that a number of private and public groups have expressed opposition to the new construction program of the Federal Bureau of Prisons.

These groups say that no new correctional facilities are needed because existing Federal institutions are not overcrowded and some institutions have unused

capacity. Some of these groups contend that institutions must be eliminated and replaced by community based correctional programs such as probation and half-way houses.

Five years ago, the Federal Bureau of Prisons first developed—and has periodically updated—a long-range program designed to accomplish the following basic objectives:

To reduce the critical overcrowding in existing institutions.

To replace the most antiquated institutions.

To build or acquire smaller institutions with environments designed to facilitate correctional programs and meet human needs for privacy and dignity.

To insure maximum safety for both staff and inmates, while pursuing the larger mission of protecting the community and carrying out the judgments of the U.S. Courts.

Dealing with the matter of overcrowding, as the first but not the most important factor, the population of the Federal prison system is rising again, after a temporary period of decline. The decline that took place during the middle of fiscal 1975 is attributed largely to such occurrences as the granting of paroles under P.L. 93-481 of Oct. 26, 1974, to drug offenders not previously eligible and the release of Selective Service Act violators under the Presidential clemency program.

The decline has reversed in recent months and several indicators suggest that the uptrend will continue and increase the crowding at Federal institutions in the months and years ahead. Among these indicators is one with which you are all familiar: F.B.I. figures show that the incidence of serious crime in the United States rose in 1974 by 17 percent over 1973, the largest one-year increase in 14 years. Another indicator is criminal filings.

Preliminary figures compiled by the Administrative Office of the U.S. Courts indicate that criminal filings rose nearly 8 percent in fiscal 1975 over fiscal 1974.

Today the total population of Federal prisons is 5.5 percent above our operational capacity, until recently called "planned" capacity. That figure would be double except for the fact that many offenders are being placed in contract non-Federal community-based facilities. The number programmed through such facilities rose from 671 in fiscal 1971 to 3,155 in fiscal 1975. But even these figures do not tell the story.

The term "planned" capacity that in recent years has appeared in published Bureau statistical reports is in reality a misnomer since it does not relate specifically to any planning contemplated by the Bureau. These "planned" capacities are more accurately "operational" capacities, because they are used as a guide for making daily designations and transfers to various institutions, and to show which institutions can best absorb additional population. The "operational" capacity figures often include the use of inadequate housing, such as basement areas and cold shower facilities, and the placement of more men in a cell than it was originally designed to hold, in an effort to temporarily assist in coping with overcrowded conditions.

A more accurate reflection of the overcrowding existing in Bureau facilities is provided by comparing the Bureau's inmate population with "optimum" capacity. These "optimum" capacities are based on the physical capacity of an institution which would eliminate overcrowding, and undesirable housing, provide an element of privacy for each inmate and an acceptable level of safety for staff and inmates, and allow for program flexibility.

Mr. Chairman, humane standards advocated by the United Nations Standard Minimum Rules for Treatment of Offenders, the American Correctional Association, the National Clearinghouse on Correctional Planning and Architecture, and the National Advisory Commission on Criminal Justice Standards and Goals would provide each inmate with a private room or cell, or 75 to 80 square feet of space, or both. In our newly-constructed facilities, such as the Federal Youth Center in Pleasanton, California, and the new Metropolitan Correctional Centers in San Diego, New York and Chicago, most inmates have private rooms and those few housed in dormitories have nearly the recommended allotment of floor space.

Unfortunately, most existing Federal institutions do not meet these standards. Living space per inmate varies from 70 square feet at the Federal Reformatory at Petersburg, Virginia, down to 18 square feet at the U.S. Penitentiary at Leavenworth, Kans.

Contrary to allegations, Bureau of Prisons operational capacities have not been arbitrarily revised downward. Closures of farm dormitories, the installation of cubicles for inmate privacy, the elimination of grossly substandard housing units and similar moves have reduced operational capacity.

While it is true that at any moment a few Federal institutions may have populations under operational capacity, we cannot relieve overcrowding by simply transferring inmates from one institution to another. Older recidivistic offenders should not be mixed in with youths and juveniles. To relieve overcrowding on the Eastern seaboard by transferring inmates to the West Coast would make it impossible for many of the less affluent to visit an incarcerated husband or wife, child or parent, thus severing or weakening an already strained family tie that may constitute the single most effective link to a law-abiding life.

The following chart shows the 19 Federal facilities built or acquired in the past four years, those under construction or design, and those partially funded.

BUREAU OF PRISONS—NEW FACILITIES CONSTRUCTION PROGRAM

Facilities fully funded	Year and amount of appropriated funds	Beds
Completed:		
Federal Youth Center, Pleasanton, Calif. (July 1974)	1971-72 \$6,622,500	250
Metropolitan Correctional Center, San Diego, Calif. (November 1974)	1972-73 \$14,459,000	500
Metropolitan Correctional Center, New York, N.Y. (July 1975)	1966-1971 \$14,830,000	450
Metropolitan Correctional Center, Chicago, Ill. (September 1975)	1971-72 \$10,220,000	400
Under construction:		
Federal Center for Correctional Research, Butner, N.C.	1971-72, 1975 \$19,250,000	350
Federal Youth Center, San Diego, Calif.	1971-72, 1975 \$8,148,200	250
Federal Youth Center, Miami, Fla.	1973-74 \$8,700,000	250
Federal Youth Center, Memphis, Tenn.	1973-1975 \$11,130,000	320
Under design: Federal Youth Center, Bastrop, Tex.	1973-1975 \$12,051,000	260
Facilities partially funded:		
Federal Youth Center, Talladega, Ala.	1973-\$1,000,000	400
Federal Youth Center, Camarillo, Calif.	1971-1975 \$778,300	450
3 Northeast youth centers	1973-\$2,000,000	1,000
Federal Correctional Institution, Otisville, N.Y.	1975-\$1,500,000	500
Facilities acquired:		
Federal Correctional Institution, Lexington, Ky. (1974)		790
Federal Correctional Institution, Oxford, Wis. (1973)		500
Federal Detention Center, El Paso, Tex. (1973)		150
Federal Correctional Institution, Fort Worth, Tex. (1971)		475
Total	\$110,749,000	7,295

These new institutions do not or will not replicate the institutions of the past. They are designed for humane incarceration.

Members of this committee have visited the new Federal Youth Center at Pleasanton and have seen the privacy, the modern facilities and the opportunities afforded inmates. You have also visited the U.S. Penitentiary at Leavenworth, Kansas, as well as a number of other state and Federal prisons and can appreciate how difficult if not impossible it is to provide humane incarceration in such antiquated, crowded facilities. The situations at the U.S. Penitentiaries at McNeil Island and Atlanta are similar. All three institutions are more than 70 years old. Inmates are housed six and eight to a cell in what are literally 5-tiered steel cages.

We also are greatly concerned for the safety of both inmates and staff. This concern is shared by the American Federation of Government Employees (AFGE) Council of Prison Locals, which represents our employees. Unfortunately three Federal correctional officers have been murdered by inmates in the past two years. Violent assaults and homicides by inmates continue to be a major concern.

The union in a letter to me March 28, 1975, voiced its "deep concern over the increasing number of employees and inmates murdered and assaulted." The union called upon the Bureau of Prisons to "identify areas and situations where life of both correctional officers and prisoners might be in jeopardy and safety is critical."

Mr. Chairman, we believe the growing problem of violence can be traced in part to the changing nature of the offenders incarcerated in prison today. During recent years, there has been a substantial increase in the number of offenders committed to custody for violent offenses. Most people convicted in Federal courts today are being moved into community-based corrections, some through halfway houses but most through probation. In Fiscal 1974, less than half those convicted of Federal crimes were sentenced to prison. The proportion of convicted offenders placed on probation increased from 27 percent in Fiscal 1969 to nearly 54 percent in the first half of Fiscal 1975.

As the members of this committee are aware, U.S. District Court judges base their sentencing decisions on comprehensive pre-sentence reports prepared on

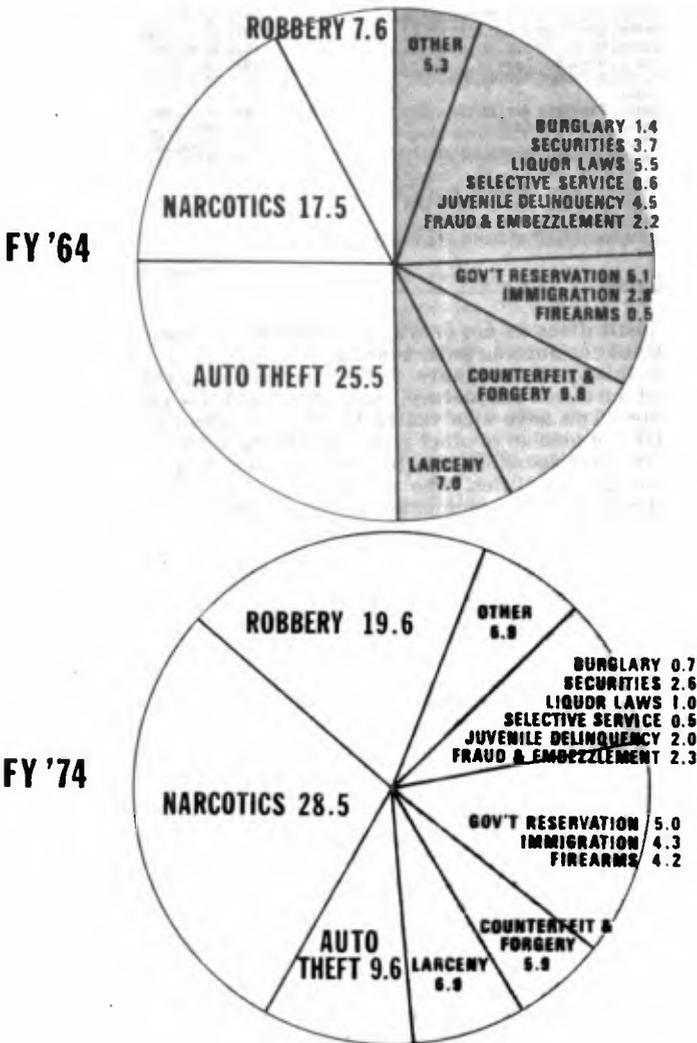
virtually all convicted defendants by U.S. Probation Officers. These reports review in a comprehensive fashion the defendant's background, his offenses, his psychological tests and evaluations, and the community resources available to help him.

Those considered least dangerous to society are given sentences that do not include incarceration. Federal prisons get the rest. Most of these are violent or repeat offenders and many have multiple prior state or Federal convictions.

More than 25 percent of all Federal inmates today have been convicted of a violent offense, compared to only 15 percent 10 years ago. Conversely, inmates committed for the Interstate Transportation of Stolen Motor Vehicles have declined from 25 percent to 10 percent of the total population during the past 10 years. The following chart shows the changes in our offender population over the past 10 years.

BUREAU OF PRISONS

Percentage of Population Confined to Institutions by Offense



Mr. Chairman, for many years the Bureau has consistently supported community-based corrections. As you will recall, we proposed, and this Committee acted favorably on, both the 1965 Prisoner Rehabilitation Act and its 1972 amendments. These legislative enactments authorized the use of furloughs, work release and study release and the broader use of Community Treatment Centers to house offenders serving Federal sentences.

The Community Treatment Centers opened by the Bureau in 1961 were the first operated by any correctional agency. They are used both for offenders being released from institutions as well as an alternative to confinement for probationers and parolees who require support for brief periods.

During fiscal 1974, some 36 percent of the total released population participated in residential community-based programs compared to only 26 percent for the previous year. Our goal is to have 65 percent of the released population participating in these programs by fiscal 1979.

At the same time, the Bureau recognizes that not all offenders can be safely handed in the community. As I have indicated, many of them have a history of violence, and I believe they must be incarcerated for the protection of the public. In his recent Crime Message to the Congress, the President called for mandatory sentences for persons convicted of such offenses. The idea that violent offenders can be "rehabilitated" by some combination of vocational, counselling and other programs, inside or outside of an institution, has yet to be demonstrated. A number of scholars tell us "rehabilitation" has been largely a failure because we do not know what causes crime and we have no certain cures. Deterrence and retribution, many times overlooked in the language of criminal justice, are again being recognized as valid reasons for incarceration. The limits and hazards of "rehabilitation" have been examined in two recent books, "The Future of Imprisonment," by Norval Morris, Dean of the University of Chicago Law School, and "Thinking About Crime," by James Q. Wilson, Professor of Government at Harvard.

Mr. Chairman, if rehabilitation is to be effective, it must be voluntary. A variety of program options—including education, training and counselling—must be made available to inmates, but the decision to participate must be theirs. I believe if there is any hope that offenders will be motivated to rehabilitate themselves, we must tear down the grim relics of the past and build modern and smaller institutions—of no more than 500 inmates each—without the iron bars, the overcrowding, and the lack of privacy and safety that is corrosive to the human spirit. Only in a humane atmosphere can an offender be reasonably expected to turn his back on crime and to take full advantage of the programs designed to help him successfully reintegrate himself into the community.

Mr. Chairman, because of new construction, the Bureau of Prisons over the past 14 years has been able to close nine institutions and camps (including the U.S. Penitentiary at Alcatraz) with capacities for more than 3,100 offenders, and to house inmates under better conditions.

Currently, the Bureau projects the closing of the U.S. Penitentiary at McNeil Island, Washington in 1979, the U.S. Penitentiary at Atlanta, Georgia, in 1983, and the U.S. Penitentiary at Leavenworth, Kansas, in 1985. Assuming no dramatic increase in inmate population, McNeil Island will be closed upon the completion and activation of the Federal Youth Centers in San Diego and Camarillo, California. The scheduled closing of the Penitentiaries at Atlanta and Leavenworth are of course contingent upon continued Congressional support for the Bureau's construction program.

Moreover, the new Metropolitan Correctional Center recently completed in New York City will enable us next month to close the antiquated Federal Detention Center on West Street, a facility that is literally a warehouse of steel cages. Our first Metropolitan Correctional Center was opened in San Diego last November and a third will open in Chicago during September.

In my opinion, the most glaring problem in our Criminal Justice System in this country today is the shameful condition of so many of our jails. We hope these new Metropolitan Correctional Centers will influence the development of better programs and facilities throughout the country for short-term incarceration of offenders, and for the detention of those awaiting trial.

In addition to the construction efforts I have just discussed, the Bureau of Prisons has taken other steps to humanize and improve its operations. These include:

Regionalization and decentralization to put decision-making closer to the operational level.

Establishment of Staff Training Centers at Atlanta, Dallas and (in fiscal 1976) Denver.

Conversion of institutions to functional unit management, which divides larger institutions into groupings of 50 to 100 inmates; each group has its own staff who work close to where the inmates live and spend their leisure hours. This increases the number of contacts between staff and inmates, enhances the continuity of relationships, minimizes potentially dangerous misunderstandings and enables staff members and inmates to collaborate on constructive programs and activities.

As I mentioned earlier, Mr. Chairman, you and members of this committee have visited Leavenworth and have witnessed the sheer physical impossibility of converting this old penitentiary into a modern correctional institution. On the other hand, you have also had an opportunity to visit our new facilities at Pleasanton and San Diego. We firmly believe they represent major advances in institutional concepts and design.

In summary, the Bureau of Prisons has concentrated its efforts, through reorganization and through replacement of outmoded institutions, to make Federal prisons safer and more humane. We have greatly expanded community based programs and the use of furloughs. We have increased minority employment from 6 percent in 1970 to 13 percent today. With the support of the Congress, the ratio of correctional officers to inmates has been significantly increased—from one officer to every 7.3 inmates in 1969 to one for every 5.7 inmates today.

To further reduce tensions and to intensify contact with the community, our policies with regard to telephone calls, visits, mail, manuscripts, and news interviews have been significantly liberalized.

We recognize that we have no panaceas, no sure cures for crime and recidivism. We believe, however, that the grim prisons of the past have no place in the 1970's. Until the Criminal Justice System finds new, more effective ways of dealing with criminal behavior, some offenders are going to have to be incarcerated to protect society, and to deter others from turning to crime.

We believe this incarceration must be as humane and as safe as we can reasonably make it. We believe that loss of freedom is punishment enough and should not be compounded by the grim conditions existing at some of our penitentiaries. We believe that new and promising programs of self-improvement cannot be carried out effectively in antiquated institutions.

Mr. Chairman, I believe the Bureau of Prisons and the Congress must continue the momentum we have achieved over the past five years in upgrading and improving the Federal Prison System.

I would be pleased at this time to answer any questions you or your colleagues may have.

Mr. CARLSON. Let me say at the outset, Mr. Chairman, that I appreciate your committee's interest in our efforts. We have worked with you over the past 2 years, and we welcome the opportunity to appear before you again today. I think in the past we have been open in terms of what we are doing and why we are doing it, and I assure you that in the future we intend to continue in the same spirit of cooperation with this committee and other committees of the Congress.

Let me comment if I may, Mr. Chairman, on the five main subjects in my formal statement, as well as issues that were raised in testimony by other organizations before this committee 2 days ago.

The first concern is the increase in population in the Federal prison system. At the present time our inmate population is 23,500, and the population has been climbing for the past few months. Last year we had a temporary decline, because of several unexpected developments. The first was passage by Congress of a law which made previously nonparolable narcotic offenders eligible for parole. A substantial number of these cases were heard by the board of parole and released prior to the end of the year.

In addition, nearly 100 selective service violators were released from our institutions last fall through the Presidential clemency pro-

gram. This of course resulted in a temporary, but very noticeable, decline in inmate population.

As for the future, we believe there will be an increase in the months and years ahead, for the reasons cited in my written testimony. The U.S. courts and the FBI report that the crime rate in this country is on the increase, the filings of the U.S. attorneys of criminal cases in the U.S. district courts are also increasing, and projections are that both the crime rate and criminal filings will continue to increase in the months ahead. Furthermore there is the possibility that Congress may enact additional legislation that would increase the number of people prosecuted, convicted, and incarcerated by the Federal criminal justice system.

It is very difficult to predict the population of the Federal prison system because of the variables we cannot control or predict. Among these variables are the sentencing practices of the courts, the prosecution policies of the U.S. attorneys, and the results of parole board deliberations, all of which have a significant impact on the inmate population.

But based on what we know now, our judgment is that the Federal prison population will continue to grow.

Second, I would like to comment briefly concerning the present capacity of the Bureau of Prisons institutions. The charge has been made that we arbitrarily changed the capacity figures to justify construction. As I said in my formal statement, we have never changed the capacity figures of any institution to justify expansion of the system.

Any alteration of figures has been done in terms of the operational needs of the Federal Prison System and not to impress anyone, either on this committee or anywhere else in the Congress, or for that matter any part of Government.

The term "planning capacity", which is frankly a poor term, has been used for a number of years by the Bureau of Prisons on the population report that we publish every week. It reflects the operating capacity of our institutions—how many inmates we can accommodate through overcrowding—and has no significance for long-range planning.

We are now in the process of developing a new term which I feel will more realistically assess what the capacity needs are in the Federal Prison System in terms of the type of inmate population that we have, and the type of institutions we operate.

To give you an example of inmate capacity, the institutions of Leavenworth and Atlanta at one time held over 4,000 inmates each. If we wanted to, and had to, we could crowd 4,000 inmates in those institutions today. I wouldn't want to do that, none of our staff would want to, and I expect the committee would not want us to. But at one time Atlanta did hold 4,000 inmates and could do so again. Still, we don't think the 4,000 figure is realistic for that institution, and it certainly would not provide humane incarceration of the people committed to our custody by the various U.S. district courts around the country.

Mr. Chairman, you have visited Leavenworth and other Federal institutions and I think you and your staff had an opportunity to see how the inmates live, the large gang cells, the inmates living in old

shower stalls. These conditions make it clear that Federal prisons are overcrowded at the present time and additional construction is needed for humane incarceration.

Mr. Chairman, my third area of concern is the need for correctional institutions in this country, and whether they can be replaced completely by community-based corrections. Roughly 25 percent of the inmates in Federal institutions have been committed for violent crimes, and the rest for property offenses.

Even though most were incarcerated for nonviolent crimes, the vast majority of these individuals are repeat offenders and have a lengthy prior history of crimes. These are not young first-time offenders who are being committed to our custody. Such offenders are normally released on probation.

The use of probation by the Federal courts has increased dramatically over recent years. In 1969, 37 percent of all the people sentenced by U.S. district courts were placed on probation. That figure rose to 54 percent during the first half of fiscal 1975. In other words, more than half the offenders sentenced by U.S. district courts never came to Bureau of Prison institutions, but were diverted out into some type of alternative correctional program or probation. I applaud that. It is a remarkable increase and I certainly hope the trend will continue in the future, so long as it is consistent with the public interest.

You also know, of course, that before an offender is sentenced, a presentence report is usually prepared by a trained probation officer. This report states the facts regarding the offender's case and makes a recommendation to the judge. So, when a Federal judge imposes a sentence, he has before him in the vast majority of cases a comprehensive presentence report, and makes his decision, based in large part, on that report. I make that point because many people assume that Federal judges are imposing prison sentences when they need not. I feel from personal observation that there has been a tremendous improvement in the system over the years that I have been associated with it.

The fourth area I would like to comment on concerns the utility and function of correctional institutions, and the purpose they serve society in our criminal justice system. As we all know, traditionally there have been three basic reasons for institutions of incarceration—retribution, deterrence and rehabilitation.

In recent years there has been an increased emphasis on the rehabilitative aspect of incarceration, but the concern expressed by many people is that institutions do serve other functions, namely retribution and deterrence. Several scholars have pointed this out recently. Norval Morris' new book, "The Future of Imprisonment," clearly points in this direction, and James Q. Wilson, in his thought-provoking book, "Thinking about Crime," also alludes to the fact that there are three basic rationales for incarceration, and that rehabilitation is not the only reason that people should be committed to institutions.

I feel there is a need for institutions in our criminal justice system, both in the present and in the future. There are basically three types of offenders that have to be incarcerated because we have no other alternative today.

The first of those is the violent offender. As I indicated earlier, approximately 25 percent of the Federal inmates today are committed for violent offenses. This number has doubled over the past 10 years.

The second type are offenders who cannot and will not respond to community supervision. You can try them on probation, or in half-way houses, or on work-release programs and for some unknown reason, they either fail to respond or immediately get into further difficulty with the law. For these repeat offenders there is a need for some type of sanction, and I think it is incarceration.

The third type is the white collar criminal for whom incarceration is important in terms of deterrence. I know some scholars feel this is not a realistic concept, but I feel deterrence has value for some types of offenders, particularly for the white collar offender.

In addition it has been charged that all correctional institutions are a monumental failure, that no one ever changed, that everyone goes back out and commits another crime. As the committee knows, a Federal Bureau of Prisons research project started in 1970 found that after 2 years in the community, 67 percent of released Federal offenders were successes rather than failures, and that after 4 years the success rate was 55 percent.

Based on our statistics, and I think they are accurate, we predict that about half of those inmates released in 1970 will not be convicted of further crime for the rest of their lives.

I don't applaud this figure. I think the rate of success is not as high as it could be. But I think it does rebut the charges that all inmates are failures and prisons themselves are a total failure.

The next thing we have to work on is the question of why people change. I very candidly admit that we don't know the answer. We don't know how to rehabilitate inmates. We do know you can't coerce people to change. We can and should and do, however, provide opportunities in such areas as education and vocational training for inmates who are motivated to better themselves and to improve their chances of success once they are released from confinement.

The fifth area that I would like to comment on concerns the proposal that the Federal Bureau of Prisons be abolished, and that the State and local governments assume responsibility for all inmates committed by the Federal courts. I can only comment that yesterday I met here on Capitol Hill with three Federal judges from Detroit who came to Washington to personally explain the necessity of the Federal Bureau of Prisons' building detention facilities to serve that court.

I commented that some people felt that this should not be done by the Federal Government, but by State and local governments. Their response was that it was an impossible situation, that local facilities were so inadequate that the Federal prison system must build some place to detain people awaiting trial before the U.S. district court.

Mr. KASTENMEIER. We will have to ask you, regretfully, to defer the balance of your testimony until we return from a recorded vote on the floor. We have been, for the past several weeks, operating while the House was in session. It is a custom with us for the purpose of a recess to ignore a quorum, but not a vote. This is the second bell, so we will recess for approximately 10 minutes.

[Wherenpon, at 10:45 a.m., a 10-minute recess was taken.]

Mr. KASTENMEIER. The committee will come to order. We will be joined shortly by our colleagues.

When we recessed, Mr. Carlson, we did not have the opportunity to greet the Deputy Attorney General, Mr. Tyler.

Mr. TYLER. Good morning, Mr. Chairman.

Mr. KASTENMEIER. We are very pleased to have you with us this morning.

At the time we recessed, Mr. Carlson, you were making a point on an alternative suggested by others; namely, that the Federal prisoners be incarcerated in State and local institutions, rather than Federal institutions. You were citing a case in Detroit that had come to your attention recently. Mr. Carlson, perhaps you might continue.

Mr. CARLSON. Thank you, Mr. Chairman. I will be very brief.

Historically, the Continental Congress back in 1777 provided that inmates who had been convicted of Federal charges be housed in State prisons, with payment to be made by the Federal Government. Conditions shortly thereafter became so horrible that eventually in 1890, the Congress authorized construction of two Federal penitentiaries, those in Atlanta, Ga., and Fort Leavenworth, Kans. And then in 1930, after the system had grown to five institutions, the Bureau of Prisons was established within the Department of Justice. I personally have a bias in terms of the organization, having been a part of it for the past 17 years. I do feel it serves a very useful function, and under past Directors the Federal system has developed new and innovative programs, and new concepts of incarceration for those committed to our custody by the Federal courts.

Insofar as the question of whether or not State and local resources are adequate. I will defer to others; particularly to the Federal judges because they have a better knowledge of local conditions in many areas.

That concludes my formal remarks, Mr. Chairman. I will be very happy to answer any questions you or the committee will have.

Mr. KASTENMEIER. Thank you, Mr. Carlson.

Mr. CARLSON. Mr. Chairman, I believe Judge Tyler has some remarks he would like to make.

Mr. KASTENMEIER. Mr. Tyler?

Mr. TYLER. I did want to say something on the last point touched upon by the Director.

I have asked to come along this morning, Mr. Chairman, because of my puzzlement and concern over the apparent view of many—and I am sure their view is well intended—that somehow the U.S. Bureau of Prisons is to slowly go out of business and allow a system to grow up whereby Federal prisoners will be incarcerated in State and local institutions.

This, to me, would be a great setback in the history of penology in this country, and in practical terms, if I may speak about my experience in my home city of New York as a Federal judge for many years, I would have been appalled if I had been put in a position where I would have had to think about sending the Federal prisoners to an institution like the Tombs, or indeed other State institutions. Those are very unsatisfactory places.

I am sure my former colleague and longtime friend, Judge Morris Lasker, would agree that this would be a concern and always has been a concern, if we were confined to the process of considering imprisonment only in State and local jails. I think the same point can be made here locally.

In the few months that I have been in office, Mr. Carlson and I have had a great deal of correspondence from all the Federal judges—here in town and from the States of Virginia and Maryland. In fact, I recently received a letter from the chief judge of the fourth circuit, imparting us to establish a Federal detention center so prisoners would not have to be sent for detention, or for a period of confinement under a judgment of conviction, to State and local institutions there in the area. I think we could go on endlessly. There are Federal judges in the South and in the West who have the same kind of concern, I am sure.

I would like, Mr. Chairman, with the leave of the committee, to place in the record an article which appeared in last Saturday morning's issue of the New York Times. I think I can say without contradiction that this was not solicited by Mr. Carlson and his colleagues. It is an article about our new detention center at Foley Square, and the headline in my judgment properly indicates that this is a very new advance in jail design concept.

Mr. Carlson and I were up there recently at the formal opening. I must say, it was one of the most exciting events in my professional career because of the nature of the custodial and living facilities. The medical facilities and the teaching facilities are all well above standard of even our best public and private schools in my judgment. And here we have a situation where the building program of the Bureau of Prisons has finally borne fruit in what I think is a most salutary way.

I would like to, with your leave, Mr. Chairman, have this article made part of the record.

Mr. KASTENMEIER. Without objection, the article will be received and made part of the record.

[The article referred to follows:]

[From the New York Times, Saturday, July 26, 1975]

NEW DETENTION CENTER AT FOLEY SQUARE IS HAILED AS
ADVANCE IN JAIL DESIGN

(By Paul Goldberger)

The Tombs, the Women's House of Detention and the West Street Federal jail never gave New York City much of a reputation for advanced prison design. In fact, all three were considered seriously regressive by prison experts, and two of the three have been closed—with their replacements rated little better.

Now, the West Street jail is about to go as well, and its replacement, the new Metropolitan Correctional Center at Foley Square, will bring to New York City its first piece of advanced—and humane—prison design. Warden Larry Taylor calls the move from West Street to Foley Square "a leap of two hundred years."

The new building, designed by Gruzen and Partners, is actually part of a large addition to the United States Court House at Foley Square and also contains new offices for the United States Attorney's staff. The \$23-million addition sits behind the 1936 Cass Gilbert-designed courthouse, with its classical facade surmounted by an obelisk tower, so the new section is not actually visible from the square.

A SIGNIFICANT IMPROVEMENT

But it skillfully completes the eastern part of the civic-center area, a former jumble that is now given at least a semblance of order by this building and by Gruzen's own New York City Police Headquarters of 1973, just a plaza away from the new structure.

And the addition not only represents an advance in prison design itself, but a significant improvement in the level of Federal architecture in New York as well.

Until now, the standard for Federal design in the civic-center neighborhood was set by 26 Federal Plaza, the grotesque checkerboard office tower across Foley Square from the courthouse. (The Government has not quite learned its lessons yet, either—an addition to 26 Federal Plaza that is now going up is being coated with a glass and metal skin that manages not only to be ugly in itself, but to clash completely with the existing section.)

But for all of its general design quality, the new courthouse addition is most important for what it says about the role of the prison today. Until recently, most prisons were designed for little beside security, and the architect's job was merely to arrange rooms in a dull pattern that was more often than not based on some earlier prison.

A HUMANE ENVIRONMENT

Now, penology has changed radically, the failure of most traditional prisons to achieve any success at all in rehabilitation has led to a search for more humane environments. And prison architecture, which once sounded like a contradiction in terms, has become a major and creative field within the architectural profession.

Gruzen, a large commercial firm that has done work of generally decent, if uneven, quality, has excelled in prison design. The new Metropolitan Correctional Center is a superb example of an intelligently conceived, fully secure environment that nonetheless manages to be comfortable and even, to the extent that any prison can, feel welcoming.

The entire internal scheme of the building is built around units of eight small single rooms. Each end of each residential floor contains six groups of eight rooms, arranged split-level around a large central double-height lounge space. The physical arrangement permits a sense of privacy and yet allows for close security, since all 48 prisoners can be observed from the lounge space.

The rooms themselves are Spartan, but comfortable—there is excellent wood furniture (built by inmates of the Federal system) that resembles the simple wood furniture popularized by such places as the Workbench years ago. Unbreakable glass covers the windows, and the over-all sense is as much that of a new college dormitory room as that of a prison cell.

The clusters of rooms will each be administered as separate units, and each contains eating areas and rooms for counseling and education. A more complete recreation area is on the roof of the building—with the best view of the Municipal Building tower from anywhere in town.

The building will house 480 inmates, both male and female, most of whom will be awaiting trial, not serving extended sentences. The relaxed, dorm-like ambience—there are even Eames chairs in the lounge area—is merely skin-deep; underneath, the new prison is as secure as they come. But the security system is largely electronic, with doors, elevators and alarms controlled by a central building computer, thus freeing the architects from the need to provide the traditional physical symbols of incarceration—bars, iron gates and so forth.

OFFICE SPACE INADEQUATE

The prison will begin functioning early next month; the United States Attorney's section of the structure has been in operation since early this year, and the attorneys, it appears, have not fared as well as the prisoners will. If the Correctional Center represents an advance in prison design, the United States Attorney's office represents a retreat in office design.

The attorney's floors at first glance look like those of an average speculative office building; on careful examination they turn out to be worse, with inadequate space, awkwardly arranged rooms and insufficient space for the private conferences with witnesses that are so vital to that office's functioning.

It is hard to know whom to blame, since the architect's role in the Interiors was minimal, and the General Services Administration, the Government's "contractor" agency, claims that all of its floor plans were approved by the Justice Department. If so, it is clear that the Bureau of Prisons has a much clearer idea of what it needs than the Department of Justice does.

In any event, the combined building is a total success on the exterior. Gruzen used a ribbed precast concrete for the facades, with horizontal window strips grouped into long bays—a scheme that provides a controlled balance between horizontal and vertical.

The facade is active enough to create a presence, but not so active as to overwhelm its important site, adjacent to the Municipal Building, the new Police

Headquarters and the United States Court House itself. A subway power station separates the correctional Center from the United States Attorney's wing; it has been covered in the same precast concrete, and the result, which ties together the entire complex, is superb.

Mr. TYLER. Now, may I say one other thing, Mr. Chairman. Over the years and particularly in recent years, the Federal Bureau of Prisons, under the leadership of Messrs. Bennett, Alexander and Carlson, has been properly regarded by many professionals as serving an additional function beyond its normal function. That is to say that the modern building techniques, which the Bureau is developing under its building program, do serve the purpose of being a model for our States and localities. One cannot measure that point statistically, I suppose, but I do think it is true.

Frankly, I don't know whether Congressman Badillo would agree, but I am hopeful that in our State our new detention headquarters may be a model to State authorities, in terms of their troubles with their present New York State institutions.

I think this has been true abroad. In my conversations with penologists, judges, and other people in the criminal justice system in England and Europe, they regard the U.S. Bureau of Prisons as making a real breakthrough in terms of new developments in their building programs, providing more humane treatment and for providing more alternatives for incarcerated men and women to get education and other services to help them, so that they will possibly go out as better citizens.

Mr. KASTENMEIER. Thank you, Mr. Tyler.

Again I regret to report that we have a vote on, so, we will momentarily recess for some time. On our return the panel will have a colloquy and ask questions of the witnesses.

I would like to observe two or three points about the so-called critics, who have testified on Monday.

They testified that they would prefer the Federal leadership to be directed to the States by setting standards and goals, rather than building prisons and becoming keepers. That tends to be their philosophy. This is one position of the Justice Department and Bureau of Prisons that they dissent from.

Second, the detention centers that both Mr. Carlson and Judge Tyler referred to are not so much a center of controversy, particularly the Federal detention centers. Many believe that there is no better option, presently. However, it is the construction of long-term custodial prisons that they object to.

And third, they suggest there may be options other than long-term institutional plans that ought to be explored. And as a matter of fact, Mr. Carlson alluded to some of the options that have been increasingly used, rather than long-term commitment in a prison setting. Whether these are realistic, or whether it is for the Federal Government to impose upon States and expect the maintenance of State prison systems according to standards that would be acceptable to the Federal Government is a good question. That would seem to be a long-term program in and of itself, to induce the States to upgrade their facilities so that they would be acceptable for diverting long-time or short-term Federal prisoners to non-Federal settings.

We can discuss this further, perhaps.

This is the second buzzer, we are going to have to vote. So, we will temporarily recess for approximately 10 minutes. The committee stands adjourned.

[Whereupon, at 11:10 a.m. a 15-minute recess was taken.]

Mr. KASTENMEIER. The subcommittee will come to order.

Mr. Carlson, could you describe for the subcommittee the planning process which the Bureau used to develop the long-range master plan; and the process you have used for updating the plans, so that we can better assess that which has happened, and how the decisions were arrived at?

Mr. CARLSON. Mr. Chairman, going back in history, I have been in Washington since 1959, when Jim Bennett was Director. At that time, there was a planning office which Mr. Bennett established some years earlier, to develop advance planning for the Bureau of Prisons. But I expect you are much more interested in the years since 1970, particularly as it relates to our construction program.

Mr. Chairman, shortly after I became Director in 1970 we established an office for planning and facilities development, headed by Gary Mote. Later, this office was reorganized as a Division of Planning and Development, headed by Mr. Mote who is now an Assistant Director of the Bureau of Prisons.

He has a staff of various disciplines working for him. They include psychologists, case workers, teachers, architects, and engineers. In addition to our in-house planning staff, in 1971 we established an advisory panel to assist in our total planning effort. The panel included representatives of the U.S. Board of Parole; the Administrative Office of the U.S. Courts; the U.S. Probation Service, as well as outside persons who had expertise in the needs of the criminal justice system.

You heard testimony on Monday from Dr. Walter Menninger, who was a very active member of this planning and advisory group. Based upon the reactions and suggestions of the panel, and based upon our staff efforts, we developed first the 1970 long-range plan. That plan has subsequently been revised on several occasions.

Mr. KASTENMEIER. Did you have any input from State or local groups, legislators, or law enforcement agencies, other than the ones you referred to?

Mr. CARLSON. We have had contact with other groups, and I will be glad to submit a list for the record.

But the advising panel was our primary sounding board and planning vehicle. It was a small group, and we felt the varied expertise in the group gave us input from various perspectives: The law, psychiatry, medicine, and the courts.

Mr. KASTENMEIER. Was there any public debate of the tentative development?

Mr. CARLSON. The meetings were open, at least the last two or three as I recall, pursuant to an act of Congress, which required a public announcement. We had outside representation, but there were no public hearings per se. It was essentially an in-house planning operation, but utilizing an outside group of advisers because of their particular competence in the area of planning and criminal justice.

Mr. KASTENMEIER. I have a number of other questions I am going to

have to defer because Mr. Drinan has other obligations. So, at this time I yield to Mr. Drinan.

MR. DRINAN. Thank you, Mr. Chairman. I will be very brief, and I'm sorry, too, and apologize for the additional votes.

I want to thank you, Mr. Carlson, and Judge Tyler for your statements, and obviously we have a difficult decision to make in this subcommittee in regard to these \$22 million-plus for new installations. But we welcome this testimony. We have had testimony which is apparently in contradiction, on Monday. Mr. Carlson, I commend you for the job you are doing, every time you come before us you give us this good testimony. I think my job is a lot easier because your job is so difficult.

MR. CARLSON. I appreciate your remarks, Congressman.

MR. KASTENMEIER. Is that the extent of the questioning by the gentleman? [Laughter.]

MR. DRINAN. Well, I don't want to get into something because we have to go to that vote; there may be another time, I hope.

MR. KASTENMEIER. The gentleman from New York. We have a few minutes.

MR. PATTISON. I have no questions.

MR. KASTENMEIER. Well, on the risk of imposing upon the witnesses further, if you could remain, we will convene in about 10 minutes; there are some questions. Mr. Tyler, I don't know what your schedule is, but if you would stay, we'd appreciate it.

MR. TYLER. Mr. Carlson and I will be happy to stay.

MR. KASTENMEIER. The committee will stand adjourned for 10 minutes.

[Whereupon, at 11:30 a.m., a 15-minute recess was taken.]

MR. KASTENMEIER. The committee will come to order. I would like to return to a number of specific questions about the planning process and what it will hopefully achieve.

Let me ask you whether a reassessment, or reevaluation of the philosophy of prisons might be controlling with respect to other prisons that are built, and if so, what their architecture shall be. Is it your position, up to the present time, that the generally accepted rehabilitation model for prisons has not succeeded. Recently, you concluded that all we can hope to do within our present competence is to have a humane environment, in which we incarcerate prisoners who have been committed to prison sentences.

MR. CARLSON. Mr. Chairman, I must say that I have changed my attitude over the past few years, based upon a number of things that have come to my attention. The work that Dr. Robert Martinson has done is perhaps the classic example of extended research on this subject. [See page 317.] Also I have been influenced by the books that I cited by Norval Morris and James Q. Wilson. Both authors are considered scholars in this field.

I have changed my philosophy, particularly as it relates to what I call the medical model; that is, the idea of diagnosing and treating the criminal much like the doctor treats a patient who has a physical illness.

I still think, however, as I said in my testimony, that inmates can and do change. Why they change I don't know. I don't think anyone knows. But as I indicated, about half the inmates released from cus-

tody do stay out of trouble. The change has to come from within the inmate himself. He must want to change. He has to have the motivation. We can't impose a treatment program that will force anyone to change. The inmate has to have the desire, the motivation to change. I think we can facilitate change, but we certainly cannot coerce it.

Mr. KASTENMEIER. I appreciate your statement. I don't disagree with you. I think that is a rather painful reassessment that you have made, and it is not for me to say that you are mistaken; you may indeed be totally correct.

I must say, I was impressed when I heard about the statement, that this would have profound implications in the years ahead, if this were adopted as general policy.

It would also seem to me to have implications for a prison construction program because to the extent to which we do not devote resources to rehabilitation and special medical experiments, as in North Carolina, for example, and to traditional rehabilitative models, this would tend to suggest a different type of institution is in order. If it is the case, that philosophically, the sole task of the Federal Bureau of Prisons is to insure that those incarcerated are in a humane environment, this view will have profound implications for the construction program. Would you not agree?

Mr. CARLSON. Insofar as it relates to all our new construction, Mr. Chairman, we have attempted to develop total flexibility in the design of the institutions. I believe the committee has seen several new institutions, including Pleasanton and the Correctional Center in San Diego. Our intent was to develop the maximum amount of flexibility and not lock ourselves in to any specific program.

Concerning the Butner facility, I candidly admit that if we were planning it today, we would make some changes in the design, because there has been an evolution in this field just as there has been an evolution in my own personal philosophy. I do not think the design of the Butner institution is going to be a constraint, however. The institution will provide the privacy I think is essential; the humaneness we have alluded to; and the space where inmates can have educational, vocational, and recreational opportunities which I think are essential if we are going to have a positive impact upon the inmate.

Mr. KASTENMEIER. Then your testimony is, notwithstanding the change in philosophy, that the long-range master plan, insofar as it is partially realized, has not been a poor investment because of a change in philosophy with respect to what our priorities are for prisoners.

Mr. CARLSON. Mr. Chairman, I don't believe it has been a poor investment. I cite as an example the Metropolitan Correctional Center in New York City that Mr. Tyler alluded to earlier, and I believe Judge Lasker will be commenting on later when he testifies.

Even though the institution was designed in 1971, it is as close to what we would do today as I can imagine. I can't think of anything significant that we would include or omit from the construction today because of a change in attitude. I think the differences today are basically a change in philosophy on how we deal with inmates, and what we expect of inmates, rather than an architectural change in the physical facilities.

Mr. KASTENMEIER. Could you explain your construction priorities for us? Why is it, for example, that 10 of the new prisons are for

youths? Is not one of the primary factors, in fact, to relieve overcrowding of the old adult facilities, and to close down three of the old adult penitentiaries?

How will the construction of youth prisons facilitate the closing of Atlanta and Leavenworth?

Mr. CARLSON. Mr. Chairman, that issue was very carefully thought through and discussed among our own staff, as well as by the advisory panel that I mentioned.

First of all, we feel—and I personally feel—the younger offender is the one in whom we ought to invest the maximum amount of resources, and to whom we should offer the maximum opportunities for change. He has a longer life ahead of him. If we can somehow intervene at the earlier age, and help bring about a change in behavior, we can save the taxpayer and criminal justice system a great deal of expense in the years ahead.

Our theory is that if we build newer facilities, modern facilities, for youthful offenders, we can then use present youth facilities for the penitentiary population, and by attrition ultimately close down the large penitentiaries.

In other words, we are trying to phase out the penitentiaries by developing new youth centers and shifting the utilization of other existing institutions. Indirectly the new youth centers will absorb much of the population now confined in the penitentiaries. So, it is a graduated system that was carefully thought through.

I will give you a very classic example. We have the McNeil Island Penitentiary, which I believe some of the members of the committee have visited. It is the oldest institution we operate, and it opened in 1865. To replace the McNeil Island institution, we are building a series of youth institutions in California. They will allow the movement of youthful offenders out of the institution at Lompoc, Calif., which was not designed as a youth facility, but rather as a penitentiary by the Army. It is designed almost exactly the same as the Terre Haute Penitentiary.

We will shift the youthful offenders out of Lompoc into institutions like the Pleasanton facility, and then move the penitentiary inmates from McNeil Island to Lompoc. Eventually we will close the McNeil Island institution.

We feel this strategy is the most appropriate way to attack the basic problem of closing McNeil Island.

Mr. KASTENMEIER. We have been informed that there has been a 3-year period of community opposition, for a variety of reasons, to the 500-bed youth prison in the San Diego area. The city counsel, the AFL-CIO, the California Youth Authority, and Governor Brown apparently all are opposed.

A similar situation developed, we are informed, in New Jersey and San Francisco when the Bureau planned to build there.

What procedures does the Bureau follow in a community when building an institution? To what extent are community leaders consulted or advised?

Mr. CARLSON. First of all, Mr. Chairman, I must say that correctional institutions are much like freeways, cemeteries, or airports. They are not very popular, no matter where you put them.

We can go to some remote part of the country, miles from anything, and we will find very little community opposition, if any. But our

philosophy is, and I think you will agree, that new institutions should be as close as we can humanly get them to where the offenders are from, and where we can find staff and other resources.

San Diego, I think, is an excellent case in point. The planned site is a military installation owned by the Government, which was declared surplus. We applied for it through the regular governmental process of acquiring surplus Federal land. It was deeded to the Bureau of Prisons and through the General Services Administration, we proceeded to build the facility.

The leaders of the community were consulted and advised of our plans. I personally went out to San Diego and held some meetings. Mr. Mote and other members of the staff participated in various discussions with people in the community.

There has been a great deal of opposition in many parts of the country where we plan facilities. Judge Tyler will recall very vividly the situation in New York City where we had pickets in front of the Federal Courthouse.

Mr. KASTENMEIER. The committee will recess for a period of 10 minutes. The committee stands adjourned.

[Whereupon, at 12:05 p.m., a recess was taken until 12:20.]

Mr. KASTENMEIER. The committee will come to order.

Following up the question of building where there is some community opposition, what is the policy of your Bureau? Is there an attempt to measure the opposition, or the nature of the opposition?

Mr. CARLSON. Yes, sir, it does. If the opposition is present prior to the start of construction, we obviously pay attention. As you probably know, a formal hearing is required under the GSA building program. If extensive community opposition does exist, including opposition by elected officials of the community, the decision will probably be made not to locate at that site.

In San Diego, however, I should point out that there was virtually no adjacent community at the time we began construction some 2 years ago. The site was surplus military land that had been acquired by the Bureau of Prisons. But at that time, I don't recall any substantial opposition. Of course, later, under the Environmental Protection Act, a suit was filed; there was an 18-month delay, as I recall, pending the completion of the environmental suit. And of course, during that time the community was building toward the site. In reality, however, the institution was started before there was a community adjacent to it.

Mr. KASTENMEIER. In other words, the opposition materialized after the commitment was made.

Mr. CARLSON. That is correct, Mr. Chairman.

Mr. KASTENMEIER. In your view, what is the major reason for community opposition, is it community fear of inmates, or the residents of the facility? What, in your experience, is the reason for community opposition?

Mr. CARLSON. I think perhaps the primary reason for opposition is, the fear of what might happen should there be a mass escape or disturbance in the institution.

On the other hand, you probably know that many of our institutions, once they are built, become very attractive. The community 'terally surrounds the institution with some fine housing developments.

The best example is the Youth Center at Morgantown, W. Va. When it was constructed, it was literally out in the "boondocks." Now it is surrounded by very expensive homes. A beautiful new shopping center opened last summer which, reflects the fact that despite the initial anxiety of the community, the institution is no longer a real concern to the citizens of the area.

Mr. KASTENMEIER. At the present time, what is the Bureau's position with respect to the closing of Leavenworth, Atlanta, and McNeil Island?

Mr. CARLSON. Mr. Chairman, assuming the rate of increase remains about as it has over the past 5 years, and assuming that the Congress continues to provide the funds to construct new institutions, we project the closure of McNeil Island in 1979, the Atlanta Penitentiary in 1983, and the Leavenworth Penitentiary in 1985.

Mr. KASTENMEIER. It was the position of the Bureau, was it not, in 1970, that these institutions would be closed much earlier than is now projected?

Mr. CARLSON. That is correct, Mr. Chairman. And the dates I have cited, of course, are dependent on several variables, as I have already mentioned. I can't assure the committee, and wouldn't try to delude you into thinking, that these are absolute dates, because the variables I have cited are of great importance.

Mr. KASTENMEIER. What were, precisely, the reasons for having to change the prediction with respect to the closing of these three institutions, as developed in 1970, and at the present time?

Mr. CARLSON. The rate of new construction was not as high as we thought. In other words, we were not building new institutions as rapidly as we thought we would. In addition, the population pressures that I cited earlier were a factor. Inmate population has been going up steadily. When we made the 1970 projections, we were not sure what the long-term trend would be.

Mr. KASTENMEIER. Therefore, these variables will be present now and in the future. But as you point out, that is in effect the present status with respect to these institutions.

Mr. CARLSON. That is correct, Mr. Chairman. But I want to say at this time that as long as I am director, it is my full expectation and anticipation that we will close the three institutions as soon as we can.

Mr. KASTENMEIER. One of the witnesses on Monday made a reference to it being difficult for the Bureau to close such an institution because the local communities and the local prison personnel would oppose such closing; that these people have a vested interest in the continuance of these three institutions.

What is your view with respect to the interest of the Bureau personnel at any one institution, or the community in which the institution is located, with reference to the effect of the closing?

Mr. CARLSON. To answer the former question about the Bureau staff, obviously there are going to be some who are concerned; that is a matter that can't be controlled. We have closed institutions in the past, and on each occasion we have been able to place all the people who wanted to remain with the Bureau in other institutions. We try to do that as the first course of action. I see no reason why this cannot continue to be done in the future. In respect to the second question concerning the community, I strongly suspect that if we closed the three

institutions, the State governments might be very interested in acquiring them because of their own needs.

Atlanta, Leavenworth, and McNeil are old, antiquated institutions, yet—and I hate to say it—they are perhaps better than some of the local and State institutions. I can attest to the fact that in Kansas, where I did work at the Leavenworth Penitentiary, our facilities were in better condition and more humane despite their age and overcrowded conditions, than the Kansas State Penitentiary.

Mr. KASTENMEIER. Just two additional questions. In terms of alternative institutions, such as private or nonprofit programs and community treatment centers, is it your expectation that available spaces in these centers or alternative private nonprofit programs can be used to a degree that resort to prisons can be reduced somewhat in the years ahead; and would that have any effect whatsoever on the long-range building program?

Mr. CARLSON. Mr. Chairman, as I cited in my earlier testimony, I think the Federal courts are doing a very good job of diverting people from institutions. Their primary concern is to keep people out of prison, rather than putting them in prison. The use of probation has increased dramatically; the use of our community treatment centers as an alternative to incarceration has been a factor and has been a useful tool.

However, I don't think there is going to be any net decrease in the need for institutionalization. I feel the Federal courts have about reached the saturation point in terms of diverting cases out of institutions.

Mr. KASTENMEIER. Your position is that a realistic alternative does not presently exist to the nonprison assignment of sentenced people, other than those that presently exist?

Mr. CARLSON. I think that by and large the Federal judiciary is very cognizant of the use of alternatives to incarceration, and as I see cases being committed and talk to our staff, I think the judges have very carefully weighed the alternatives. They have a presentence report which, as you know, is prepared by a probation officer who makes a recommendation. If alternatives are available and appear to be in the best interest of all concerned, the judges are diverting people out of institutions.

So, I don't think there will be any massive shift as far as people who will have to be confined.

Mr. KASTENMEIER. Is it your observation that if the number of places or beds available were double, that still courts would make the judgment they presently make with respect to diverting people from prisons?

Mr. CARLSON. No, Mr. Chairman. I suspect, however, that there would be increased use of pretrial detention where adequate, humane institutions are available.

Again, to cite the experience I described yesterday with the three Federal judges from Detroit, they told me they are releasing far too many cases for the public good because they just don't have any alternative that they feel is humane. If there were humane institutions, I suspect they would be placing more people pending trial in detention.

I don't think, however, that would be any increase in imposition of

sentences. The figures have already indicated that the use of probation has dramatically increased in the last 5 years, and I suspect will continue to increase in the future.

Mr. KASTENMEIER. You are relating an experience, or opinion, that if we had humane facilities, those facilities would be utilized; whereas presently, there being no humane facilities, people are released out on the street, as a preferred alternative to incarceration in a substandard prison cell.

Mr. CARLSON. This was what was related to me yesterday. Mr. Chairman, by three members of the Federal judiciary who cited examples. They thought they were misusing alternatives because of the lack of a humane detention facility.

Mr. KASTENMEIER. In my last question I merely want to refer to a letter which I received this morning from Congressman Pete Stark of the 9th District of California. He refers to the institution at Pleasanton, which this committee visited.

Congressman Stark observes that the Bureau has decided to deviate from their original plans. The deviation is occasioned by a request for \$2.68 million for an additional housing unit, to be constructed at Pleasanton, which he interprets as an increase in the capacity of that facility. This new capacity, he states, was not the understanding of the community, or himself, or anyone else locally. He presents the following three questions:

1. Why was the community not consulted prior to substantial expansion?

2. Is the present facility being utilized to capacity?

3. Are various aspects of the center, that is the recreation and classroom facilities, suitable for the visiting area, additional expansion?

Congressman Stark and the general area are concerned about the expansion of Pleasanton, and the fact they were not consulted. Would you care to comment on Mr. Stark's letter which I will include in the record at this point.

[The letter referred to follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 30, 1975.

HON. ROBERT KASTENMEIER,
Subcommittee on Courts,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to bring to your attention the Federal Bureau of Prison's fiscal year 1976 budget request for constructing a new housing unit at the Pleasanton Youth Center in my California congressional district. I believe this request represents a breach of faith by the Bureau. Time and time again, I have been reassured that Pleasanton was to remain a small, innovative facility with an emphasis on individual attention impossible at larger, more institutional centers. I don't know when the Bureau decided to deviate from their original plan, but I do know that to this day, they have neglected to inform me accordingly.

The proposed expansion is suspect for another reason. The request for \$2.86 million for an additional housing unit was surreptitiously hidden under the heading Rehabilitation For Existing Structures rather than New Construction, which it clearly is. If the Bureau is convinced of the need for the additional unit, I wonder why they fail to inform the Congressman involved, and then try to get the money by pretending it's something it isn't.

I would be most grateful if you would ask these questions of the Bureau's representatives this morning. At the same time, I would welcome answers to:

1. Why the community was not consulted prior to substantial expansion.
2. Whether the present facility is being utilized to capacity.
3. Whether various aspects of the center, i.e., the visitor, recreation and classroom facilities are suitable for the additional expansion.

While I am not irreversibly opposed to expansion of the Center at some future date if this action seems justified, I would certainly favor a period of evaluating the Center's present operations first. After all, it has been in existence for only one year.

Thank you kindly, Mr. Chairman, for any insight you are able to bring to this important matter.

Sincerely,

FORTNEY H. STARK, JR.,
Member of Congress.

Mr. CARLSON. Yes, Mr. Chairman. First of all, Mr. Mote and I talked with Congressman Stark several months ago about the issue, and discussed fully what the long-range plans had always been for Pleasanton. The architectural design, when we first built the institution which you have seen, specifically included plans for a third housing unit. It was not built initially for two reasons. The first was, this was a totally new concept in institutional design and construction. We wanted to wait and have a chance to find out if it was a workable plan and design.

Of course, subsequently we concurred with your observation. It is a very fine design and fine plan.

Second, the initial money that was available from the Congress was not enough to build all three living units. So, we built two living units, with a capacity of 250. It is now operating at full capacity. The expansion will permit the population to go up to 370 inmates, which will be the maximum of the institution.

Again I want to emphasize that in our initial planning we had included this. As a matter of fact, the utilities were set up in that fashion, and a part of the total area of the institution was set aside to locate eventually a third housing unit.

Mr. KASTENMEIER. I think the essence of Mr. Stark's letter is, and I quote, "I have been assured that Pleasanton would remain a small, innovative facility with an emphasis on individual attention impossible at larger, more institutional centers."

Your point is that 370 residents would not constitute a variant from that objective?

Mr. CARLSON. I don't believe so at all, Mr. Chairman. I think it will enable us to operate a more economical institution in terms of the cost per inmate per day. An increase in population reduces the per capita cost expenditures. But I think a 370-inmate institution is not too large in terms of the present standards of this country. In fact, it is far smaller than you find at most institutions, and actually far smaller than most Federal institutions.

Mr. KASTENMEIER. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. Thank you, Mr. Chairman.

Mr. CARLSON. I see on page 9 of your testimony that you have identified the population by offense, and there is a significant increase in those who are confined for reasons of narcotics, i.e., from 17.5 percent in 1964 to 28.5 in 1974. Are those individuals sellers, or users, of narcotics, or both?

Mr. CARLSON. Congressman Badillo, these are only people who have been arrested and convicted for narcotic offenses, primarily the sale and transportation. I should point out that there is an additional group of other offenders who are narcotic addicts.

So, we would project that roughly a third, 33 percent of all of our inmates were narcotic addicts at the time they were committed to custody.

Mr. BADILLO. That's my point exactly because a person may be convicted of robbery because of drug addiction.

Mr. CARLSON. That is precisely correct, I agree with you.

Mr. BADILLO. And you state that one-third of your population has drug-related problems. Do you have any programs which would provide help to those who are drug addicts, regardless of whether they were identified as drug addicts, or convicted for drug addiction?

Mr. CARLSON. Yes, Congressman.

Mr. BADILLO. Are they made available on a wholesale basis? I don't mean pilot programs.

Mr. CARLSON. We have drug abuse programs presently in operation in 17 institutions. We presently have a capacity in these programs of approximately 2,000 inmates at one time. Now, they don't stay in the program for any great period of time, generally 12 to 18 months prior to their release. We do have programs to meet their needs.

Mr. BADILLO. Are such programs made available to inmates upon request?

Mr. CARLSON. Yes; these are voluntary programs, unless the inmate has been committed under title 2 of the Narcotic Act, which requires that we provide them with programs. All other inmates participate on a voluntary basis.

Mr. BADILLO. What is your view of what the size of a prison should be?

Mr. CARLSON. Congressman Badillo, I have said that institutions should run from 250 to 500 in capacity. All our planning effort has been built on the concept that 500 is the absolute maximum size of any institution.

Mr. BADILLO. How did you arrive at that conclusion?

Mr. CARLSON. I would have to say that it is partially based upon experience. Many of us have worked in institutions. However, most people would agree who have observed the criminal justice system and correctional programs in general.

Mr. BADILLO. Has any study been conducted, that you know of, which would indicate the best size for a prison, in terms of capacity, to function?

Mr. CARLSON. The National Clearing House, which is located in the University of Illinois, has conducted such studies, and I think they concurred with the 500 figure. Mr. Mote happens to be an architect, and is more familiar than I.

Mr. MOTE. Congressman Badillo, the National Clearing House at the University of Illinois undertook the job of preparing guidelines for local governments to construct facilities.

Mr. BADILLO. Who are they?

Mr. MOTE. This is a group that was funded by LEAA to prepare guidelines.

Mr. BADILLO. No; I mean in terms of background. Are they architects, builders?

Mr. MOTE. Primarily architects and sociologists; and one member of their staff is also an ex-correctional administrator. Their standards are roughly the same as ours.

Mr. BADILLO. Were the inmates consulted?

Mr. MOTE. Yes; they were. Also, there is an inmate on the staff at the present time.

Mr. BADILLO. Well, if we could get a copy of that.

Mr. MOTE. Certainly.

Mr. BADILLO. Mr. Carlson, where do you think prisons should be located?

Mr. CARLSON. Congressman Badillo, I think they should be just as close as we can possibly get them to a major metropolitan area. We should not be forced into a situation such as we are today, where we have institutions far removed from communities large enough to have the resources we need. The problem, however, is when you try to build in a major city, you immediately run into a lot of opposition. So, it is a difficult decision as to where to locate an institution.

Mr. BADILLO. Well, I notice that one of the facilities that is being discussed in this budget is a \$21 million facility for 500 prisoners in Otisville, N.Y.

First of all, 500, that really gets to the top of the size scale; and secondly, the distance is about 65 miles from New York, really the other end of the world. Did you try to get a facility in New York City?

Mr. CARLSON. We certainly did, Congressman Badillo. We made extensive efforts for nearly 2 years to locate an institution in New Jersey, or New York, as close as possible to metropolitan New York City. Again, there were no sites available to us. In some cases in New Jersey, there was tremendous community opposition, and we had to back off.

Mr. BADILLO. Did you have meetings with the chairman of the City Planning Commission in New York City?

Mr. CARLSON. I don't recall the chairman of the Planning Commission per se, but I do recall a number of conversations with people in the New York City system.

Mr. BADILLO. With whom?

Mr. CARLSON. Ben Malcolm, in particular, a knowledgeable man who is the Director of Corrections, and was formerly the Director of Probation in New York City. We also consulted members of the Federal judiciary.

Mr. BADILLO. With correction officials, see, the problem is that they agree with the present system.

It seems to me—and I didn't read about that in the newspaper—it seems to me that there is a city planning commission in New York City whose function is not to administer a program, but to locate sites throughout the city that might be available for such purposes. It seems to me it is critical that these groups be consulted because they are set up precisely because of the fact that they don't serve any particular interests; they concern themselves with any public building, whether it's a prison, or police station, or school, or library, or park. Is this decision to build in Otisville a final decision?

Mr. MOTE. Congressman Badillo, we have worked with the State government very closely. The site located in Otisville is, we think, as satisfactory as we were able to obtain.

Mr. BADILLO. Satisfactory to whom?

Mr. MOTE. To the mission of the Bureau of Prisons.

Mr. BADILLO. I don't see that at all. I was in Attica, as you may know. Have you read my book, by the way, of Attica?

Mr. CARLSON. No, I have not read yours. I have read Mr. Wicker's book.

Mr. BADILLO. We were both there, and as you undoubtedly know from his listing of complaints of the prisoners; now, one of the big complaints is the inaccessibility to the families. Now, 65 miles from New York City from somewhere in Holland or the South Bronx is as far away as Attica. Otisville is just as hard to get to as any part of New York State.

So, of course it is satisfactory to the State prison people, they are the ones that built Attica, they are the ones that talk about the maxi-prisons, if you remember, in New York City. That was their response to the Attica situation.

Mr. CARLSON. Congressman Badillo, all I can say is that it was the best alternative we had available.

Mr. BADILLO. But you didn't consult with the New York City people.

Mr. CARLSON. We consulted with a number of people in New York City about what would be available.

Mr. BADILLO. Is this a final decision?

Mr. MOTE. We would like to move forward, Congressman. If we receive the construction funds, we plan to.

Mr. BADILLO. Were there any public hearings that were held on this?

Mr. CARLSON. Yes, sir, there have been. We have had public hearings in Otisville on this very subject.

Mr. BADILLO. In Otisville.

Mr. CARLSON. And we had public hearings in a number of other areas.

Mr. BADILLO. Where have you held public hearings?

Mr. MOTE. In the Otisville community.

Mr. BADILLO. But you have not held hearings—you don't expect too many people from Otisville to be there as inmates.

Mr. MOTE. No, sir. Very candidly, the problem that we face, Congressman, is the inability to locate a site of the required size within New York City on which to locate the facility—

Mr. BADILLO. I understand that, but I am asking for the effort that was made, and I am trying to find out because it is easy to come before this committee and say, "I couldn't get it approved"; I want to know what efforts you made to find a facility in New York City, other than talking to the State correction bureau, who are obviously going to support what they have continually been doing. Also the city correction bureau which also believes in having an institution as far away from the community as possible. You are asking the very people who have consistently refused to change.

I mean, there is never an opportunity, as far as I can see, in this system, to be in touch with the people in the city who represent other interests than those of the prisoners; the planners in the city; the

community people in the city, and those who are concerned about prison reform.

Mr. MOTE. I know in my initial efforts there were attempts made to locate sites in New York City, within the five boroughs. GSA acted as our agent there, and we asked them to survey any possible sites, whether they be Federal surplus sites, or non-Federal sites that could be required. The result of that survey was that there were no suitable sites available.

Mr. BADILLO. Do you have that survey in writing?

Mr. MOTE. We may have such records, although I don't know that we do. We can certainly search the records.

Mr. BADILLO. I would appreciate it if you would look and provide that to the committee.

Mr. CARLSON. I can recall also, Congressman Badillo, trying to find a site at the Brooklyn Navy Yard, which is surplus; and we were advised that that was not possible, there was no way that we could build a facility of this type, even though it was a surplus naval facility.

Mr. BADILLO. Who did you ask about the Brooklyn Navy Yard?

Mr. CARLSON. A Member of Congress who represented that district at the time.

Mr. BADILLO. A Member of Congress doesn't control the site. A Member of Congress doesn't dispose of areas in his district, especially in New York City where we have a lot of Members of Congress, that is not as impressive as it might be in some areas.

Mr. CARLSON. Frankly, Congressman, we always consult with the Members of Congress.

Mr. BADILLO. It is one thing to consult, but not to walk away when a Member of Congress says you can't do it, for the very same reason you stated, that people might not want it. There is a lot of empty land in my district, and I'm a Member of Congress.

Mr. CARLSON. We ought to look at some.

Mr. BADILLO. I would have no objection at all. We have a lot of land that is vacant, that was cleared for model cities.

Mr. CARLSON. We will be happy to look at it.

Mr. BADILLO. You would have no problem at all with the elected officials in my area, I assure you.

My time is up, and for the time being I would like to yield to Mr. Railsback.

Mr. RAILSBACK. Thank you.

I would like to just say at the outset that I have had a chance to see a great many improvements in the Federal prison system under your administration. I don't think that even you would say everything that we have done has been perfect, and you probably admit that there has been a rapidly evolving change in this area. But I think that, given the resources available you have made some very, very constructive changes.

We have heard some rather strong, emphatic testimony that the Federal Bureau should actually be phased out of the prison business, as far as operating prisons, and that there should be a shift back to the States. I don't know if you have had a chance to see the other testimony.

Mr. CARLSON. I have read the other testimony.

Mr. RAILSBACK. I would like for you to tell us just as succinctly and briefly as you can what are some of the advantages or disadvantages you foresee in doing that?

Mr. CARLSON. Congressman Railsback, from a philosophical point of view I would agree that in the long run the Bureau of Prisons could and should be phased out, with the inmates being turned over to State and local authorities. But to me this is a very, very long-term goal. I see very little progress, frankly, at the local level of corrections; I see spotty progress on the State level in terms of improving facilities. I just don't think there is any possibility in the near term—and by near term I am referring to the rest of my career and beyond that—of having the State and local authorities assume the responsibility for more than 23,000 inmates that we handle in the Federal system.

As you probably know, most State systems are rapidly becoming overcrowded. Virtually every major State has population pressures right now with their own inmates; and I don't think it is a feasible solution for us to suddenly try and dump the Federal inmates into some State or local system.

Mr. RAILSBACK. What, if any, input do you have in State and local correctional facilities, as far as helping them, or recommending guidelines to them, or is that all LEAA?

Mr. CARLSON. Congressman Railsback, the last session of Congress passed the Juvenile Justice Act. Included in this act is the establishment of a National Institute of Corrections, which is now part of the Federal Bureau of Prisons. An advisory board has been appointed, as required by the legislation. The institute essentially will provide training and technical assistance to State and local correctional personnel. We will do the best we can to help them to appraise their systems.

Mr. RAILSBACK. Right now, what narcotics treatment facilities do we have in the Federal system?

Mr. CARLSON. We have narcotic treatment units, as I mentioned, in 17 separate institutions, where there are centralized programs to work with the narcotics addict.

Mr. RAILSBACK. Let me just refer you to some statements that I heard earlier, which gave me great cause for concern. We met one time—and I think you were there—with the so-called "Big House" wardens. I think I asked some of the Big House wardens, "How many of your inmate population are serving time because of either narcotics addiction, or narcotic addiction related offenses," and I recall the figure to be staggering.

I am just wondering, what progress are we making in separating those people from the rest of the prison population so that they can be adequately treated? Can you elaborate on that a little bit?

Mr. CARLSON. Congressman Railsback, we have specialized institutional treatment units. In addition, when the inmate is released, he is provided with after-care support services by contract with a local agency.

Mr. RAILSBACK. What about incoming treatment?

Mr. CARLSON. He is provided, of course, with treatment in the units. Essentially the treatment is a voluntary program, essentially based on therapeutic models where inmates live together, work together.

interact together with staff guidance and support from mental health psychologists.

Mr. RAILSBACK. I have visited Pleasanton, which appears to be a very enlightened, progressive type facility. I also visited San Diego, and I saw what amounts to a detention center.

But at Pleasanton I was a little bit disheartened about the fact that there was so little for the young people to do. When I first walked through the gate, I saw a guy embracing a girl, which I kind of liked, but, [laughter] that scene was an example of the very relaxed, tension-free atmosphere at that institution, but, with a great deal of idle time.

I, personally, talked to many people in that institution, and the one major complaint they had, was just that. There was too much idle time, nothing constructive to do.

I wonder what has been done, or what can be done to correct that.

Mr. CARLSON. Congressman Railsback, you went to the institution not too long after it opened, and, I agree, initially we did not have the educational programs and vocational programs in operation that have subsequently been placed in operation. By the way, we don't provide our own teachers. We contract with the local school district to provide particular vocational training activities.

Mr. RAILSBACK. As I recall, at that time there was little educational work, and no vocational work.

Mr. CARLSON. These programs are now in operation. We have auto mechanics, welding, and a business course, and we have small engine repair, which generally is for motorcycles and which is very attractive to youngsters of that age.

By the way, those programs are available regardless of sex; we have women in the mechanics program, and men in the business program. So, there is no differentiation based upon sex of the offender.

Mr. RAILSBACK. What percentage of the money that you are requesting, and that we are overseeing right now, is going to new-site construction, and what percentage is going to renovate and repair facilities?

Mr. CARLSON. I believe the issue before the committee, is \$1.5 million for site and planning of a south-central facility; and \$21.7 million is physically to construct the institution that Congressman Badillo referred to, in Otisville, N.Y.

Mr. RAILSBACK. Now, let me ask you this—I am running over my time a little bit, but I am very interested.

Mr. BADILLO. You have a lenient chairman.

Mr. RAILSBACK. I think I like you as chairman. [Laughter.]

Anyway, we also know that there are some State jurisdictions who are increasingly going to contract out to local correctional people offenders to be sent to that local area; and they call it probation, and the State reimburses the local people and the State saves money in the long run.

The Federal Government right now has work release programs. You have community centers, and you have neighborhood facilities. I don't know of any so-called probation programs. What are the prospects of somehow contracting out to local probation people Federal offenders, particularly youthful and nonviolent offenders?

Mr. CARLSON. Congressman Railsback, the supervision and control of all probated offenders, of course, is the responsibility of the courts

through the U.S. Probation Service. I believe that under the speedy trial bill, we now have the authority and funds, the resources, to start contracting out for services.

My understanding is prior to the present legislation they did not have any funds available, or authorization, to enable them to contract for services. But we do now, and plan to use this.

Mr. RAILSBACK. Well, I sincerely hope that they do that.

Mr. BADILLO. The gentleman from New York?

Mr. PATTISON. I am concerned about that site selection process, and the emphasis that is apparently put on public pressure. Do I understand that if there is a lot of public pressure against locating a facility in a particular site, that basically you back away from it?

Mr. CARLSON. Yes; we do, particularly if opposition is by elected officials in the Congress—I assume they represent their constituents. If they feel that it is a bad location which they cannot support, we look elsewhere.

In fact, we are required to look elsewhere under the GSA space acquisition requirements, when public hearings are held and the preponderance of the community is opposed to the facility. I believe we have no alternative. Mr. Mote can amplify on that.

Mr. MOTE. Congressman, we are required to have public hearings and solicit the views of the community and elected officials. The decision about whether to move forward is our decision, but it is based upon these discussions. We work closely with the community, explain our plans, develop an understanding; and in most instances, we have been very successful, and the community has been supportive.

Sometimes, however, because of the fear and concern that many citizens have, opposition develops. And when it is overwhelming, we don't feel we can have an effective program that would involve the community as well as our staff, and we try to find another site.

Mr. PATTISON. Well, I have been involved in a number of site selection processes for unpopular things, halfway houses for retarded children and adults, landfills, and things like that. I find that the elected officials are almost universally going to be against you; because they have political considerations they move against you. A lot of them hope that you will ignore their advice and put the thing where it ought to be, but they are sort of protecting their own interests by getting on the side of the people who are against.

I am not saying that is a responsible way for a public official to act, but I think that is true in many cases, and the Bureau of Prisons ought to keep that in mind. This idea of having a referendum; we would never put a landfill anywhere if we had a referendum every time. And I sure as heck wouldn't expect people in my district who are going to have to put up with a prison, to welcome it with open arms. There is always the fear that there is going to be a mass escape, and all kinds of things like that.

It is a very unfounded fear, normally, and the experience—am I right?—is that once you have a prison located somewhere, that in fact it works out fine, and there is no real public opposition afterward?

Mr. MOTE. That's correct.

Mr. PATTISON. Well, I would say that you are in a better position to bite that bullet than a lot of public officials. And I would think that relying on the congressional Representative from that area would

be a mistake on your part. I am not saying you should not advise him, or that you should not consult the community; that is a good thing, to consult the community. I also think you should not just worry about the community where it's going, but also about the community where the people are coming from; I think that is something that maybe we haven't done.

I am also interested in this notion of a Federal-State partnership: the notion that perhaps instead of building a lot more Federal prisons, we should join in some sort of partnership with States who are willing to join us in a partnership. Instead of saying, you build a prison. I build a prison, why don't we say, "why don't we build a prison together, one that we can both live with, and maybe we could obtain a lot more flexibility that way."

I am not trying to do away with the Federal Bureau of Prisons: I think the Federal Bureau of Prisons should be a leader in the way they build their prisons and in the way they run them. I think it would be a very good thing, and in a way you would have even more influence. For instance, if you were to join with States on a contract basis, working out the building of new facilities, that would enable you to build two or three prisons in three different States, rather than to build one prison, and you would have more flexibility.

I realize that is sort of following up Congressman Railsback's question, but don't you agree that sort of makes sense, that that would help us to upgrade some of our local prisons?

Mr. CARLSON. I certainly agree with that, Mr. Pattison, but from practical experience, it's very difficult to merge Federal and State construction efforts.

I can cite one example very briefly. In the State of California, we purposely deferred construction of a facility because the California Youth Authority appeared able at that time to take a substantial number of Federal commitments. But as the months went by, California's population went up, and the State had no room for us, and we were literally left holding the bag and had no place to put a substantial number of youthful offenders that ordinarily would have been contracted with the State.

Mr. PATTISON. On the other hand, if that were done by agreement, your rights would be preserved, those spaces would belong to the Federal Bureau of Prisons.

Mr. CARLSON. The issue of course is, who would operate, and who would control the institution. As you know, when you cross a political boundary, it becomes a problem.

Mr. PATTISON. Yes; I agree it is difficult, but the State prisons are in such bad condition now. The example you gave with Leavenworth is very troubling; Leavenworth being better than the other prisons that are in the State, that is an appalling example; and I know that is true in New York State.

I think we would be better off, even if we were to keep Leavenworth and build something new for the State, in cooperation with the State, it would seem to make more sense to me.

I'm not concerned about this problem of sitting around. I'm not too sanguine about rehabilitation, but I know that in our local jails, county jails, basically the procedure is that you go into the jail and have a cell—they are right out of the Middle Ages—they have a pad

with a chain, and you sit and watch TV through a bunch of bars; and the thing is made out of glass bricks, they can't even see outside. And a kid will be put in that. If you go to the local jail, you will find the average age about 19. And they will be put in for 6 months or a year, and simply do nothing for that whole period of time, just sit in that cell, and the only thing to do is watch TV.

Now, it seems to me that follows up what I was saying before, there are darned few modern county jails in New York State. And it seems to me if you are going to rehabilitate anybody, probably the one place you have a chance to do it is in the county jail where it's probably a first offender. Do you agree with that?

Mr. CARLSON. I certainly agree.

Mr. PATTISON. And it seems to me that just emphasizes the sense of doing things on a partnership basis because obviously we are not ever going to upgrade the activity that goes on in those local jails, the lack of activity, unless they have some money or motivation to do it. And I think the Bureau of Prisons would be able to provide both money and guidelines as to operation. Obviously, you would have to impose it by contract if you are going to put your people in there. Would you agree with that?

Mr. CARLSON. Yes; I think that if some partnership could be developed and the authorization came from the Congress, that would be a feasible approach to try to upgrade local jails. I wholeheartedly agree that the largest single problem that I see in the criminal justice system is in the local jails, which are, as you described, horrible.

Mr. PATTISON. I have been in a lot of them, I visit them. They are run by nice people, the sheriff's departments are decent people, but they just destroy them by inactivity. It is absolutely devastating what happens to a kid who has been in there for 6 months.

Or another point, what would be the effect on your operation of some sort of mandatory sentencing procedure, what would that do?

Mr. CARLSON. Obviously, it would impact on us in terms of the number of cases being committed to us by the courts. If the court would have no jurisdiction, and no flexibility in sentencing, it would impact significantly.

Mr. PATTISON. Suppose they were short-term mandatory sentences?

Mr. CARLSON. That would reduce the problems, but still exacerbate the existing conditions.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. Let me go back to the Otisville prison that you have planned. You said you held public hearings in Otisville; did you hold any public hearings in New York City?

Mr. CARLSON. The city itself, no; but we did in New Jersey and in New York State, and at other sites we were looking at.

Mr. BADILLO. None in New York City. In Otisville, is there a railroad station?

Mr. MOTE. There is a railroad station in a nearby city. I think about 5 miles away; and there is also good bus transportation.

Mr. BADILLO. How far is the railroad or bus station from where the prison is to be located?

Mr. MOTE. Congressman, I would say between 5 and 10 minutes, a very short distance.

Mr. BADILLO. Ten minutes, or 10 miles?

Mr. MOTE. Seven or eight miles.

Mr. BADILLO. What is the population of Otisville?

Mr. MOTE. It numbers in the hundreds. The community of Otisville itself is very small.

Mr. BADILLO. How many blacks are there in Otisville?

Mr. MOTE. I don't know. I would estimate very few.

Mr. BADILLO. How many Spanish-speaking people?

Mr. MOTE. Again, I would estimate very few, but I have no knowledge of that.

Mr. BADILLO. How do you propose to get black guards, assuming it were to be built, black guards, or Spanish-speaking guards for Otisville?

Mr. CARLSON. I would like to answer that, simply by aggressive recruiting. I can cite an example. Congressman Kastenmeier is familiar with Oxford, Wis., which is even more remote from the black community. Through very intensive recruitment efforts, more than 12 percent of the staff—and these are primarily guards and correction officers—are black or minorities.

Mr. BADILLO. And what is the percentage of the inmate population?

Mr. CARLSON. I would suspect about the average of our system, roughly a third.

Mr. BADILLO. Would this be true in this proposed area, too?

Mr. CARLSON. I don't think it would be as hard to find blacks in Otisville as in Oxford, Wis.

Mr. BADILLO. But I mean, the inmate population would be more likely to include many blacks and Spanish-speaking people in Otisville.

Mr. CARLSON. Yes; there will be a higher proportion. I am talking systemwide, it's roughly a third.

Mr. BADILLO. In the New York-New Jersey area, it would be well over one-third.

Mr. CARLSON. Yes; I expect so.

Mr. BADILLO. And if you combine black and Spanish-speaking people, it might well go over one-half.

Mr. CARLSON. Correct.

Mr. BADILLO. Well, doesn't that make it very difficult? Realistically speaking, the problem you had in Attica—the town of Batavia is probably identical to the situation in Otisville. In fact, it would be difficult to find a situation more comparable than of Batavia, in terms of location; and one of the problems is the problem of discrimination in terms of housing. You have a very small town, and there isn't that much housing that is available; and that which is available is not advertised in the local newspaper. Have you looked into that situation as to planning, before you design the prison?

Mr. CARLSON. Again, it was the best alternative that we could find available to us. I would like to comment, however, on minority recruitment. We have tripled the number of minority employees in the past 5 years in the Bureau; our goal is to hire one-third minorities, which is comparable with the number of inmates overall. We have been running between 29 and 30 percent.

Mr. BADILLO. I know, generally. But I mean, in Otisville, have you sought to determine what the housing situation is?

Mr. CARLSON. Yes, sir, we have. Congressman Badillo, There is presently located on the site a State narcotic treatment facility, de-

veloped by the State Narcotic Commission; we have talked with them. They have a substantial number of black employees that work in their institution, and they assure us there is ample opportunity for commuting for a distance. It is not that far from New York City, and there are a significant number of blacks and other minority groups in the surrounding area.

Mr. BADILLO. The other part of the request is \$1.5 million for planning and site acquisition, including, among other things, the youth prison in the northeast; where is that planned?

Mr. MOTE. Congressman Badillo, the site and planning funds are being requested in the 1976 budget for the new adult institution in the south-central region of the United States; it does not include any planning or construction funds for a center in the northeastern part of the United States.

Mr. BADILLO. Well, I was told it included both, an adult center in the south-central region, and a youth prison in the northeast.

Mr. MOTE. No, sir.

Mr. BADILLO. Where, in the south-central region are you planning the adult facility?

Mr. MOTE. We have not tried to pinpoint that site at this time. It is our custom to wait until the Congress approves the project by providing site acquisition and planning funds. The heaviest concentration of the case load will be in the Texas-Oklahoma area. We will seek to locate the facility in that general area.

Mr. BADILLO. You are planning one adult prison in the south-central region, and what else are you planning now, is that the only thing that you are requesting funds for?

Mr. MOTE. That is the only new institution we are requesting funds for, yes.

Mr. BADILLO. Now, is there any planning going on right now which you received funds for?

Mr. MOTE. Yes, sir.

Mr. BADILLO. Could you tell me what that is?

Mr. MOTE. Yes, sir. We have funds for the planning for a facility in Camarillo, Calif., one that we had deferred construction on earlier. We also have planning funds for a facility in Alabama. We have just held a public hearing concerning the site. The community is receptive to the facility, and we plan to ask Congress for construction funds in the future.

In addition we have site planning funds approved for three new youthful institutions, located in the northeastern area of the country.

Mr. BADILLO. Tell me about those.

Mr. MOTE. We hope to locate one just as close as we possibly can to New York City; another one somewhere in the vicinity of Philadelphia or Baltimore; and the third perhaps in the Cleveland area.

Mr. BADILLO. Mr. Chairman, in view of the discussion we have had here on the Otisville situation, when you were away the question came up, the fact that it is difficult to get public support in the local community, especially in New York City where a certain local Congressman said "no," and they went to Otisville.

It seems to me that one of the problems is getting congressional support for the location of a prison in urban centers. One of the things we might do as a master policy is to the planning request come before

us. I mean, if we want congressional approval, why not have this committee look at it, so that then, if there is a problem with the local Congressman, the committee might be able to talk to the local Congressman and maybe have him come before us because it would be very difficult to do, it seems to me, if a local Congressman is opposed to building a prison in an urban center, it is not attempted. Unfortunately we have a problem that can turn Otisville into a "Little Attica," and the money is already there for construction, the plans have been approved; and at no time was the city planning commissioner consulted, and there was no opportunity for public hearings in New York City.

I don't know what we can do about that at this point, but perhaps we can establish a mechanism so that as a matter of course future planning will come before this committee. I think I would welcome that.

Mr. CARLSON. That is perfectly agreeable.

Mr. BADILLO. And if you have a problem with public officials, we can help on that.

Mr. CARLSON. I would be perfectly agreeable to that.

Mr. KASTENMEIER. I would comment that we do have oversight responsibility in these matters. It is not required that authorization be obtained by this subcommittee. There is also, of course, the Appropriations Subcommittee which exercises authority in this area.

I think the gentleman has a good point, there is some room for a greater role for these recommendations to be considered. As a matter of fact, it may also come to pass that the Judiciary Committee generally, in the future, through legislation, will be required to pass an authorization bill in respect to all the functions of the Justice Department, which of course includes the Bureau of Prisons. If that comes about, something such as you suggest would become a necessity, not merely a question of policy oversight.

Mr. BADILLO. Well, if we have that agreement—we can't do it today, of course, we are not prepared for it—but might we not begin with these facilities you have enumerated, the facilities for youthful offenders in the northeast, both in Baltimore and others that you spell out, get some information to the staff of this subcommittee, so we can see what you are planning. And certainly, if you want a facility in New York City, you would have to get in touch with the City Planning Commissioners, they are the ones that have to approve it. See, you have to go to the City Planning Commission for approval and maybe a board estimate.

But you know, we would be the ones—I would certainly be in a position to help you. But if you have a planning list and can get it to the staff people, we might be able to review the individual projects and won't have the problem of being confronted with a fait accompli like Otisville; you would have come before us 2 years, or so, ago.

Mr. CARLSON. I can assure you we will, Congressman Badillo, in the future.

Mr. BADILLO. Thank you very much.

Mr. KASTENMEIER. I would only say that while the colloquy this morning probably has not explored all questions which we would like to ask, we can get testimony by virtue of letters directed to you, which you can respond to by letter. This way we may all amplify, or extend the colloquy with respect to some questions we did not have time to raise today.

On behalf of the committee, I wish to thank Director Carlson and Mr. Mote for their testimony this morning, you have been very thorough.

That concludes the Bureau of Prisons' testimony this morning.

I would like next to call two distinguished members of the Federal Judiciary, U.S. District Court Judge Charles B. Renfrew, of the northern district of California, and U.S. District Court Judge Morris E. Lasker of the southern district of New York.

Because of the delays, I would also ask Judge Lasker to come forward and share the witness table with his colleague, Judge Renfrew; and first of all I would like to call on Judge Renfrew.

TESTIMONY OF HON. CHARLES B. RENFREW, JUDGE, NORTHERN DISTRICT OF CALIFORNIA

Judge RENFREW. Thank you, Mr. Chairman. I, at your request, have submitted a statement. I don't propose to read my entire statement, I would refer to it just in summary form, if that is satisfactory to you.

Mr. KASTENMEIER. Before we start—and again, I'm embarrassed to observe that we have a vote. I would say not only to the witnesses, but those attending this particular meeting, they have been very diligent in remaining through all these votes, and indeed through the noon hour lunch.

However, we will recess shortly, for about 10 minutes, and reconvene. [Whereupon, at 1:20 p.m. a recess was taken until 1:45 p.m.]

Mr. KASTENMEIER. The committee will be in order. When we last recessed, Judge Renfrew was about to give his testimony on the question of Federal Bureau of Prisons facility construction.

Judge RENFREW. Let me tell you, Mr. Chairman, the question which was put to me in your letter was, what is my view as to the effectiveness of incarceration, and the desirability of the Bureau of Prisons' plans to construct additional facilities.

Preliminarily, while it is obvious, I would like to state that I speak personally, and I do not purport to speak for anybody else on the judiciary. You should also know that I have very limited experience as a judge. I have only been on the bench for 31½ years. But for those of us who have been on the bench and have had to pass sentence on a fellow human being, it is an impossible duty to fulfill the responsibilities of a judge without thinking very deeply about incarceration and the role of prison in our society today.

And because of my concern for this role, I have taken it upon myself to spend 3 to 4 days consecutively at each of the Federal institutions to which I send inmates. It gives me a better understanding of the institutions to which they are sent, the processes and services, and facilities available; and it gives me a far greater insight to the whole question of imprisonment and the need for future construction.

I would like to say at the outset that I think we all have relied too heavily on incarceration, and I am of the view that there is need for further construction, but construction of the type of facilities that Mr. Carlson referred to earlier today.

I am extraordinarily pleased that this subcommittee concerns itself with the whole question of prisons in our society because there are other

issues that some people say are more important, for example, the deterioration of our economy, our environment, threat of war, and the like.

But I think it is vital that we concern ourselves with prisons. In the first place I think that public institutions such as prisons, public schools and health facilities more accurately reflect the real values of our society, and I think we should look at our prisons to see whether they reflect what we believe to be the highest values and standards. And moreover, the role of the prison is the most extreme authority and control that the State exercises over its citizen, it puts into dramatic conflict so many of our basic tenets and concepts that it needs constantly to be reexamined to understand the dynamic tensions that exist between citizen and State.

So, I will just share with the committee my great pleasure that you are so interested in this subject that is so vital to all of us.

We cannot isolate prison from the criminal justice system, what is unlawful is what you all determine. I urge that all of us are careful not to make criminal what we disagree with, or find morally unpleasant. We can't separate prison from the Constitution and the whole sentencing process of the court, and some of the factors that influence the very rate of crime.

But, in the 31½ years I have been on the bench I am absolutely persuaded that we rely too heavily upon incarceration; and those who insist upon this—and there are those whom I have read, that think one of the problems that we have is that there aren't mandatory sentences. The State of New York, as you know, has imposed, I think, very stringent mandatory sentences in the area of narcotics violations that cause me great concern because personally I think there is a very basic question that has to be answered before anyone can adopt a program of longer sentences.

I think you would have to ask yourself, what reliable data is there that the length of the sentence, rather than its certainty and the speed with which it is imposed, will be of greater deterrence. What reliable data is there that the length of sentences that we have imposed in this country have had great deterrent effect than the sentences that have been imposed in other industrial societies, where they are substantially shorter.

Why is it that the wardens, and associate wardens, and prison staff, and counselors and correctional officers I have talked to almost to a person have told me that they find the sentences imposed today are too long?

Incidentally, there is one thing that I think we can't overlook—and I am sure your committee is well aware of it—that there is a relationship between freedom and crime. In a totalitarian society where the entire power of the State can bear on those things which the State finds to be activities prohibited and unlawful, you find very little crime. I don't think we should accept crime, but I don't think we should ignore the fact that if we believe in freedom and value it as a concept, as a goal, then we are going to have people who transgress and violate that freedom and the rights of others. Freedom, real freedom means the freedom to succeed, as well as the freedom to fail.

Now, to look at prison, we have to understand why we send people to prison, and there are four basic purposes, we all know of them,

punishment, deterrence, isolation from society for certain individuals, and probably what is thought to be the most humane, rehabilitation. And I suggest to you that as a consideration, that should never be a purpose to send somebody to prison. If that is the only reason you are sending someone to prison, he should never be sent to prison, he should be sent to some type of community facility because to my understanding rehabilitation requires a voluntary compliance on the part of the person, that he wishes to be rehabilitated. That is not going to be obtained in the coerced, and cold environment of the prison.

Surely, we are going to have people in prison who are ignorant, who are economically deprived and psychologically unstable. They need support in those areas, and you should have programs for institutional training, educational programs, vocational training, psychological counseling, drug abuse programs. But I think they have to be, essentially, voluntary and we should never send someone to prison for the sole purpose of participation in those programs.

Now, who do you determine to be in prison? And this, of course, is a very hard dilemma which I have had to face hundreds of times. How do you protect society without destroying an individual? How many individuals do you destroy before you destroy a society?

I don't offer you any answer because I can't, I think it has to be done on a case-by-case basis. But I think one thing has been very interesting to me in my visits to the institutions that I have gone to; and I attempt in the 3 or 4 days in the institutions to seek out as many correctional people as well as inmates as I can. And everyone whom I have talked to on the staff has told me, without exception, that there are people presently serving in institutions who should not be there, and I have never heard the estimate drop below 50 percent. Because of its source, I think that that estimate is something that we really have to give great weight to. Before you determine whether somebody should be sentenced, you have to see whether the lesser sanction would be appropriate; and I have set forth in my statement some factors I consider, that are factors also that the American Bar Association has established, and that other thoughtful groups have analyzed. But essentially, one should not be sent to prison unless a lesser penalty would seriously depreciate the offense and because it is really essential for purposes of deterrence.

I think some incarceration is necessary for income tax law violation, merely for deterrence purposes.

Now, I think everyone agrees once you have determined someone should be imprisoned, how long should he be there. And I say, not one day more than necessary. And again, I can't tell you how long that is, I don't know.

One thing that I do personally, that I would like to see other Federal judges follow, I impose on myself an automatic hundred-day review of every criminal sentence imposed. A hundred days after I passed sentence, my secretary places on my chair—because that's the only place where I can find new materials. [Laughter.]

Judge RENEW [continuing]. A file containing judgments. And I have my courtroom deputy automatically enter a minute order that the court on its own motion considered modification of sentence, that gives me some time to look at it.

And where I send a person to an institution I call up the caseworker, or warden, or associate warden and talk to them, what has the person done, what type of program has he established, how has he been working in the drug abuse program, is he seeking to get an educational program, is he participating in vocational training? Because I have been to the institutions, I know the people involved. I talk to the man running the vocational training, and is the inmate really serious about trying to be a welder, or whatever the particular job is?

And then, based upon that, I take a look at the sentence that I have imposed; and if I think it is appropriate, I modify it on my own. And before I ultimately pass sentence, I tell the prisoner beforehand that I am going to do this on my own, and that the next hundred days in that institution are particularly important to him.

I have been told by some of my brothers that I am very young and very naive because the men are going to go to prison and try to be model prisoners, and participate in every beneficial program they can; but I don't think that's bad. As I say, I don't modify most of my sentences, but I consider that possibility. And I have found that even those prisoners whose sentences were not modified, appreciate knowing that the judge who passed sentence upon him, took the time to call the institution to find out how he was doing. In some cases, from my observation, that has made a dramatic impact on that person, in that he has developed a sense of esteem and individual confidence to continue to go through the almost impossible burden of surviving in prison.

One concern I have is about the uncertainty of the time to be served. I come from the State of California where they have an indeterminate sentence, the judge doesn't determine the time to be served, the State legislature does. In cases, for example, assault with intent to do bodily harm, the term is 6 months to life. I find that absolutely shocking. To a certain extent the Federal sentences under section 4208(a)(2) of title 18 have some of the same effect, and a man becomes eligible for parole as soon as the Board of Parole determines, rather than serving the normal one-third, which is otherwise required.

The indeterminate sentence under 4208(a)(2), I think, came about because of humanitarian reasons and concern for the inmates, and I think they are splendid ideas, except they are flawed by a fatal error in the basic premise that one who does a criminal act is sick.

I have never seen any study that those in prison have more psychoses, or even neuroses, than those in the outside society; and because they start with that premise that a criminal is someone who is sick, just as someone who is ill cannot be determined to be well without professional assistance, so we cannot tell who should be released from prison until we have the expert opinion of sociologists, psychiatrists, counselors and so on. And of course, the factual matter is that it is very difficult, if not impossible, to determine who can work and succeed on the outside, based upon how one does in a prison environment because of the very nature of the environment there.

There is so much more that I could say. What we have to do is to look at the type of prison that we need, and I believe the emphasis should be on work release, study release, home furloughs, and community treatment centers. This means that our institutions have to be located in or near the area from which the inmates have come.

We need to strengthen the ties of the inmate to his family, and this I think should be taken into account in the location of our prisons.

I know there are a lot of well-meaning, and well-intentioned people who question the expenditure of moneys by the Congress for bricks and mortar. I don't question their good intentions. I don't question the good intentions of the 18th century Quakers who devised the basic concept of the modern penitentiary where a man could be isolated from corruptive influence and given time for introspection and to read the Bible. But I do say, despite the good intention of those Quakers, the penitentiaries have destroyed more men than they have saved, and degraded, rather than uplifted the people who have served in them.

I think that the "no more prison" movement is insisting on no reform unless we have total reform; I think that is unrealistic and totally irresponsible. We do not deny a miner who has black lung disease economic support on the ground that instead there should be an all-out effort to improve mining conditions and safety equipment.

Now, I have put in my statement those factors which I think should be met in each institution. There simply must be the physical safety of each prisoner. We cannot let continue the extortion, and assault, and rape that has gone on. We have to have nutritional food, adequate hygiene, recreational facilities, and, I think, very importantly, the opportunity to work for meaningful, adequate wages at a job which bears some relationship to employment opportunities outside the institution. And because we are trying to strengthen the prisoner's ties with his family, I think he should have a chance, the opportunity, to work in prison so his family won't need to be on welfare when he is incarcerated.

I think we will have to have rules that are written and widely disseminated so the prisoners know what conduct is proscribed. There have to be procedures in accordance with due process for those who violate these rules and appropriate punishment for the violation, with a reasonable relationship to the seriousness.

When prisoners obtain good time, obtain hundreds of days of good time, which means they will be released that much earlier, that is vested, in my judgment, and should be theirs, not to be taken away by a violation of a prison regulation. There should be a punishment, whether that is an additional 15 days, or what have you, but not the loss of their good time.

I don't know anything about the budget, nor am I an expert about the design of prisons, but they have to be small enough to be able to assure the safety of the inmates and give them some type of privacy that is necessary to maintain self-identity and self-esteem which they are going to need for successful release to society. That means that you have to have individual housing, and it has to be housing over which the prisoner has some control. There is no more ominous sound in the world than to stand outside a multitier group cell and hear that master lock open or close. It is an experience that those of you who have heard it, find at least I find it difficult to put into words.

I found, even going as a judge, it struck terror in my heart, it was a terrifying thing. We must remember that prison itself is such a punishment that we should not add to its crushing burden. To contrast the multitiered cells at McNeil Island with the new facilities of Pleasanton, there is a difference as between night and day.

I know there are people who say that Pleasanton is too pleasant a facility, too easy; and those who have violated the law shouldn't serve in such a setting. But I feel strongly, just the deprivation of liberty, particularly in a society such as ours that values liberty, is such a severe punishment that you really don't need more—you really don't need more. How many people have been with the Armed Forces in the loveliest parts of the country, and as soon as they were able fled from those areas just because they were unfamiliar surroundings, somewhat hostile environments, with an absence of loved ones and familiar surroundings.

So, I suggest that if we treat people like animals, they will become animals. I suggest that what we need to do is to have new institutions of the type like Pleasanton, located in the area from which the prisoner comes, where every effort is made to increase the prisoner's ties with his family and his community. I suggest that we judge a man's ability to survive in a free society, not by what he is doing in prison, but what is he doing on a work release; how is he doing on a study release; how does he handle a home furlough; how does he work out at a community treatment center. I think that gives us a better basis for probation than what he has done in the institution.

And if you believe, as I believe, that there are too many people in prison who don't belong there, serving sentences that are too long, then I think we will have moneys to provide smaller facilities for people who are going to be spending substantially less time in there, and we will have the funds available to provide work opportunity and study opportunity, home furlough and community treatment centers that I think are necessary.

I think there are prisoners, to be sure, who have to be carefully observed and handled because they have a brutal nature, but I urge that none of us who are participants in the criminal justice system should add to that number because of the design, or location, or operations of our institutions.

Thank you.

Mr. KASTENMEIER. Thank you, Judge Renfrew.

[The prepared statement of Hon. Charles B. Renfrew follows:]

STATEMENT OF HON. CHARLES B. RENFREW, UNITED STATES DISTRICT JUDGE,
NORTHERN DISTRICT OF CALIFORNIA

I am pleased to appear before the Subcommittee on Courts, Civil Liberties and the Administration of Justice and share with you my views of the effectiveness of incarceration and the desirability of the Bureau of Prisons' plans to construct a number of additional facilities. These views are entirely personal. I cannot and do not purport to speak for any other member of the federal judiciary. While my experience as a judge is limited, I have only been on the Bench 3½ years—I have spent 3 to 4 days at each of the federal correctional institutions on the West Coast as well as visited state prisons and county jails. During these visits I have talked to wardens, associate wardens, professional staff members, counselors, correctional officers, and hundreds of inmates. I have observed classification hearings, disciplinary hearings, educational programs, drug abuse programs, ethnic group meetings, work assignments, vocational training, parole hearings, and the general life in the institutions. In addition, it is impossible to escape serious thought about prisons, and their role and function, when exercising the awesome responsibility of sentencing. It is a responsibility which I have had to perform hundreds of times, alone in a virtually uncharted sea.¹

¹ Judge Marvin Frankel's *Criminal Sentences: Law Without Order*, New York, Hill and Wang, 1975, is a brilliant effort to establish some guidelines and paths to assist the judge in sentencing and is required reading for all interested in this subject.

My summary response to your inquiry is that we have placed too great a reliance upon incarceration and that we do indeed need to construct additional facilities.

Preliminarily, one might ask why this subcommittee or any other important congressional group should concern itself with the comparatively narrow issue of the role of prison in our society. Surely, there are more fundamental problems facing us, such as the energy crisis, the state of the economy, increased racial polarization, the alarming deterioration of the core of metropolitan cities, the collapse of the urban public school system, the threat of permanent ecological damage, and the specter of war in various areas of the world. Each of these demands our attention and cries for resolution. Yet it is important that we be concerned with prison—its use and role in society. Public institutions such as prisons and health and educational facilities more accurately reflect the values and standards of a country than any statements by its leaders. We need to look carefully at our prisons, study them, change them, if necessary, to ensure that they truly reflect what we believe to be our highest values and standards. Moreover, in a democratic society, prison is the most extreme authority and control which the state exercises over its citizens. We need constantly to examine this authority and control, its justification and extent, because it places in dramatic conflict so many of our basic tenets and concepts. Such an examination can give us an insight, hopefully a profound insight, as to the relationship of citizen and state, and of the dynamic tension which exists between them. Such an insight may well assist us in dealing with the other serious problems which we face.

To isolate the prison from the rest of the criminal justice system may be extremely difficult. Imprisonment cannot be viewed apart from the fundamental questions of what kind of conduct is deemed to be unlawful,² the processes of prosecution and sentencing (who, when, and what punishment), and indeed what are believed by many to be the factors influencing the rate of crime. These are said to be employment opportunities contrasted with gains from illicit activities, the speed and certainty of apprehension, the ability of the criminal justice system to convict and punish, the strength of common societal values and mores (including whether they are transmitted to successive generations), environment considerations such as family structure, the existence of viable community facilities in the areas of health and education, the relationship between law enforcement agencies and the communities in which they operate, and whether the overall society is in a state of rapid change or flux, often resulting in increased ambitions but thwarted opportunities.

While we should never be proud of or condone the existence of crime in America, we cannot ignore that there is a relationship between freedom and crime. Totalitarian societies have the lowest crime rates for a variety of reasons, in large part reflecting the absence of real freedom, both physical and intellectual. There is not going to be a serious crime problem in a homogenous society, in which the state is supreme and indoctrinates incessantly the populace with certain stated values and goals and enforces them with complete control over all aspects of society. If we truly value freedom, then we must accept that unfortunately some will abuse it, will transgress, and will violate the rights of others. True freedom means both the freedom to succeed and the freedom to fail.

In answering your inquiry, I propose to discuss the purpose of prison, considerations in determining when a person should be incarcerated and for what period, and finally, what standards should be required of every prison and whether they can be met by the existing facilities.

Before we can evaluate the effectiveness of prison, we first must examine its purpose or function.³ Generally there are four justifications given for imprisonment. Any single case may involve one or more of these goals. They are:

1. Punishment. This is often ignored but today it appears to be increasingly recognized as a legitimate purpose for imprisonment. The continuation of any society requires that one who violates its basic tenets must pay a penalty. This has been so throughout recorded history and will doubtlessly remain a viable end.

² We need to examine carefully the question of determining activity which we find morally offensive, such as public drunkenness, adultery, prostitution, etc. to be criminal activity.

³ The single most valuable text which I have encountered on the whole subject of prisons is Dean Norval Morris's *The Future of Imprisonment*, University of Chicago Press, 1974. It is an extremely thoughtful and significant book, and the first three chapters in particular are essential reading in this field.

2. Deterrence. Both the inmate should be deterred from repeating his criminal activity and potential violators should be dissuaded from similar conduct.

3. Isolation. While doubtless a part of punishment, it is also a goal of imprisonment that certain persons must be kept from the community for its protection.

4. Rehabilitation. An inmate should develop such skills and self improvement so as to permit him to assume a responsible role when he returns to the community. While rehabilitation, superficially at least, appears to serve the most humane purpose, there is an increasing awareness that that purpose is deceptive, and imprisonment for the purpose of rehabilitation alone is not only unworkable but inhumane.

It is my strong view that there should never be imprisonment for the sole purpose of rehabilitation, because that process requires genuine willingness on the part of the individual to make whatever efforts or changes may be necessary. It cannot be extorted or coerced, and that is precisely what imprisonments for that purpose alone seeks to accomplish. There will be, of course, in any prison a number of poorly educated, addicted, psychologically unstable, or economically deprived persons. They should be provided assistance and support in these areas, but they should not be sent to prison for those reasons alone.

If none of the other ends are to be served by the imprisonment of an individual, then he should not be imprisoned but given an opportunity to participate in a rehabilitative program, structured for his individual needs in a nonprison environment in the community in which he lives. Such a program would be substantially less expensive. The costs of imprisonment of an individual for one year range from roughly five to fifteen thousand dollars depending upon the institution. More importantly, the chances of success of rehabilitation are far greater when the program is not forced or coerced.

Who should be imprisoned? Here, of course, lies the heart of the judge's dilemma. How does he protect society without destroying an individual? Based upon my visits to federal institutions and my discussions with wardens and their staffs—and I might say here that I have been extremely impressed with the professional dedication and concern which they have demonstrated—every person with whom I have spoken has told me that we have men in those institutions who should not be there. While the number of these men varies from person to person, I have never heard the estimate drop below 50%. I give these estimates great weight in light of their source. Moreover, in my discussions with certain inmates and subsequently reading their files, I am persuaded there are men in prison who should not be there in that none of the legitimate purposes of imprisonment are being met. There is an over-reliance upon incarceration as a punishment. Its advocates have promised too much, overlooking the meager results obtained to date. There are a rich variety of sentencing alternatives available which should be considered before imprisonment is determined to be appropriate.

Before a person is imprisoned, the sentencing judge should be assured that a lesser sanction would not be appropriate. First, there should be a consensus within the society that imprisonment is appropriate for that offense, e.g., it would be highly inappropriate to imprison one for a minor traffic violation. Second, imprisonment is necessary (i) to protect the public from further criminal activity by that person, or (ii) to deter that person or other potential violators, e.g., income tax law violators, or (iii) because any other sentence would unduly deprecate the seriousness of the crime, or (iv) because that person has failed to respond to less serious sanctions imposed previously.

All agree on both economic and humanitarian grounds that a prisoner should not be in prison any longer than necessary, but how is this determined? There are some who believe that one of the reasons for the increase in crime in America—and there is an increase in crime in America, no matter whose statistics are used⁴—is that we have been too lenient in the length of sentence imposed upon prisoners. Yet before such a position can be seriously considered, several basic questions need to be answered. First, is there any reliable data which shows that the length of a sentence, in contrast to the speed and certainty with which it is imposed, is a greater deterrent? Second, is there any reliable data which shows that sentences in this country, which on the whole are longer than those in Western Europe, have had a greater deterrent effect? Third, how does one explain that almost all of the wardens and prison staff members with whom I have spoken are of the opinion that present sentences are too long?

⁴ See the recent report by Attorney General Levi that crime increased 18% for the first quarter of 1975 over the same period in 1974, which in turn represented an increase of 15% over the same period in 1973.

While I cannot suggest any specific test or standard, I firmly believe that the sentences currently imposed are too long and should be substantially reduced.

One of the chief complaints which I have heard from inmates in federal institutions and from prisoners in California penal institutions is the uncertainty of the time to be served. Humanitarian considerations in penal reform in California led to the indeterminate sentence where a defendant upon being found guilty is sentenced by the court to the term proscribed by law which in some cases range from six months to life, e.g., a conviction under California Penal Code § 245(a) (assault by means of force likely to produce great bodily injury). Similar treatment, in part based upon some of the same considerations, is afforded in federal institutions by a sentence under title 18 U.S.C. § 4208(a)(2) which makes the prisoner eligible for parole at such time as the Board of Parole may determine. This is in contrast with the normal requirement that he serve at least one third of his sentence. The indeterminate sentence arose from a genuine concern for the inmate. It is a splendid idea flawed only by a fatal error in its basic premise—that one who does a criminal act is sick. The rationale for such a sentence is that since only medical professionals can determine if one who was physically ill has recovered, similarly it requires professional judgment of penologists, psychiatrists, psychologists, sociologists, etc., to determine whether an inmate is well enough to return to society. Even assuming that one who does a criminal act is sick, which is unsupported by any study,⁵ and contrary to my understanding of basic human nature, it is not a sickness such as a physical ailment where there can be a coerced cure such as the setting of a bone. The illness, if there be one, would be of a psychological or mental nature, and there appears little dispute that there can be no coerced cure for this type of illness.

The length of sentence should be fixed. The prisoner should be advised at the earliest possible opportunity of his estimated time of release.⁶ He should be told, for example, that if he follows the rules of the institution and is a good prisoner, he will serve two years; if he does not, he will serve three years.

While this is a topic which needs to be reserved for future considerations, there needs to be a re-examination of the relationship between the sentencing judge and the Board of Parole, which in most cases has practical responsibility for two thirds of the sentence imposed. There are cases where a prisoner's time has been extended for a substantial period because of a comparatively minor violation of prison rules. Whatever good time a prisoner has earned should be vested. If there is a violation of rules, the prisoner should not lose his good time but be given the appropriate sanction, e.g., fifteen days. Too often the release date is, or at least has been, dependent upon the prisoner's participation in educational or vocational training and other rehabilitative programs. The sentence should not vary depending upon such quasi-coerced participation. To alter the time to be served because of such participation ensures that it will not be voluntary, which is essential if it is to be effective. Moreover, participation in such programs in the rigidly structured and controlled prison environment does not give any real basis for judging what a prisoner will do in a free society. It is for this reason, as well as to strengthen the ties of the prisoner with his family and community, that there should be greater reliance upon work release, study release, home furlough, and half-way houses or community treatment centers. Experience with these programs will be of more assistance to the prisoner in preparing him for ultimate release to society.

Once there has been a consensus as to the goals of prison, the persons who should be incarcerated, and the length of time they should serve, we should have a better idea of the considerations to be taken into account in designing the type, location and operation of a prison. While I am not familiar with any of the details of the Bureau of Prisons' proposed construction budget, I have no doubt there is a current need for prisons and that need should be met by smaller and better designed institutions along the lines discussed below. There has been a number of well publicized attacks on the very confluence of prisons and a demand that there be no further expenditures for "bricks and mortar". It is argued that instead there should be an all out attack against ignorance, poverty and prejudice, which are asserted to be the causes of crime. It is urged that expenditures should be for rehabilitation and support programs, not for physical

⁵ There is absolutely no evidence that there is a higher rate of psychoses among inmates than the rest of society or indeed, I suspect, even of neuroses.

⁶ Both the Board of Parole's new guidelines and recent decisions of the California Supreme Court now require the establishment of a fixed term within a reasonable time. *People v. Wingo*, 121 Cal. Rptr. 97 (1975); *In re Rodriguez*, Slip Opinion, June 30, 1975.

plant.¹ Based upon my personal observations, there is an urgent need for substantial improvement in existing facilities and a pressing demand for new facilities. I do not question the sincerity or the good intentions of anyone who argues to the contrary. Nor do I question the good intentions of the 18th Century Quakers who conceived the concept of the modern penitentiary, a place where a person could be removed from corrupting influences, engage in introspection, and read his Bible and receive counsel therefrom. However, despite their good intentions the penitentiaries they spawned have destroyed more men than they have saved and have degraded rather than uplifted the persons who served time in them. Even assuming there is some direct correlation between the factors claimed to cause crime and the rate of crime,² the no-more-prison movement appears to insist on no reform unless there is total reform. At best that is totally unrealistic. At worst that is the height of irresponsibility. One does not deny a miner with "black lung" disease medical assistance and economic support on the ground that instead there should be an all out effort to improve working conditions and safety equipment.

In consideration of the improvement to the existing facilities and the construction of new facilities, there are certain basic standards which should be met in the design, location and operation of every prison facility:

1. The physical safety of each prisoner must be assured. They should be designed to prevent to the maximum extent possible assault, extortion, theft, or rape by staff or inmates. This cannot be met in many existing institutions.

2. There must be nutritious food.

3. Adequate hygiene, including medical and dental care, must be provided.

4. Recreational facilities must be provided.

5. There must be an opportunity to work for meaningful wages at a job which bears some relationship to employment opportunities outside the institution. Since we should seek to strengthen the prisoner's ties with his family, if he has one, and his sense of responsibility for them, he should have the chance to work so that his family need not be on welfare while he is in prison.

6. Each institution must have reasonable rules and regulations with respect to the conduct expected of its prisoners. These rules and regulations must be written and disseminated widely throughout the institution. There must be written procedures complying with due process established for those charged with violation of these rules. There must be appropriate punishment for the violation, which bears a reasonable relationship to its seriousness. Because imprisonment is a supreme sanction applied for serious violations of the law, the institution itself must be meticulously fair in observing its rules and regulations governing prisoners.

I do not claim to be an expert in either the design or operation of a prison, but I am of the opinion that many of the existing federal institutions are too large to ensure the physical safety of inmates and afford some modicum of privacy necessary for an inmate to be able to maintain that sense of self-identity and esteem necessary for successful release to society. This requires that there be individual housing units over which the prisoner has some control. The group cells need to be eliminated not only because of the threat to the prisoner's security but to the institution's as well. I have been told that today there should not be any institution which has more than 500-600 inmates, and possibly that is too high a number. This factor alone requires modification of existing facilities and the construction of new facilities.

The dramatic difference between the multi-tiered cells at McNeil Island, which no modern zoo keeper would even contemplate using, with the new and attractive youth facility at Pleasanton is almost too great to comprehend. There are some who may visit Pleasanton and urge that it is too luxurious, too pleasant a place to stay for one who has been found guilty of violating the law. That facility is really a model and is substantially above the minimum standard which would be required. If we believe in a free society and value liberty itself, then we must

¹ See Jessica Mitford's *Kind and Unusual Punishment: The Prison Business*, New York, Alfred A. Knopf, 1973; American Friends Service Committee, *Struggle for Justice: A Report on Crime and Punishment in America*, New York, Hill and Wang, 1971, a recent report of the National Council on Crime and Delinquency.

² Professor James Q. Wilson in *Thinking About Crime*, Basic Books, Inc., New York, 1975, has questioned this widely cited assumption based upon an analysis of statistics during the 1960s which indicate a substantial growth in the crime rate in the face of increased employment and greater expansion of civil rights. Professor Wilson suggests a better comparison might be made between the economic benefit from and the availability of legitimate employment with the gains of criminal activity and the likelihood of detection and punishment.

remember that imprisonment alone is extraordinary punishment. We must not unnecessarily add to its crushing burden. To give a homely illustration, many young Americans served in the Armed Forces in lovely parts of the country on the West Coast; for example, Fort Lewis near Seattle and Tacoma, Washington; Fort Ord near Monterey, California; various Navy and Marine bases near San Diego; El Toro near Laguna Beach; and various Naval and Army bases in the San Francisco Bay Area. Yet the partial deprivation of their liberty, coupled with the absence of loved ones and familiar surroundings, and a strange and sometimes hostile environment, made many of these young men dislike their bases and the surrounding areas from which they fled at the earliest opportunity. Imagine then how grim today is the very fact of imprisonment in correctional institutions in those same locations. The more freedom and privileges one enjoys in society outside an institution, the more punitive imprisonment becomes.

One extremely important factor in location of a prison is that every effort should be made to strengthen the prisoner's ties with his family and community. This means that to the maximum extent possible the prisoner should be incarcerated in or near the community from which he came. The prisoner's ties with the outside community can best be maintained by liberal visiting rights, mail privileges restricted only in case of contraband or prison security, access to material published outside the institution, wider use of study release programs, work release programs and home furloughs, conjugal visits, and community treatment centers. Location of an institution in or near population centers will also increase public awareness of and involvement with a prison. Whatever we do, we can never forget those in prison.

If, as I believe, there are persons in prison who do not belong there and serving sentences which are too long, then if we reduce the numbers in prison and the time they serve, there need not be that much extra expenditure required to ensure that there are appropriate institutions properly located which do not unnecessarily destroy the prisoners within them. There should also be sufficient funds available to provide adequate wages for working prisoners, suitable rehabilitation programs both inside and outside the institutions, increased work and study releases, increased home furloughs, and more community treatment centers.

Hopefully we have learned enough about psychology and human behavior to realize that if we treat human beings like animals, they will become animals. While there are some prisoners who need to be carefully observed and handled because of their brutal nature, we should not add to their number merely by the physical condition, location and operation of our penal institutions.

Mr. KASTENMEIER. Judge Lasker, I don't know whether we should ask you to start, or not; we have another vote.

Judge LASKER. I would be glad to start. Mr. Chairman, and if what I say intrigues you enough, if you want to come back, so much the better. I really think I will get my point across in a short time. You may have questions, so, I am at your service.

Mr. KASTENMEIER. We will need to return for the purpose of asking questions of you both.

So, I think at this point, Judge Lasker, I will ask you to start, and we will probably have to interrupt you.

Judge LASKER. I understand that possibility.

TESTIMONY OF HON. MORRIS E. LASKER, JUDGE, SOUTHERN DISTRICT OF NEW YORK

Judge LASKER. Let me say this before I start, or at the start, if I had known Judge Renfrew before, or had known what his views were, I would have said there was no point in asking me to come.

First of all, he has done a very comprehensive job in discussing all the elements of the correctional process as seen from the bench; and second, his views are nearly identical to my own as far as the philosophy of sentencing is concerned.

I am quite encouraged to find a fellow judge from a different part of the country, whom I have not known before, who does look at things that way, but I share his statement that it would be a mistake for the committee to assume that all judges feel like we do about sentencing. However, I will report on the basis of a somewhat larger body of experience than Judge Renfrew, 7 years now on the Federal bench in New York City, that I do think more and more judges are questioning the practicality, usefulness, productivity of long imprisonment as a correctional procedure.

I certainly, like Judge Renfrew, do advise against it, and I do think that is relevant to the decisions you have to make. Having said that, I also continue to believe—as I assume does Judge Renfrew and all of us who are working in the field—as distinct from theorizing, and maybe there is a lesson to be learned there, too, we must learn from theorists, but they must learn from us, too.

I continue to believe that prisons are going to be necessary for at least the short, foreseeable future, whether it is for the purpose of some cases of keeping violent, or particularly destructive, people off the street so they can't commit further crimes; whether it is occasionally, where the crime is lurid, for the purpose of punishing and making it quite apparent to the public that there is a social stigma to that kind of activity. Now, this leaves for your committee, as I see it, two major questions.

The first one I really wasn't concerned with until I was advised that it was a matter pending before you; that is, who should run the institutions that are existing and that will be built.

I have absolutely no doubt in my mind that insofar as Federal offenders are concerned, the Federal Bureau of Prisons should continue to operate. I say that because I have had practical experience. I come from Congressman Badillo's part of the world, and it's all symbolized for me, for example, in the difference between the new Federal house of detention that has just opened, or will be opened next to my courthouse, and the parallel State facilities in New York.

Mr. KASTENMEIER. Judge Lasker, perhaps if you would speak into the microphone, those in the back will have a chance to hear you.

Judge LASKER. I'm sorry, I didn't realize that that was a problem.

So, to me there is no question that the Federal Bureau of Prisons should continue to administer the facilities in which Federal prisoners are housed because the standards of the Federal facilities are infinitely better than the State facilities that I know.

I don't want to make an overgeneralization; there are some good State facilities, and there may be some very poor Federal facilities, although those that I know, in my part of the country, are quite satisfactory.

I hear the buzzer go, I don't know if you want to break at this point, or whether I have a little more time.

Mr. KASTENMEIER. Under the circumstances, we will recess, and are asking you to bear with us one more time because in addition to your concluding words, we want to ask both of you some questions and have some colloquy with you.

The committee stands in recess for 10 minutes.

[Whereupon, at 2:10 p.m., a 10-minute recess was taken.]

Mr. KASTENMEIER. The committee will come to order.

Judge LASKER. Excuse me for anticipating. I'm used to gaveling myself. [Laughter.]

As I was going to say, certainly. I can report to New York friends that Congress indeed earns its inadequate pay by voting five times a day.

In any event, I have a few points left that I would like to leave with you before you ask us questions.

I think I talked about the issue of who shall administer prisons for the Federal prisoners who are incarcerated, and I said I feel quite strongly that it should remain with the Bureau of Prisons.

I also want to stress my strong feeling, which is concurrent with that of Judge Renfrew, and I think with the Bureau of Prisons, as well as Congressman Badillo, that it is a very important thing that facilities are built as close to population centers as possible. I conceive of nothing that is more important to the maintenance of prison morale and the continuity of the prisoner's—shall we say, spiritual and emotional, whatever it is, actual life within his community, than to preserve family ties and ties with friends; and it is a very serious logistical, and economic problem for the people, at least, in the big cities who are poor, to visit their relatives when they are located even as far away as Otisville, N.Y., which is a place I know very little about, even though I must live near it.

Now, two other points I would like to stress, before I stop. One is that I think there is a crying need for the improvement of programs for prisoners, even in the Federal facilities. I believe people are trying very hard, there are some good token programs and there are some better than token programs; but on the whole, it seems to me that there are serious inadequacies.

I realize it will be harder, not easier, to provide augmented programs in the smaller institutions which I think most people favor today. However, I am convinced there is nothing more useful to the prisoner and society than providing the basis for skills and interest, to alleviate the terrible boredom of prison during the period of custody, and continue to benefit him and his community after his release.

It also seems to me terribly important to spend more money on the preparation of prisoners to reenter society, and their actual reintegration, including placement in appropriate jobs when released from custody. Prison is a naturally sheltered environment; it places no demand on the prisoner to exercise responsibility, or to make the manifold decisions that free men are called upon to make every day. On a dollar-to-dollar basis, the return would be far higher. I would think, if a prisoner were trained to assume responsibility, and to make decisions for himself, than to be simply released, only to return as a result of another conviction and sentence.

Now, the techniques for this, I know, are difficult to shape, and create, and evolve, but we are beginning to see some of them, the halfway house, the furlough, the probation and creative terms for community services, or something of that kind: in addition to which perhaps there may be improvement in self-government, grievance committees, and other things of that kind within the prison administration itself.

Finally, I would like to plead for increased education of judges. Under present circumstances, Federal trial judges are woefully under-informed about the nature and range of Federal correctional institu-

tions, and the actual effect on prisoners of the sentences which they themselves impose, partly because of the size of the country; partly because Federal judges commence trying cases soon after they are commissioned; and partly because of the heavy caseload which we are carrying today.

Most Federal judges rarely have an opportunity to visit prisons. Although it may be outside the jurisdiction of your subcommittee, I earnestly suggest that Congress in some way formally acknowledge that it is a good practice for Federal judges to visit representative Federal correctional institutions before commencing service, and thereafter at appropriate intervals.

Mr. KASTENMEIER. May I just interrupt you to say that actually that is not out of the jurisdiction of this subcommittee because we are concerned in addition to prisons with Federal courts. This, specifically, would relate to some as a recommendation.

Judge LASKER. Well, I am delighted, Mr. Chairman, to know that.

Mr. KASTENMEIER. Potentially to implement something like that.

Judge LASKER. I think that a lot of my colleague judges, for example, would be interested to visit Federal institutions and don't do it partly because they think, "Well, I should be sticking in the courthouse, doing my job; I shouldn't run up bills on junkets"—though goodness knows a trip to a Federal prison is hardly that.

I think if the Congress made it known to the Federal judiciary that you felt, as I should imagine you would, that this is just as important a part of our job as trying some of the cases that come before us, it would encourage us to go along on that leg.

Finally, the Congress, in my view, should authorize the institution, or encourage the improvement—if there is one—of a program of research to follow up the behavior of Federal convicts, both those who are on probation, and those who have served prison terms. Its results, I would imagine, would furnish information which would enable the Bureau to test the validity of its programs, and help judges to evaluate their sentencing practices. Under present circumstances the judges know nothing of the effect of the sentence which they impose, except to the extent whether a man behaves well in prison or not, which everybody says isn't much of a guide as to his behavior when he gets out.

At best, sentencing is a rudderless activity, while data collected from such research might give us a more reliable compass.

These are the items which floated to the surface of my mind in trying to prepare remarks for you in the short time since you asked me to come down here, and I hope they will be of some help to you in the very important decisions you have to make.

Mr. KASTENMEIER. Thank you, Judge Lasker, for your remarks; they are indeed helpful to us.

[The prepared statement of Hon. Morris E. Lasker follows:]

STATEMENT OF HON. MORRIS E. LASKER, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF NEW YORK

Mr. Chairman, Honorable Members of the Committee, your invitation to members of the federal trial bench to express their thoughts as to the budget of the Bureau of Prisons suggests an understanding of the interrelatedness of our roles in the correctional process. A judge cannot be, and certainly I make no pretension to be, sufficiently versed with the dollar items in the proposed budget to make any intelligent comment on details. However, the correctional process is

a continuum, and the acts of judges in sentencing criminal defendants have a significant impact on the nature of the job which the Bureau of Prisons must fulfill and on the facilities which it needs to do that job. Accordingly, your decision as to how large the Bureau's budget should be and what priorities it should reflect, may be influenced by the sentencing philosophy of trial judges. I am aware that what I have to say on that subject does not by any means represent the view of all federal judges. Indeed, so far as I know, no study has been made of the views of the sentencing philosophy of federal trial judges as a group but that is a problem for another day. In the meantime, I believe that many judges do share my general approach and that you may wish to take it into consideration in reaching your conclusions.

The major question for a sentencing judge, and the one which most clearly influences the task of the Bureau of Prisons is whether a convicted defendant should be sentenced to prison at all. I suggest the following premises as guides to that fundamental decision.

First: As Thomas Jefferson observed that the best government is the least government, the best sentence involves the least imprisonment. There are a number of reasons why this is a sound principle.

In the first place prison is a harsh and stigmatizing punishment, and in a civilized society harsh and stigmatizing punishment ought not to be imposed unless it is necessary for society's protection. We need spend little time reviewing what life in prison is like. Karl Menninger, whose long life devoted to the improvement of corrections has made him as knowledgeable a witness as anyone in the country, describes it best: (The Crime of Punishment, Page 73) "An atmosphere of monotony, futility, hate, loneliness, and sexual frustration pervades the dank dungeons and cold hangars like a miasma, while time grinds out weary months and years." Chief Justice Burger in his address to the National Conference on Prisons in 1971, put it vividly: "Playing cards, watching television or an occasional movie with nothing more, is building up to an expensive accounting when these men are released—if not before. Such crude recreation may keep men quiet for the time, but it is a quiet that is ominous for the society they will try to re-enter."

Moreover, prison is costly: costly in every way. It generally costs members of the community more to maintain a man in prison than it costs to send a child to college. It goes without saying that when a man is in prison terrible costs are imposed on his family aside from the loss of income. Spouses lose the emotional support and companionship of spouses, and children the emotional support and training of parents, not to mention the pain of being marked as a prisoner's child.

In addition, there is generally the further cost to society of sustaining a prisoner's family on welfare and of foregoing the production and taxes which it would otherwise receive from a working member of the community. As the ABA Minimum Standards for Criminal Justice on Sentencing Alternatives suggest (Page 79): "Use of the community, in as normal a setting as is compatible with correctional goals and for as many offenders as is compatible with public safety, presents a far more encouraging picture of the future than does traditional incarceration. The promise which it holds is more effectiveness at less cost."

Finally, the evidence strongly indicates that imprisonment encourages rather than discourages recidivism. It appears to do so by teaching offenders bad habits in an atmosphere of criminal ferment, by embittering large numbers of prisoners and, in a significant number of cases, by impairing social personality. On this point the ABA Study comments (Page 62-3) that the President's Crime Commission was not "breaking new ground when it observed that 'removing a man completely from the community' may impede his successful reintegration later, and that atmosphere, associations, and stigma of imprisonment may reinforce his criminality." Menninger reports that (Pages 74-5) "The frustration of the prisoner's ability to make choices, and the frequent refusals to provide an explanation for the regulations and commands descending from the bureaucratic staff involve a profound threat to the prisoner's self-image because they reduce the prisoner to the weak, helpless, dependent status of childhood."

If these premises are correct, then the following criteria should guide us in deciding whether to impose prison terms.

1. A sentence of unconditional imprisonment should be imposed as a last resort. It should be imposed if, and only if, probation, partial confinement or other pos-

sibilities which permit employment and the preservation of social ties will not do the job.

2. First offenders should not be imprisoned except in cases of "shocking crimes" or where failure to imprison would depreciate the seriousness of the offense.

3. Perpetrators of victimless crimes should not be imprisoned without substantial evidence of their connection with organized crime, and then, of course, only on the same criteria as apply in cases of offenders generally.

4. Although it is repetitive to say so, it merits repetition: the shortest term that will do the job is the best term. On this point the ABA Study (Paragraph 2.1(d), Page 48) has given its imprimatur to a proposition universally recognized by students of American sentencing; "... that in many instances in this country the prison sentences which are now authorized, and sometimes required, are significantly higher than are needed in the vast majority of cases in order adequately to protect the interests of the public." The Study, therefore, recommends that: "Except for a very few particularly serious offenses" and except in very special circumstances the "maximum authorized prison term ought to be five years and only rarely ten." Indeed, the ABA proposes that total confinement be imposed only where it is necessary to protect the public, or the defendant is in need of treatment more effectively provided in a place of total confinement, or it would unduly depreciate the seriousness of the offense to impose a weaker sentence.

If these views are sound then criminal sentences should as often as possible involve alternatives to total imprisonment: for example, increased use of fines, the obligation to perform community work, service of sentence on weekends and service of sentence in institutions such as Community Treatment Centers which permit the defendant to work gainfully while in custody. To the extent that judges make increasing use of such alternatives they will presumably decrease the need for prison beds. But one cannot predict what the statistical impact of such a sentencing philosophy might be and, in spite of the convictions I have expressed, it is perfectly obvious that there will continue to be substantial need for custodial institutions for some time to come—sometimes to keep "the fear-some few" off the streets so that they cannot commit crimes; sometimes, where the crime warrants it, to punish; and sometimes for general deterrence. You are therefore faced with the issues of who should administer the institutions already in existence and those to be built, and what priority is to be accorded to various types of expenditures.

In my mind there is no question that the Federal Bureau of Prisons should continue to administer the institutions which hold federal defendants. The standards which I have observed at the Federal Correction Centers at Danbury, Connecticut, Morgantown, West Virginia, Lewisburg, Allentown, Pennsylvania, and the new Federal Detention Center in New York City are head and shoulders above the city and state institutions with which I am acquainted. Occasionally, the facilities and programs of local institutions may equal those of federal installations, but the living conditions are generally lower. For example, the contrast between the cleanliness, comfort and decency of the new Federal House of Detention in New York City and a local facility in the same city such as the recently closed Manhattan House of Detention, commonly known as the Tombs, makes the point amply clear to any one who has viewed both facilities. It illustrates not simply that the federal government has the funds to do a good job but that it understands that decent and humane conditions are a minimal requirement if there is to be any hope that imprisonment may yield something better than increased recidivism.

There remains the important question of how limited funds should be allocated. I suggest that you consider three subjects in determining your priorities: the type and location of new federal prisons, programs for prisoners and increased education of judges.

The types and location of new federal prisons. The major disadvantage of federal institutions is that the size of the country and the relatively small number of federal offenders generally assure that prison is far from an inmate's home, and a large and necessarily impersonal institution. The long distance from home inevitably curtails family visits, since it is time consuming and a great financial burden for most people to visit an incarcerated relative. It is perhaps obvious to state that this factor has serious negative effects on prisoner morale and does nothing to improve anti-social attitudes. The Bureau and the Congress should give serious thought to construction of relatively small institutions spotted around the country as near as feasible to population centers.

Programs for prisoners. Although physical conditions have been commendable at the federal institutions I have visited, the programmatic activities are too

limited to be meaningful. Existing industrial and education programs are all to the good but they should be substantially broadened in number and scope. Putting aside the question whether prisoner involvement in work or education should be required or voluntary, the opportunities for such activity should be greatly enlarged. Of course it will be harder, not easier, to provide augmented programs at the smaller institutions I have recommended. However, I am convinced that nothing can be more useful to the prisoner and society than providing the basis for skills and interests which alleviate boredom during the period of custody and continue to benefit him and his community after his release.

More money should also be spent on the preparation of a prisoner to reenter society and his actual reintegration, including his placement in an appropriate job when released from custody. Prison is an unnaturally sheltered environment. It places no demands on the prisoner to exercise responsibility or to make the manifold decisions that free men are called upon to make every day. On a dollar for dollar basis the return would be far higher if a prisoner were trained to assume responsibility, and to make decisions for himself than if he were simply released only to return as a result of another conviction and sentence.

Increased education of judges. Under present circumstances, federal trial judges are woefully underinformed about the nature and range of federal correctional institutions and the actual effect on prisoners of the sentences they impose. Partly because of the size of the country, partly because federal judges commence trying cases soon after their commission and partly because of the heavy caseloads which they carry today, most federal judges rarely have an opportunity to visit federal prisons. Although it may be outside the jurisdiction of your sub-committee, I earnestly suggest that Congress in some way formally acknowledge that it is good practice for federal judges to visit representative federal correctional institutions before commencing service and thereafter at appropriate intervals.

Moreover, the Congress should authorize the institution of a program of research to follow up the behavior of federal convicts, both those on probation and those who have served prison terms. Its results should furnish information which would enable the Bureau to test the validity of its programs and help judges to evaluate their sentencing practices. Under present circumstances, the judges know nothing of the effect of the sentences which they impose. At best sentencing is a rudderless activity. The data collected from such research might give us a more reliable compass.

I hope that these observations will be of some value in assisting you to make the important decisions at hand.

Mr. KASTENMEIER. At this point I would like to reverse the order of questioning, and yield to the gentleman from New York, Mr. Pattison.

Mr. PATTISON. I will address the questions to both, or either one of you. I guess in the first case I will address it to Judge Renfrew.

Your practice of calendaring a sentence for a hundred days after sentencing, does anybody else do that, that you know of?

Judge RENFREW. I don't know of anyone else that does it. When I come back to the Judicial Center I always start my comments with criminal matters; and I haven't been told that anyone else is practicing it.

Mr. PATTISON. Is that a practice that might be useful to have as some sort of a mandatory practice?

Judge RENFREW. In my judgment, yes.

Mr. PATTISON. How about feedback on how people you sentenced do, is that an automatic feedback at all?

Judge RENFREW. No.

Mr. PATTISON. They never tell a judge when a prisoner commits an offense in jail, for instance; they don't automatically send a report to you?

Judge RENFREW. I wish that Mr. Carlson was here. I do get something from the probation or parole people. I have asked to be on—I don't know whether it is a mailing list, or whatever, but whatever information they receive with respect to one of their persons. I have

asked to be included and I do get material; not from the Bureau of Prisons, but from the probation people, with respect to violations of probation and of parole, even before they come up for revocation.

Judge LASKER. We all get the violation of probation because when one violates probation he is brought back before the judge for sentencing.

As far as I know, and since it doesn't occur in the southern district of New York, I assume it doesn't occur as a matter of course, but we do not get any information automatically with regard to the behavior of the men and women we have sentenced.

Mr. PATTISON. That seems to me kind of like building an automobile, and never having any information as to how it is running.

Judge LASKER. Well, it is. Of course, the reason is an historic one, I think, which is that the function of the correctional processes until recent times have been quite separate; the judge imposed sentence, and that was the end of his job; then it went on to the prison people, the sheriff, or warden, or whoever it was; and then, if you went on to parole, which is a relatively modern invention, that part of the job was being taken care of by the probation and parole people.

I think we should think through those lines of authority. I don't think the judges should continue to exert authority indefinitely, but I think there should be a greater integration than there is at the present time.

Mr. PATTISON. I tend to agree with you that the judge shouldn't have much to do with treating of the prisoner once he is sentenced, but just in terms of making some kind of judgment, whether your sentence has been effective because if you don't get that kind of information, you keep making the same mistake over and over again.

Judge LASKER. That's right, and I know I have done it.

Mr. PATTISON. How about the uniformity of sentencing, is there a manual, a standard? In the Army you have a court-martial manual, you have a table of punishments, and it's really a cut and dried sort of thing. You have discretion, but it's fairly cut and dried, you give 3 months, 6 months; two-thirds pay, and different kinds of things for different offenses.

Is there any kind of a standard, a guide for sentencing judges?

Judge REXFREW. Well, in the district from which I come, the northern district of California, as part of the presentence report, we have the probation department include the statistics from the Bureau of Prisons with respect to the average sentence imposed for this type of violation; and the overall actual time served for that type of violation, that is available to the sentencing judge. We have made it a rule of our court that that be included in every presentence report.

I don't know whether they have it in the southern district.

Judge LASKER. Now, the advantage of these get-togethers is that we find out techniques in other parts. We do not have such a rule in the southern district of New York. We have available to us—and we are the largest trial court in the country—the record of sentences for a reasonable period of time on the part of all the judges of the court, with regard to particular kinds of sentences.

But I must say that the record is nevertheless one of discouraging disparity, about which we are all discouraged. You ask if there are any standards. Of course, the U.S. Code does specify what the penalty

range may be, but the range is so great that it doesn't help us very much.

A study was done by the Federal Judicial Center, of the—I should back up for a moment on that. Last year the Federal Judicial Center did a study in the following manner, they issued presentence reports of actual cases—on a theoretical basis—to 50 trial judges of the second circuit which consists, as you know, of New York, Connecticut, and Vermont; and asked them each to impose the sentence they would have imposed. The results were, again, discouragingly disparate.

Mr. PATTISON. They gave you a theoretical case?

Judge LASKER. All the information you would have if you were going to sentence a man; which also means that all 50 of us were sentencing the same man at the same time. We were most disappointed to find out that that's the way it went.

It proved to be true even with regard to the eastern district of New York, which I mention because in the eastern district of New York they have sentencing panels. One judge is legally responsible for imposing the sentence, but by rule of the court they confer with two other colleagues before the sentence is imposed. And even with that concept, it still wasn't very much better.

Mr. PATTISON. When you make a prison visit, if you make a prison visit, that is strictly on your own, I take it?

Judge LASKER. Yes.

Mr. PATTISON. You are not invited on an annual basis? I know you are welcome.

Judge LASKER. There is no formal program of any kind, that I know. I have visited Danbury, Conn. several times, which is, of course, near the southern district; and one of those was during the course of a sentencing institute of all of the trial judges of the first and second circuits. But that was just by chance.

Mr. PATTISON. Would it be useful to have some sort of legislative scheme on prison visits, at least to have, perhaps, each judge invited on some sort of a rotating annual basis, or some requirement, perhaps, that they do make a prison visit at least once a year?

Judge LASKER. I think judges ought to visit a suitable number of times a suitable number of prisons. But I think it would probably be best to start out, or I would like to see it start out, by Congress indicating that is what judges ought to do, without making it mandatory. But if the experience was not favorable, I would be in favor of making it mandatory.

Judge REXFREW. The first time I proposed doing that, in clearing my travel vouchers through the administrative office, there was some question whether that was something that was really necessary. And I called and said: "I want this to be as carefully put as you can." but when they wanted it in writing, I said: "I want you to know that I am going to take that to my Senator and Congressman to make sure that you are on the line that my going to prisons is not part of my job."

And, of course, put to them in that way, they bucked down. But clearly, the administrative office, at least 3 years ago, had some question about this being part of a judge's job.

Mr. PATTISON. That was going to be my next question. Your out-of-pocket expenses ought to be paid for; and if there is any problem with that, there should be legislation.

Judge RENFREW. The problem was cured.

Mr. PATTISON. In your particular case, but perhaps not for others.

Judge LASKER. The problem was cured, and I think the administrative officer probably wouldn't make too much of a fuss about individual cases, but if this really became wholesale practice, I think there would have to be an authorization for it, there wouldn't be enough money.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. I have just one question. The basic question here is, notwithstanding the fact that both of your testimony tends to be supportive of the Federal Bureau of Prisons' building program in a general sense. Still, I observed that you both tend to feel that there are many in prisons who ought not be there, and sentences are too long.

What I am saying is, if one gives effect to what you say, or what Judge Lasker suggested in his statement, that increased use of fines, obligation for community work, et cetera, should be utilized, other alternatives be used, the request of the Bureau of Prisons ought to be reviewed downward with respect to new facilities because it is based on a stable, or increasing prison population which presumably, by your testimony, would diminish, if in fact what you have said would be carried out.

Judge RENFREW. Well, there are two things. If what I said is carried out—and I am only one of hundreds of Federal judges—and, as Judge Lasker said, not all share my view.

Second, I am very serious when I say that I think men should work in prison for reasonable wages at a job that bears some meaningful relationship to opportunities outside of prison. That is going to take money.

So, I really think that I don't see, really, a possible reduction in the budget, but just a reordering of how it is to be expended.

Judge LASKER. Well, on the first point, of course, I agree with Judge Renfrew that there are many other judges who are not going to follow our advice unless Congress amends the law and decreases possible maximum sentences; and certainly, the executive branch of the Government, or the President, doesn't seem to view things exactly as Judge Renfrew and I do at the moment. I think that has to be taken into account. And not the public, necessarily, either. Although there is coming an awareness in the public that if prison doesn't work, that maybe more of the same medicine is not such a good idea.

To get to the question of expenditures, and putting aside the costs that might be incurred for minimum wages to prisoners, which I think is a good idea, a lot depends, it seems to me, on the extent to which judges have already adopted the views that we are talking about. Perhaps another way of saying it is that maybe they are more on our side than we know.

I was encouraged to hear today what Norman Carlson said, that 54 percent of the convicted defendants are now being put on probation; that to me is a very encouraging statistic. I don't expect that it's ever going up to 100 percent, and it is not my suggestion that it ought to go up to 100 percent. And it is for those reasons that I don't think we can predict scientifically how much the budget can be reduced by our suggestions. But I do think that the Congress should keep a watchful eye on all the factors that we are talking about, and as time goes by, I

would hope that less money be spent on brick and mortar, and more on other things.

MR. KASTENMEIER. Just a followup comment. It is not with respect to the budget generally for the Bureau of Prisons that we are interested at the moment, it is with focus on the long-term building program, whether large sums of money should go into concrete, steel, and mortar; that is what we are focusing on. And, also, to the extent that alternatives are suggested, or other disposition of cases, where different standards apply with respect to sentencing, or disposition of commitments, that would not rely on the prison per se. It is in that frame of reference that we consider the Bureau of Prisons' building program.

Now, the critics appearing on Monday tended to be less critical, for example, of the immediate need for detention centers, more critical of the devoting of resources to long-term prisons for the future, in the hope that other alternatives would dictate a lesser, rather than a stable or greater prison population.

JUDGE LASKER. Well, I share that anxiety, if for no other reason than that a detention center, after all, is a relatively small facility. The largest one probably is in New York and that's big, but not big as such institutions go. It is useful for a variety of purposes, and people are kept there only for a short period of time.

We know how long Atlanta and Leavenworth have lasted. And, if you put \$21 million, or whatever it is, in a facility that is going to be in Otisville, N.Y., that is going to be there for a very long time and will, it seems to me, exert a kind of momentum of its own on what practices will be pursued thereafter.

But I can't—even though I can say that—tell you that the statistics are going to be such where you are not going to need an Otisville next year, or 5 years from now.

MR. KASTENMEIER. The gentleman from New York, Mr. Badillo.

MR. BADILLO. Thank you, Mr. Chairman.

I am grateful to both of you for your views because we have a continuing interest on this subject in this subcommittee, particularly.

I am concerned very directly, Judge Lasker, about Otisville because the specific reason for this hearing is whether or not we should approve, as a committee of oversight, the construction of that facility. Now, you know the area generally, and you certainly know New York City.

Would you recommend that we approve that because we have to make a decision very specifically, not just generally, as it stands now? Or would you recommend that we go back to the drawing board and determine what other sites in New York City, or some nearby area, should be looked for?

JUDGE LASKER. I will answer the question as unevasively as I can, Congressman Badillo; but I can't answer it without absolutely any condition because I simply don't have enough knowledge.

I, personally, and as a judge, would infinitely prefer to see that facility somewhere within the city of New York, or its near environs. You know that I have had to deal with conditions at the city facility, and you know that I have pending before me a case recently brought by the Legal Aid Society, relating to conditions at Riker's Island, which is probably in your district.

Congressman BADILLO. That's right.

Judge LASKER. One of the major problems about Riker's Island is that even for people living in the city of New York it's very hard to get to Riker's Island; and goodness knows, it's going to be very hard to get to Otisville. I think that is a most unfortunate factor.

Nevertheless, we have to weigh against that, I assume, the question of whether the realities are such that, never mind just the Congress, the officials who would have something to do with it, are going to cooperate about the building of something like this in New York City, even though Congress has the power to do it.

Mr. BADILLO. They can't build in Otisville until we appropriate the money.

Judge LASKER. I understand that. Then I have to ask how bad the need is for an additional new and modern facility. I would say that, for example, it is important that some day Atlanta, or Leavenworth, or whatever it is, be abandoned, or even transferred to other State authorities for use.

I do think the building of new facilities, is important, but I am disappointed, or at least discouraged, to hear that the facility in your part of the country and mine will be in Otisville, rather than at least much nearer the city.

Mr. BADILLO. That's right. It doesn't make too much sense to have a facility open, such as the one mentioned in the New York Times as a house of detention, which is only temporary, and then with the final facility we are going to be back again in the Otisvilles and the Batavias, going back and doing the same thing.

Judge LASKER. I entirely agree, and to lay it on the line—and I don't know if Mr. Carlson is here—you are aware of the difficulties he was up against when he wished to have such a facility at the Brooklyn Navy Yard. I am sure you even know who the Representative was.

Mr. BADILLO. Of course, the Brooklyn Navy Yard has been a disaster for everyone who has worked on it, I think including the present Governor, they haven't been able to get anything off the ground. So, it's not surprising they couldn't get a prison built there, either.

Judge LASKER. It would be simply dandy if the Congress and its committees developed some constitutional methods for bringing counterpressure on each other.

Mr. BADILLO. I want to ask Judge Renfrew a question. During the testimony of Mr. Carlson there was some statement made that there were certain areas where judges would not send people to jail because conditions were so overcrowded. Have you found that to be the case in your situation?

Judge RENFREW. I have not, sir.

Mr. BADILLO. Have you, Judge Lasker?

Judge LASKER. I don't think that related to prison. I think he was talking about the visiting judges from Detroit who were talking about detention centers. Detention facilities in New York City, up to now—Federal detention facilities—have not been very good, but they have been decent. And, consistent with my own sentencing philosophy to keep a person out of jail if possible, if I can do it on a responsible basis; but I haven't sat around and worried about sending somebody to jail if necessary, in New York.

Mr. KASTENMEIER. Mr. Drinan?

Mr. DRINAN. Thank you very much.

Judge Renfrew, I have a question about what you said on pages 11 and 12 of your statement. You cited a report by the National Council on Crime and Delinquency; and you put that in the same category as Jessica Mitford's books. In my judgment you mischaracterized the people of the "No More Prison" movement and suggest, in your words, that that is the height of irresponsibility.

In any event, you just assume that we need the same number of Federal prisons that we have had up to date, namely houses or places for 23,000 persons. But if Judge Lasker rejoices that about 64 percent of the people are going on probation, and suggesting that could go up to 75 percent, why do we need more Federal prisons?

And this movement is going around the country, reexamining prisons. And there is an organization now, National Moratorium on Prison Construction, and particularly Federal prison construction.

So, I find, Judge, that I don't have the answers here. You say you are not familiar with any of the details of the proposed Bureau of Prisons construction budget; you just want new jails. Well, what's so magic about new jails?

Judge RENFREW. Well, having visited a very large number of prisons, the difference between going to a multitier group—

Mr. DRINAN. Now, Judge, you said that before; but you are not answering the basic question. And the basic question is this, and the NCCD, that you speak ill of here, really, is a very sophisticated group of everybody in the corrections community. They put out a statement in May of 1973 saying that nonviolent, nondangerous offenders should not go to prison, that prisons are ineffectual. Prisons probably are incapable of being operated constitutionally. Prisons are themselves productive of crime, and they are destructive of the keepers and the kept.

You have not answered these questions. And all of the facts that we have about our prisons indicate that the rehabilitation is minimal, if it exists at all. Yet, you say that you want to keep prisons, and the burden is upon you.

Judge RENFREW. Well, I want to keep prisons because I think there are some people that will have to be sent to prison. I think there are some purposes served by prisons.

Mr. DRINAN. Well, everybody on this panel agrees with that. But the question is, how many? And we have places now for 24,000 Federal prisoners, and they want to build other prisons. And this morning we heard that the phasing out of the three Bastilles is going to go on for 10, 15 years.

So, frankly, in all candor, they didn't make their case, and I wasn't able, because of the complicated life here, to question Norman Carlson. But I question you, and I put the tough question to you: How many people do you think should and must go to Federal prisons?

Judge RENFREW. I can't give you an estimate.

Mr. DRINAN. Yet, you think we still need them, we need new construction?

Judge RENFREW. Yes, because I wish to replace Atlanta, Leavenworth, and McNeil with facilities that aren't as crushing as these existing facilities.

Mr. DRINAN. Well, 8,000 Federal prisoners are now in local facilities, and the Feds pay per diem. What's so terrible about that? There are loads of half-empty jails.

Judge RENEW. Well, the last thing I did in private practice before going to the bench was work with a group of lawyers bringing a law suit against the city of San Francisco with respect to conditions that existed in the county jail there, which has a contract with the Federal authorities for detaining people during trial and awaiting transfer to institutions. We won the law suit, but there haven't been really substantial changes in that particular facility.

Mr. DRINAN. That's because the Federal Bureau of Prisons is a sloppy administrative outfit, and if they had any guts, they would insist that if we are going to pay \$18 a day, or more, to keep a person, they would insist upon cleanliness and all types of programs.

But they want more buildings, as you have heard today, they want a new empire. We haven't had this until the 20th century; it's only 50, 60 years old. Maybe we should go back and rethink the whole thing and say that Federal prisons as such should not exist.

Those are the tough questions that are before this body.

Yes, Judge?

Judge LASKER. Congressman Drinan, as a great admirer of you on most questions, I am sorry to find myself in such sharp disagreement with you.

Mr. DRINAN. Well, I have just questions, Judge, I have no answers; that is my problem.

Judge LASKER. Well, the questions are good questions—

Mr. DRINAN. Thank you.

Judge LASKER [continuing]. And of course they ought to be thought through.

Mr. DRINAN. You can't disagree with my questions.

Judge LASKER. No, I can't. But there seemed to be an implication of an answer, maybe I'm wrong.

Mr. DRINAN. I'm cross-examining you, sir; it's been a hard day, Judge.

Judge LASKER. I see.

Mr. DRINAN. We have another vote.

Judge LASKER. Well, I am glad of the one I heard came through, and I express my appreciation if you voted the right way.

Mr. DRINAN. I did. [Laughter.]

Judge. I have to suggest that you finish just briefly. Mr. Kastenmeier has asked me to close the session, and we are very grateful to you.

Judge LASKER. I am trying to do that. I just want to say, you can't oversimplify the problem. The old prisons, whether they are Federal or State, some of them are horrible. And if we are going to keep people in custody at all, they have to be replaced. Others can be cleaned up, I suppose.

I favor the Federal Bureau handling its own people because I see what they have done, and they have done a good job. I don't think, dollar for dollar, you are going to get any improvement by throwing the responsibility to the States. To the contrary, all of my experience has shown that the cities and States, at least in my locality, do not do the job that the Federal Bureau does.

Mr. DRINAN. Judges, we are very grateful. We apologize once again for the interruption. This is a crucial vote on a rule, how we are going to go on energy.

I hope that you will be in touch with us and send us more of your good counsel and wisdom.

Judge LASKER. It is encouraging to see one Congressman who has so much energy.

Mr. DRINAN. Thank you.

The committee stands adjourned.

[Whereupon, at 3 p.m. the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

(1) Final Report From the Select Committee on Minnesota Correctional Institutions. December 1974.

(2) Minnesota Department of Corrections, Mission statement 1974.

(3) Community Correction Act, a Progress report of 1973-74, Minnesota Department of Corrections.

(4) Residential community correction programs, a preliminary evaluation, summary, and recommendation, Minnesota Governor's Commission on Crime Prevention and Control, April 1975.

(5) "Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation," the Wisconsin Council on Criminal Justice, Madison, Wis., July 1972.

(6) Section I of the final report of the Ohio Citizens Task Force on Corrections to the Honorable John J. Gilligan, Governor, 1971, Columbus, Ohio.

(7) Report of the Mayor's Criminal Justice Council's Committee to Review the Necessity and the Site Suitability of the Federal Detention Complex, submitted to Hon. Mayor Joseph L. Alioto.

(8) "A Community Alternative to County Jails: The Hopes, The Realities," by H. Richard Lamb, M.D. and Victor Goertzel, Ph. D.

(9) "Imprisonment and Its Alternatives," by Gerhard O. W. Mueller.

(10) Report on Corrections, National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C. Jan. 23, 1973.

(11) An Interview with Mr. Norman Carlson, Director of the Federal Bureau of Prisons reported in the Washington Post, Apr. 13, 1975.

(12) Response to above interview by Herman Schwartz, chairman, Commission of Corrections of New York.

(13) "Putting Treatment on Trial," Hastings Center Report, February 1975, by Leslie T. Wilkins.

(14) "What Works?—Questions and Answers About Prison Reform," Public Interest, spring 1974, Robert Martinson.

(15) "Decarcerating Prisoners and Patients," Civil Liberties Review, fall 1973, David J. Rothman.

(16) "Proposals for Prison Reform," Public Affairs Committee, 1974, by Norval Morris and James Jacobs.

(17) "The Non Dangerous Offender Should Not be Imprisoned," Crime and Delinquency, National Council on Crime and Delinquency, October 1973.

(18) An American Archipelago, The U.S. Bureau of Prisons by William G. Nagel.

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(20) "Evaluating Work Furlough: A Followup," Federal Probation, June 1973, Akim Rudoff, Ph. D. and T. C. Esselstyn, Ph. D.

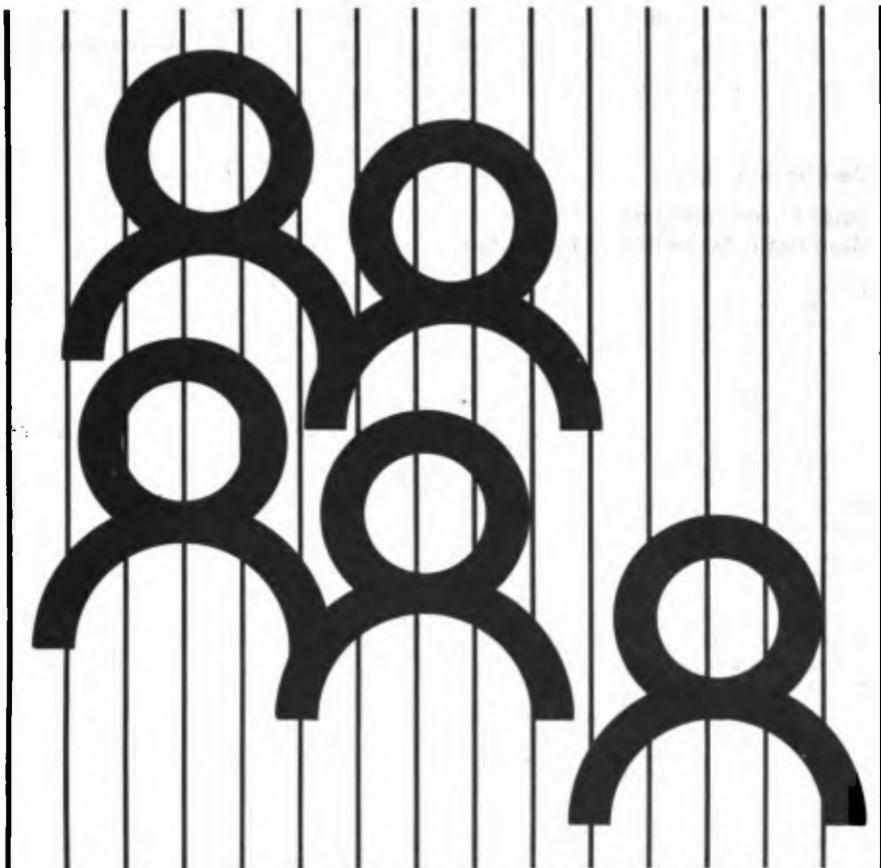
(21) "Facts About Furloughs," Illinois Department of Corrections, Dec. 30, 1974.

(22) "Prison Population and Costs—Illustrative Projections to 1980" Congressional Research Service, Library of Congress, Apr. 24, 1974.

(23) "Reform of the Federal Corrections System," statement by the President outlining a 13 point program. Nov. 13, 1969.

(24) Department of Justice, Bureau of Prisons, Building and Facilities, Budget Estimates, fiscal year 1976.

**Final Report from the
Select Committee on
Minnesota Correctional Institutions
December 1974**



DEPARTMENT OF CORRECTIONS SELECT ADVISORY COMMITTEE

CHAPTER 302
S.F.No. 3409
(Not Coded)

AN ACT RELATING TO THE DEPARTMENT OF CORRECTIONS; THE SELECT ADVISORY COMMITTEE ON CORRECTIONS; AUTHORIZING THE COMMITTEE TO SUBMIT A REPORT ON JANUARY 2, 1976; AMENDING LAWS 1973, CHAPTER 765, SECTION 3, SUBDIVISION 1.

THE COMMISSIONER OF CORRECTIONS IS AUTHORIZED TO ESTABLISH A SELECT COMMITTEE OF 15 TO 20 MEMBERS WHOSE PURPOSE WILL BE TO REVIEW THE ROLES OF ALL MINNESOTA CORRECTIONAL INSTITUTIONS AND TO DETERMINE WHICH OF THESE INSTITUTIONS SHOULD BE RETAINED.

THE COMMISSIONER OF CORRECTIONS IS AUTHORIZED TO APPOINT TO THIS SELECT COMMITTEE MEMBERS OF THE LEGISLATURE, LAW ENFORCEMENT AND PRIVATE CITIZENS OR CITIZEN'S GROUPS.

THE REPORT WILL BE SUBMITTED TO THE 1975 LEGISLATURE BY JANUARY 2, 1975.

Membership List

Select Committee on Minnesota Correctional Institutions

WILLIAM J. BINGHAM, JR.
Sr. Vice President
First Bank System

HONORABLE GEORGE R. CONZEMIUS
Senator, District 25

DR. BETTY GREEN
Chairman, Sociology Dept.
Hamline University

HONORABLE JOAN GROWE
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Senator, District 37

LEONARD LaSHOMB
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Representative, District B58

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HONORABLE ROBERT J. TENNESSEN
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DR. FRANCIS TYCE, Medical Director
Rochester State Hospital

HONORABLE JAMES ULLAND
Representative, District 88

RICHARD D. CONNER, Chairperson
Select Committee and
Vice President, Human Resources
Control Data Corporation



**STATE OF MINNESOTA
DEPARTMENT OF CORRECTIONS**

SUITE 430 METRO SQUARE BLDG. • 7th & ROBERT STREETS • ST. PAUL, MINN. 55101

OFFICE OF THE
COMMISSIONER

December 18, 1974

Members of the 1975 Minnesota
State Legislature
State Capitol
Saint Paul, Minnesota 55155

Dear Legislator:

Attached is a brief but poignant report developed by the Select Committee on Correctional Institutions. Their recommendations would have great economic and social policy significance for the State of Minnesota.

I have been impressed with the quality of the members and their diligence in undertaking their task. Many of the recommendations of the Department to the 1975 session will be based upon this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kenneth F. Schoen".

Kenneth F. Schoen
Commissioner

KFS/fc

Executive Summary

The Select Committee was given a mandate by the Legislature to determine which Minnesota State Correctional Institutions should be retained. Throughout its deliberations, the Select Committee had improved public safety and cost effectiveness as primary objectives. After more than a year of work the Select Committee recommends that . . .

1. The Department of Corrections should develop a plan that will lead toward a goal of small specialized secure State facilities for a total of 500 to 600 inmates. They would be located so as to affectively utilize health, education, welfare and industrial resources. Transition to these institutions will allow the closing of most present institutions as they now exist by the early 1980's. The associated recommendations regarding institutional closings and restructuring should be developed and presented to the appropriate committees of the Legislature during its 1976 session.
2. Stillwater (Minnesota State Prison) should be shut down first, hopefully by June 30, 1977. Its immediate and long range costs are prohibitive.
3. Authority for operating the State Security Hospital should be transferred to the State Department of Corrections from the State Department of Public Welfare. The Department of Corrections should close the present State Security Hospital, plans to be completed within a year, and should establish a new facility at a location to be judged appropriate by the Department of Corrections.
4. Institutional closings should take into careful consideration the economic impact on the affected communities. Particular attention should be given to affected employees. The Department of Corrections should develop appropriate plans to respond to these problems with the assistance of Minnesota Manpower Services, the Minnesota State Department of Education, and allied agencies.
5. Funding under the Community Subsidy Acts should be expanded to assure affective development of non-institutional community-based correctional programs—thus enabling significant reduction to institutional populations. The Department of Corrections should expand successful programs in this area and increase research and development to find new rehabilitative techniques.
6. The Legislature should allocate sufficient funds for upgrading the compensation and training of correctional officers/custodial staff to the level of law enforcement agencies in Minnesota.

Approach

The Select Committee on Minnesota State Correctional Institutions was established by the Legislature "to review the roles of all Minnesota Correctional Institutions and to determine which of these institutions should be retained."

A. Initial Considerations

During the last three months of 1973, the Committee held a series of hearings on the current status of facilities, improvements needed to maintain their present status, and remodeling necessary to reasonably increase capacity. Large amounts of data on the present institutions and the criminal justice system were reviewed.

After analyzing this information, the Committee decided that it required "reasonable" predictions of the needs for correctional institutions in the next ten years, based on the predicted numbers of offenders that would be entering the corrections system. To gain this information the Select Committee designed a special predictive study and employed Correctional Services of Minnesota¹ to conduct it. The Bush Foundation provided the funds for this study.

B. The Dalphi Study on the Future of Minnesota Corrections

The Committee used the "Dalphi" research technique: repeated in-depth briefing and polling of carefully selected focal and national experts until they agree on an answer to a specific question about the future. The participants in this study were criminal justice experts with half of them also having an additional speciality such as psychiatry, penology, or sociology. The basic question the experts were asked was,

"What are the numbers and kinds of adult and juvenile correctional institutions Minnesota will require in 1985?"

In addition, they were asked specifically to predict:

- the probable numbers and types of adult and juvenile offenders.
- the probable percentage of adult and juvenile offenders in some residential institutions.
- the type of institutions that will be required; i.e., whether maximum, medium, or minimum security.
- the locations of the various institutions—rural vs. urban, regional vs. central, etc.
- the capacity of the various institutions.
- the nature of the programs provided in these institutions.

A list of the experts, description of the research approach, and the results of the "Dalphi" study are in the Appendix. Several reports describing the results in detail are also available. (A)(B)

The Dalphi generated a bi-product that will be valuable in future corrections studies; an exhaustive study of others' research on institutional needs and the future. (C)

C. Additional Studies Concurrent with the Dalphi Research

The Select Committee members conducted their own research on Minnesota correctional physical facilities while the Dalphi was taking place. Sub-committees held over 40 meetings and field visits, studying each facility in depth, and spent hundreds of hours analyzing their input. Final reports were prepared on adult, juvenile and community institutions. The work of the Select Committee was made possible only by the efforts of scores of people from government and private organizations.

D. Final Preparation of Recommendations

The results of all aspects of the Select Committee's studies were combined into a "strawhorse" report that was sent to Committee members. Their reactions were consolidated and reviewed during a Committee meeting on December 13, 1974, at which time the final recommendations were adopted. To provide additional input, the Select Committee is sending this report to a wide audience of criminal justice experts as well as people in other segments of society. Their responses to the Select Committee's recommendations will be compiled and presented to the Legislature in time for their 1975 deliberations.

¹ Correctional Services of Minnesota is a non profit, State wide United Way research and education agency.

Findings

The Select Committee arrived at its recommendations after carefully considering several alternatives.

The first alternative would be to make no major changes to Minnesota's existing corrections institutions. This would see operating costs rising by over 40% in the next 5 years, from \$17,300,000 to \$24,500,000 annually (see Table 1). In addition, a minimum of over \$7,000,000 would be spent in the next five years on repairs, remodeling and reconditioning the two largest institutions alone—Stillwater and St. Cloud (see Table 2). This high and increasing cost would be supporting institutions that have twice the required adult capacity. So the "no change" alternative was rejected.

The second alternative would be to lock up a much larger segment of the convicted population than is done today. Some highly visible elements of society advocate this alternative. They range from national officials (including the U.S. Attorney General) to local groups such as the St. Paul Association of Commercial Clubs, Inc. The latter group recently advocated this position for the "thief, murderer, rapist, armed robber, and burglar . . . If they are found guilty of a crime, they will know that a certain number of days will be extracted from their lives."²

The Select Committee found that this alternative would be extremely expensive. In 1973, over 13,000 persons were convicted of the serious offenses cited above.³ Total incarceration would require the construction of new institutions, at a capital cost of \$40,000 per inmate. And keeping this many individuals in institutions at a cost of \$8,000 per year (a conservative estimate—see Table 3) would cost the taxpayers approximately \$100,000,000 more than the \$17,000,000 (Table 1) now spent annually. The new total would compound to a much higher figure each year, of course, as more offenders were institutionalized. Because of its high cost this alternative was rejected.

The Committee kept in mind that time in a correctional institution generally has a negative effect on offenders. Prisons don't correct; and since most offenders are eventually released public safety is not protected. Several federal commissions on crime have come to this conclusion. It was summed up in a Minnesota Senate 1973 Interim report on "Adult Corrections" (H) which cited the following statement by Federal District Judge James Doyle:

"I am persuaded that the institution of prison probably must end. In many respects, it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards, and probably less rational."

The Select Committee recognized another reality: most offenders are not sent to correctional institutions. In 1973, 137,000 reported crimes in Minnesota led to 85,000 arrests. There were 25,000 convictions—but only 1,500 people were sent to correctional institutions. The remaining 23,500 convicted of relatively serious crimes were handled in non-institutional, usually community based programs.

Future emphasis should therefore be on non-institutional efforts. The Select Committee concluded that constructive efforts in improving community based programs, developing new rehabilitation techniques and decriminalizing victimless crimes would not only reduce criminal behavior, but might also allow a reduction of Minnesota's present institutional population of about 1,800 (see Table 3) to 500-600.

Community based programs include intensive use of probation, work release programs, half-way houses, vocational training, family counseling, and other supportive services that will help integrate the offender into the community. Approximately 95% of all offenders will continue to be directed to such programs in the future.

"Decriminalizing" means that some offenses, generally those that are victimless, would no longer be classified as crimes. These offenders would not be sent to the Department of Corrections, but would receive treatment from health, education or welfare agencies. About 10% of today's offenders would be diverted out of the system if this happened.

Efforts should be made to expand the use of these and to look for new approaches. Alcohol and drug treatment should receive intensified research, since chemicals seemingly play a major role in criminal life.

By seriously implementing community based programs, decriminalizing and using new rehabilitation techniques, the threat to public safety should be diminished. The long run cost to all concerned—victim and offender—should also be reduced. Concerted effort should go to programs that are clearly less expensive than institutionalization, and yet effective in offender control.

² Association of St. Paul Commercial Clubs, Inc., Open Letters, St. Paul Dispatch/Pioneer Press, November, 1974.

³ Bureau of Criminal Apprehension—Crimes include murder, manslaughter, rape, robbery, burglary, auto theft and aggravated assault.

Table 1
Institutional Operating Costs⁴
Current and Projected

INSTITUTION	FY 74	FY 80 ⁵
MSP-Stillwater	6,123,732	7,266,989
SRM-St. Cloud	4,464,102	8,331,436
MCIW-Shakopee	683,832	969,879
WRC-Willow River	425,626	603,665
MMTC-Lino Lakes	2,464,229	3,495,018
STS-Red Wing	2,252,933	3,195,335
MHS-Sauk Center	1,537,275	2,180,317
TC-Thistledeew	359,666	510,114
TOTAL	17,311,386	24,552,751

Table 3
Cost per Inmate⁴
1973-74

Adult Institutions	Average Daily Populations	Average Cost
MSP-Stillwater	733	19.85
SRM-St. Cloud	474	26.10
MCIW-Shakopee	50	40.49
WRC-Willow River	34	41.35
TOTAL	1291	23.53
	Adult Yearly Average =	8,500
Juvenile Institutions		
STS-Red Wing	187	33.90
MHS-Sauk Center	113	39.35
MMTC-Lino Lakes	149	49.01
TC-Thistledeew	44	23.77
TOTAL	493	38.81
	Juvenile Yearly Average =	14,000

Table 2
Comparison of Future Costs⁴
Stillwater-St. Cloud

FUTURE EXPENSE CATEGORY	STILLWATER		ST. CLOUD	
	MSP	SRM	MSP	SRM
	(000)	(000)	(000)	(000)
PROJECTED 10 YEAR REPAIR AND REPLACEMENT	1,440		650	
GENERAL REMODELING TO ORIGINAL CONDITION	1,530		738	
CELL HALL RECONDITIONING	2,500		1,200 ⁶	
	minimum subtotal	6,470	2,588	
INDUSTRY REPLACEMENT AND UPGRADING (10 YRS)	705		512	
	subtotal	8,175	3,100	
EDUCATIONAL UPGRADING	268		112	
	subtotal	6,443	3,212	
ADDITIONAL REQUESTS	2,295		3,261	
TOTAL	8,738		6,473	
RECONDITIONING EXPENSES ALREADY INCURRED 1963 thru 1974		2,434		4,560

⁴Source—Minnesota Department of Corrections

⁵6% increase per fiscal year, FY 74 = 100%, FY 80 = 141.83%

⁶Estimating remodeling at \$2000 per inmate

Recommendations

- A. *The Department of Corrections should develop a plan that will lead toward a goal of small specialized secure State facilities for a total of 500 to 600 inmates. They would be located so as to affectively utilize health, education, welfare and industrial resources. Transition to these institutions will allow the closing of most present institutions as they now exist by the early 1980's. The associated recommendations regarding institutional closings and restructuring should be developed and presented to the appropriate committees of the Legislature during its 1976 session.*

The path to get to this goal is difficult. Its achievement is intimately dependent on the success of community based, new rehabilitation techniques. It also requires decisions that lead eventually to a set of small secure institutions that specialize in treatment programs such as vocational rehabilitation, sex offenders, mental health, and less severe remedial problems.

These institutions would be located near major population centers so that they can employ the health, education, welfare, and industrial resources of the community in their treatment programs. Intensive, mandatory alternative treatment programs would need to be an important characteristic of these facilities. They would be designed to emphasize the humanization of the incarcerated individuals. The environment would be designed so that the inmates have adequate protection from harm, both from themselves and others.

* Programs to significantly improve the employability of institutional inmates have to be developed. Those inmates that will be incarcerated for long periods of time should be employed in efficient industry operated within the institution. Those who will spend shorter periods of time would be processed through a total system of vocational and personal problem diagnosis and treatment. This system should be conducted in conjunction with private industry and the educational sector in order to ensure that the reintegration into the world of work will take place upon release.

While working within the institution the inmates would receive at least minimum wages, if not competitive wages. They would pay for all of the services they receive except security. A range and variety of services would be made available to the inmates based on their needs, desires and willingness to pay.

A time line plan should be developed by the Department of Corrections highlighting the important events that must occur. For instance, shut down of major institutions would be preceded by research to determine whether community based non-institutional programs and new rehabilitative techniques have been brought to the level that truly enables the reduction in institutional inmates. Decision points would be established, beyond which actions to close institutions would not be made unless improvements in

public safety were provided. The institutions selected to remain in the system at each decision point would provide backup in case increased incarceration was again required.

- B. *Stillwater (Minnesota State Prison) should be shut down first, hopefully by June 30, 1977. Its immediate and long range costs are prohibitive. Stillwater was selected because of the immediate and long range costs in comparison to St. Cloud as shown in Table 2. The short time table was set because several million dollars of repairs are mandatory if Stillwater does not close down in two years. St. Cloud, Lino Lakes, and Shekopes should be remodeled to absorb those inmates to be transferred from Stillwater. This recommendation assumes that community based programs and rehabilitation techniques will improve to the point that in 1977 the total corrections institutional capacity required will be about 250 less than the inmate population is today.*

For a more detailed description of Minnesota correctional institutions a recent publication of the League of Women Voters of Minnesota is recommended. (F)

- C. *Authority for operating the State Security Hospital should be transferred to the State Department of Corrections from the State Department of Public Welfare. The Department of Corrections should close the present state Security Hospital, plans to be completed within a year, and should establish a new facility at a location to be judged appropriate by the Department of Corrections. The present State Security Hospital facility is physically inadequate and should be phased out of operation.*
- D. *Institutional closings should take into careful consideration the economic impact on the pertinent communities. Particular attention should be given to affected employees. The Department of Corrections should develop appropriate plans to respond to these problems with the assistance of Minnesota Manpower Services, the Minnesota State Department of Education and allied agencies.*
- E. *Funding under the Community Subsidy Acts should be expanded to assure effective development of non-institutional community-based correctional programs — thus enabling significant reduction of institutional populations. The Department of Corrections should expand successful programs in this area and increase research and development to find new rehabilitative techniques.*
- F. *The Legislature should allocate sufficient funds for upgrading the compensation and training of correctional officers/custodial staff to the level of law enforcement agencies in Minnesota.*

The Relationship between Corrections and the overall Criminal Justice System

The eight Minnesota State correctional institutions and the total State Department of Corrections are just a part of the whole picture to be considered when searching for solutions to problems associated with crime. Therefore, the Select Committee expanded its analysis to all elements of the so-called Criminal Justice System—both present and future—in order to arrive at meaningful conclusions regarding the Minnesota Department of Corrections and its institutions. Recommendations regarding institutions made in this report are couched in the context of expected or necessary changes in all organizations that deal with criminal offenders.

The Criminal Justice System is complex, as noted in the following paragraphs excerpted from one of the studies the Select Committee reviewed, "The Organization and Delivery of Corrections in Minnesota, 1962-1982." (D)

"The Local (Minnesota) system is a complex of 87 counties and hundreds of municipalities with approximately 197 separate correctional facilities and 66 courts. Each county and many municipalities have their own police force, sheriff, prosecutors, public defenders, etc. . . . The State consists of the Department of Public Safety, . . . a State Attorney General, . . . public defenders, . . . and eight incarceration facilities. . . . Departments of Welfare, Health and Education (again at local, county and state levels) offer a wide range of support services, financial assistance, drug and alcoholic rehabilitation, and employment counseling . . . private sector provides alternative treatment such as half-way houses, research, etc. . . . Finally, the State Legislature is a crucial factor in the system . . . makes and changes the laws affecting corrections."

Many researchers have found that an improvement in the coordination between all these elements would probably increase public safety. The previously quoted study (D) states. . .

"Taking the corrections system as a whole, there is no integrated means of setting policy for it, planning for it, collecting data about it or evaluating it. Communication and cooperation is slight . . . county and municipal jails overlap their functions . . . state and local probation officers within a few blocks of each other in some instances, carry responsibility for the same family with little communication. Whole segments are largely isolated from each other. . . . The police tend to be sealed off from the court system and courts from the corrections system. . . . Sizeable cities tend to run criminal justice systems competitive to the state. . . . It is very difficult to organize diverse services for one person, although they may be available . . . some come from state, some from local agencies, and some from the private sector. . . . The result is no overall policy, no consistency of behavior from one agency to another and considerable overlapping of services. . . . Data are not collected or shared for the system as a whole so no good consistent evaluations are possible, hence no improvement from what was experienced in programs."

The result is inconsistent and often ineffective treatment, which leads to recidivism or at least failure to solve or prevent the problems of the offender, the victim, and the associated friends and relatives.

The *Citizens League* reported in a 1970 study that there is inadequate coordination between criminal justice agencies and other public services in Minnesota. It said that civil rights, education, housing and welfare programs, all of which attack the causes of crime, have no working relationships with agencies more directly involved in the administration of criminal justice. "Criminal justice has traditionally been administered through a maze of separate agencies, each working independently of each other." (E)

The League of Women Voters of Minnesota stated in a recent report. . .

"One major conclusion of the Citizens League study was that criminal justice must be planned as a system of interdependent elements. Today, four years later, a beginning is being made to plan on a coordinated basis by using regional boards to review plans for programs." (F)

Change has begun but should be reinforced. A program that will ensure coordination of planning, programs, human resources, research and evaluation is necessary to improve public safety and rehabilitation. The Select Committee suggests no solutions but it encourages public and private agencies involved with crime and corrections to seriously attempt to improve this situation. Much work has already been done and many guidelines are already available. (D)(E)(F)(G)

As a closing comment, the Select Committee would like to emphasize that the Minnesota environment of public opinion, programs and legislation already implemented, and leadership is the best in the United States. Citizens of this state can be proud of the example that has already been set by our progress in corrections. We can look forward to establishing an even more effective corrections model that other states can emulate as they strive for the Minnesota level of success.

Appendix

The Minnesota Delphi Study on Correctional Institutions

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- D. Correctional Service of Minnesota. *The Organization and Delivery of Corrections in Minnesota, 1962-1982*. 1427 Washington Avenue South, Minneapolis, MN 55404, December, 1974.
- E. Citizens League. *Getting the Answers for the Control of Crime*. 84 South 6th St., Minneapolis, MN 55402, December 22, 1970.
- F. League of Women Voters of Minnesota. *Corrections: People, Prisons and Programs, The Minnesota Corrections System*. 565 Wabasha, St. Paul, MN 55102, October, 1974.
- G. Metropolitan Council of the Twin Cities Area. *Metropolitan Development Guide: Law and Justice Policy Plan and Program*. 300 Metro Square Bldg., St. Paul, MN 55101, May 24, 1973.
- H. Minnesota State Senate Subcommittee on Adult Corrections. *Interim Report-1973*, State Capitol Building, St. Paul, MN January 31, 1974.

1. The Select Committee on Correctional Institutions decided in April of 1974 to use the Delphi technique to predict future programs and institutional needs for the State of Minnesota. By May, funding was secured from the Bush Foundation and awarded to the Minnesota Department of Corrections for the work of the Select Committee. *Correctional Service of Minnesota*, a privately funded research and education agency, was then selected by the Department and the Select Committee to manage the Delphi research process. A Delphi Steering Committee⁷ was appointed to oversee the research. Dr. George T. Milkovich, professor of industrial relations at the University of Minnesota, was consulted on design questions throughout the study.

2. RESEARCH PROCESS

The Delphi technique, a set of procedures originally developed by the Rand Corporation in the late 1940's is designed to obtain the most reliable consensus from a group of experts. Essentially, the Delphi is a series of intensive questionnaire-interrogations concerning some primary question. Questionnaires are interspersed with controlled feedback.

The procedure is designed to avoid personal discussions among the experts. Instead, interaction among the experts is accomplished through an intermediary. This person responds to data requests from the experts, finds the answers, and transmits all researched data to all the experts together with everyone's answers to the primary question. This process is repeated until consensus is reached, or until the experts have frozen their response. This study used a series of four questionnaires over a four month period in carrying out the Delphi process.

This mode of controlled interaction avoids the disadvantages associated with more conventional uses of experts, such as round table discussions or direct confrontations of opposing views. The developers of the Delphi argue that the procedures are more conducive to independent thought and allow generalized formulation to a considered opinion.

The sixteen local and national experts chosen by the Select Committee in May, 1974 met the following criteria:

- 1) A basic knowledge of the corrections field.
- 2) Outstanding knowledge in an area of expertise related to the central question.
- 3) Status among peers.
- 4) Willingness to participate through the term of the study.

The first questionnaire was mailed to the experts on June 22, 1974; the last on September 25. One expert dropped out after responding to the first questionnaire. The other fifteen are listed on page 9.

⁷ Chairperson Richard C. Erickson, with Kenneth F. Schoen, George T. Milkovich and Richard D. Connor

Summarized Delphi Conclusions

Adult - Maximum Security

1. One maximum security institution will be needed in 1985.
2. This maximum security facility would be for violent dangerous offenders.
3. The capacity will be 450.
4. Some say use Stillwater, some say build a new one—the location did not seem to be of significance.
5. Maximum security for females received little attention—when mentioned, a coed facility was recommended.
6. Few program changes predicted: Programs of rehabilitation should be available.

Adult - Medium Security

1. Medium security institutions not needed.
2. Where medium security institutions were discussed, a strong relationship to the community was seen as necessary.

Adults - Minimum Security

1. Most 1985 institution beds will be in minimum security facilities.
2. Minimum security institutions will be located regionally.
3. There will be locally operated multi service programs with deep community involvement.

Juvenile - Maximum Security

1. A separate maximum security institution is not necessary.

Juvenile - Medium Security

1. Two medium security institutions are needed, each with a capacity of 100.
2. Medium security institutions will be at existing state institutions or in the metro area.
3. Educational and vocational programs will continue but with closer ties to the community and the public educational system.

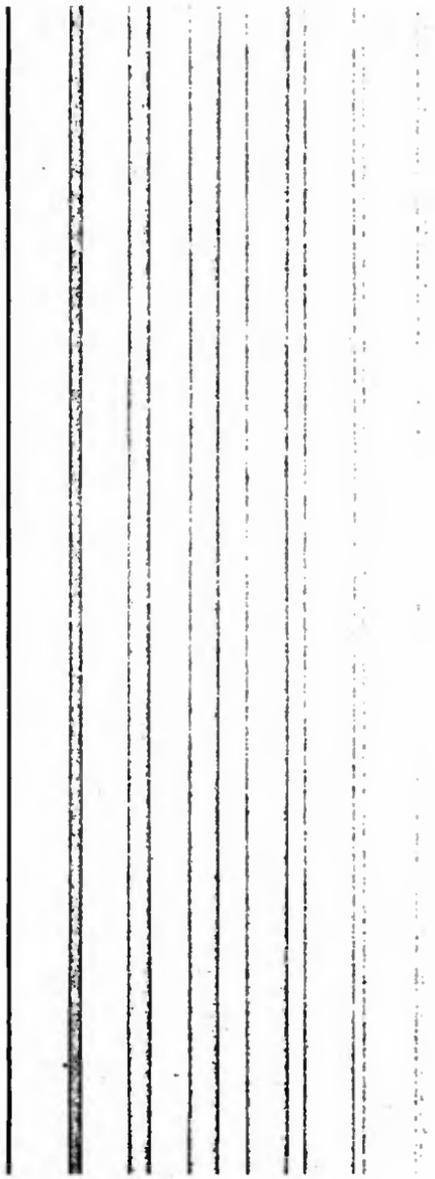
Juvenile - Minimum Security

1. Most 1985 institution beds will be minimum security facilities.
2. The facilities will be small in size, regionally located, locally operated, coeducational and utilize a wide range of programs.
3. Group homes will be necessary throughout the state.

Minnesota Delphi Study Experts

Eugene H. Burns, Director Ramsey County Court Services	Corrections
Seymour Halleck, M.D. Department of Psychiatry University of North Carolina	Medicine
James L. Hatland, Vice President Urban Development Department First National Bank of Minneapolis	Corporate
C. Paul Jones State Public Defender	Defense
William McCutcheon, Deputy Chief St. Paul Police and Minnesota State Senator	Law Enforcement
Norval Morris, Ph.D., Director Center for Studies in Criminal Justice University of Chicago	Behavioral Scientist
William Nagel, Director Institute of Corrections The American Foundation	Corrections
Paul Noren, Senior Pastor Mount Olivet Lutheran Church, Minneapolis	Counseling/Clergy
O. Russell Olson Minnesota District Court Judge	Judiciary
John Rector, Chief Consul and Staff Director United States Senate	Legislative
Rosemary Sarri, Institute for Continuing Legal Education and School of Social Work University of Michigan	Corrections
Don Schon, Ph.D., Professor MIT Principal Associate OSTI Corporation	Futurist
Charles Shireman, Ph.D. School of Social Service Administration University of Chicago	Corrections Research
Austin Wehrwein, Editoralist Minneapolis Star	Media
Frank B. Wilderson, Jr., Ph.D. Assistant Dean, College of Education University of Minnesota	Education

MINNESOTA
DEPARTMENT
OF CORRECTIONS
**MISSION
STATEMENT**
1974



Introduction

The basic purpose of the Minnesota Department of Corrections, an element of the Criminal Justice System, is the community's protection. To accomplish this goal the primary objective of the Department is to provide programs which both (1) control the inappropriate behavior of offenders and (2) assist them to function as law-abiding and free citizens.

The Department recognizes that most crime cannot be significantly affected by the Criminal Justice System. Until some basic societal changes occur, crime will continue to be a major problem in the United States. Since almost all the Department's clients will subsequently be released from whatever temporary level of supervision is provided, conditions which provide the greatest likelihood that the clientele will ultimately lead responsible lives as free individuals must exist in society and in Department of Corrections programs.

The second basic function of the Department is to accomplish its mission within its allocated resources. It must administer State funds and provide for priority programs while maintaining control over cost. Presently, the Department provides a range of institutional and community programs. Historically, the largest allocation of these resources has been to institutional care. Escalating costs and high failure rates within the conventional system and the development of effective programs within the community, motivate the Department to plan to expend the majority of its resources in the community programs. Currently 69% of the Department dollar is spent for institutional services, and the remainder for community programs and Department administration.

The Department is committed to reversing this proportion. The Department's ultimate objectives include the following functions:

1. Providing financial and technical assistance for development and operation of community-based corrections programs;
2. Setting standards and insuring that they are enforced;
3. Researching and evaluating programs and providing information, training, technical assistance and social development;
4. Instituting and encouraging model or demonstration programs, both institutional and community-based; and
5. Operating institutions for the residual offender.

The Department is in concert with legislative intent and with community feeling as it declares that the use of the penitentiary as a means of rehabilitation shall diminish. However, there will be a need for maximum custody institutions for a small number of adult offenders in the following categories:

1. The individual who commits outrageous crimes and will simply "do time" as a result;
2. The professional criminal; the competent individual who chooses to live outside the law;
3. The individual who would currently be dangerous if placed in any kind of community program.

1. Institutions for Juveniles

Studies indicate that removal of offenders from the community generally makes rehabilitation more difficult and less successful. Since most juvenile offenses are no risk to the community (they are usually either against property or are status offenses), juveniles should be handled almost entirely in the community, preferably in the context of normal social institutions, particularly the family and the school. The juvenile institution shall be responsive primarily to individuals whose needs are currently beyond the resources of the community. The goal of the institution shall be to assist the youngster in developing the skill necessary to cope with community expectations. Occasionally, removal from the community is appropriate to assuage community emotions. In some instances, selected programs within the institution could provide a voluntary experience of self-improvement for the youth similar to a "retreat" for the average adult.

High security is not usually part of the programming for juveniles. Juvenile security programs historically intensify aggressive acting-out and promote a "tough guy" role identification. However, the Department recognizes that there are juvenile offenders whose cases indicate that their needs and those of society are best met in high-security settings. Significant space is available for these offenders in secure facilities, and we are committed to construct no additional juvenile facilities.

A "certification" process must be used to place the juvenile offender in a secure facility. Such certification assures the juvenile the protection of due process. The current condition of secure programs should not militate against their use for such juveniles, rather the programs themselves should be improved.

2. Context of Justice

Justice is the central virtue for all public institutions and programs. Every person is entitled to the most extensive basic liberty to the degree that it does not violate and is compatible with like liberty for others. It follows that, with few exceptions, curtailment of freedom should be limited to the degree of control neces-

sary for the protection of others from the offender. Control beyond the degree necessary for this purpose is a violation of the offender's rights. The correctional system must enable the offender to enjoy the rights and to perform the duties of full citizenship as a responsible member of society.

3. Participation in One's Own Fate

Offenders violate the law for a variety of personal and environmental reasons and, as a result, require services consistent with their own life situations. The Department rejects the belief that offenders can be coerced into conforming, since significant behavior change is effective only if the individual desires to change. Corrections programming will be directed toward providing positive reinforcement for the client who selects a program of self-improvement. Correctional systems should facilitate the offender's access to services but should rarely impose them. Experience

indicates that correctional services should provide for the following:

1. Remedial education for the educationally disadvantaged;
2. Vocational education for the unskilled;
3. Higher education opportunities;
4. Treatment for the disturbed and anxious;
5. Medical care for the sick;
6. Reintegration services for the socially impaired;
7. Restraint for the dangerous; and
8. Supportive community services.

4. Advocacy for Social Change

Fundamental to understanding crime in contemporary society is the acceptance of the principle that the offense is generated by a situation composed of the offender's own condition of the surrounding social environment. The success of the offender returning to society depends upon the offender him-

self and the modification or the acceptance of his environment. The offender, the correctional agency and the community all benefit by vigorously advocating action to change the social conditions which conduce the committing of crime.

5. Specific Steps and Services

The following goals reflect a basic philosophy and provide a framework for producing the changes necessary to improve the effectiveness of the correctional process within the next five years.

1. Programs that minimize or prevent penetration are desirable. It is the Department's goal to deinstitutionalize and to decentralize programs consistent with offender

rehabilitation and public safety, and to provide programs within or near the offender's community. The Department shall, as well, implement cooperative ventures with community agencies and the private sector to jointly operate correctional services. It is known that penetration of an offender into the system and his subsequent rehabilitation are negatively correlated.

2. The State shall provide subsidies to communities to encourage the development and maintenance of local correctional programs which utilize and supplement existing community human resources. The Community Corrections Act of 1973 shall be implemented in pilot counties.
3. To reduce the duplication of services, the Department shall develop and enable others to develop viable administrative and management structures. These structures should also make the correctional system more humane, rational, effective and responsive to demonstrated needs.
4. Since the crime problem is complex and involves many elements of society, the Department shall promote a sense of proprietorship and participation in correctional programs on the part of legislators, citizens, and elements of the Criminal Justice System. It will seek to accomplish this through the use of advisory committees, administrative boards and by developing community understanding and support for effective correctional programming.
5. Within the context of constitutional rights, justice and public safety, the Department, in cooperation with the Minnesota Corrections Authority, shall develop and approve criteria for parole release and parole revocation.
6. The Department shall maximize the effectiveness of those in direct contact with the offender through training and appropriate support services.
7. The Department shall develop management and evaluation systems of staff effectiveness and career development so that the importance of individual contribution will be recognized and rewarded by appropriate remuneration.
8. The Department shall encourage volunteers (with specific responsibilities, goals and objectives and with training and accountability) in all levels of correctional services.
9. The Department shall develop communications systems which provide information for fiscal control, planning, cost effectiveness, and evaluation of all programs.
10. Correctional clients are of many races and creeds. To insure optimum rapport between clients and staff members, the correctional staff should similarly be representative. The Department has as its goal to hire and retain minority members in at least the percentage represented by its clients.
11. The rights of the victims of crime have constituted the substance of much of the regressive rhetoric on criminal justice, which holds that the victim has the right to expect punishment of the offender. It is the position of the Department of Corrections that the victim has the right to restitution through the State's good offices. Whenever possible, the victim's compensation should be a condition of the offender's sentence. Restitution should be an element in the consideration of all criminal justice decision-makers. Where restitution is not desired or feasible, an equitable basis for compensation from public funds should be available.

6. Auspices

Some special services need to be provided under correctional auspices and whenever possible such services should be purchased for the offender from private and community agencies. Eventually, correctional services should consist primarily of referrals to ap-

propriate agencies and the maintenance of incarcerating facilities for the control of the dangerous offender. The impracticability of this goal at present should not obscure consideration of its desirability as a long range goal.

C O M M U N I T Y C O R R E C T I O N S A C T

A Progress Report of 1973-74

**Minnesota Department of Corrections
January 1975**

SUMMARY

The Community Corrections Act was enacted by the 1973 Minnesota State Legislature. The development of the Act resulted from the work of a 1972 Study Committee composed of legislators, judges, legislative staff, county probation officers, police, county government staff, educators, and staff from the Department of Corrections. The primary concerns of this Committee were the high cost of state institutions, limited local corrections resources, overlapping corrections jurisdictions, and lack of service standards.

The Act provides state funds to counties for the development and operation of local corrections programs, while at the same time providing a financial disincentive for the use of state institutions for all but the habitual or dangerous offender.

With passage of the Act, the 1973 Legislature appropriated \$1,500,000 for implementing the legislation in a number of pilot areas in the state. Three pilot areas have since come under the Act - Olmsted and Dodge Counties on June 1, 1974; Ramsey County on July 1, 1974; Crow Wing and Morrison Counties on September 1, 1974. Subsidy funding available to each of these pilot areas through June 30, 1975, totals \$2,379,302.95. This maximum available subsidy is allocated as follows:

Olmsted/Dodge	\$338,286.50
Ramsey	\$1,808,816.49
Crow Wing/Morrison	\$232,199.96

The deficit between the legislative appropriation and the total maximum subsidy available will be made up by the transfer of state programs, services, and subsidies to the pilot areas, as well as by charges made to pilot counties for the use of state institutions.

The Comprehensive Plans which have been submitted by the pilot counties have been approved by the Department of Corrections for the period through December 31, 1974, at which time new Plans will have been approved for the 1975 calendar year. The operating plans of the pilot areas are aimed at improving the administrative capabilities of the local corrections systems, developing a planning and evaluation process, coordinating, strengthening, and implementing a variety of corrections programs and services at the local community level - prevention and diversion programs, residential programs, non-residential programs, and institutional programs.

Proposed implementation of the Act over the 1976-77 biennium is to maintain the existing pilot counties and expand into six additional areas of the state - Hennepin County; Anoka County; seven county region 3; Red Lake, Polk and Norman Counties; five county region 6B; and Todd, Wadena, and Cass Counties. The approximate biennial cost for this group of counties is expected to be slightly over nine million dollars.

SECTION I - DEVELOPMENT, AIMS, AND GENERAL IMPLEMENTATION OF THE ACTHow the Act Works - Major Elements

The Community Corrections Act allows the Commissioner of Corrections to make subsidy grants to a county (or counties) electing to provide a wide range of correctional services, including prevention services, diversion programs, probation and parole services, community corrections centers and facilities to detain, confine and treat offenders of all age groups. The major elements of the Act include the following:

1. Corrections Advisory Board

Basic to the Act is the requirement that participating counties must establish a 17 member Corrections Advisory Board. Membership on this Board is to be composed of representatives from law enforcement, prosecution and defense attorneys, judiciary, education, corrections, ethnic minorities, social welfare services, and lay citizens. The Board is expected to be actively involved in the development of a local Comprehensive Plan for the development and delivery of correctional services. In addition, the Board is expected to provide the coordination and cooperation which will be needed to make the expanded community corrections system a reality.

2. Comprehensive Plan

The local Comprehensive Plan defines correctional needs and identifies the programs and services designed to meet these needs. This Plan is developed by the Corrections Advisory Board and the Task Forces appointed by this Board and approved by the County Board of Commissioners.

3. Equalization Subsidy

Upon approval of the Comprehensive Plan, local counties are eligible for a state financial subsidy. The formula used to determine the amount of subsidy for which each county is eligible involves per capita income, per capita taxable value, per capita expenditures for correctional purposes, and percent of county population between the ages of 6 and 30. This formula is designed to relate correctional needs and the ability of the county to pay.

4. Local Administrative Structure

The Act provides counties with authority to determine and establish the administrative structure best suited to the efficient delivery of community services. Counties thus have the freedom to determine the particular administrative structure most suited to the local condition.

5. Commitment Costs

Once under the Act, counties will be charged for the use of state institutions for adults whose sentences are for five years or less, as well as for

all juvenile commitments. Coupled with the subsidy, the obvious incentive is to encourage the development and use of community programs wherever possible and state facilities only as a last resort.

Background Development

The development of the Community Corrections Act began with the formation of a study committee in July, 1972, to review and assess the correctional system in the state. The committee was composed of legislators, judges, legislative staff, representatives from county probation departments, police departments, education, county government, members of state agencies, and staff from the Department of Corrections.

The creation of this committee resulted from several factors, the primary concerns being:

1. Increased institutional costs.
2. Limited alternatives available locally.
3. Overlapping correctional jurisdictions.
4. Lack of standards for service delivery.

After the initial meetings, four task forces were created to review and make recommendations in the following areas:

1. Regionalization - the determination of appropriate geographical areas as service delivery units. The issue of concerns here was that while vast geographical areas interfere with the delivery of quality services, too small a service delivery unit causes problems for the development of comprehensive programming.
2. Administration - the determination of the appropriate administrative structure for the correctional system. The prime concern here was to simplify the existing overlap of correctional services while placing major administrative responsibility at the local level.
3. Standards - the development of program standards for the correctional system. Uniform program standards were lacking and where standards did exist, there were no effective mechanisms for ensuring compliance.
4. Subsidy - the development of a coherent funding formula for the correctional system. A variety of state-local funding patterns existed, the aim was the development of a unified funding plan for the equitable distribution of state funds.

The recommendations of the four task forces were revised and reviewed by the full study committee. A draft of the Community Corrections Act resulted from this work. In turn, the draft plan of the Act was presented to a variety of legislative, professional, and citizens groups. After many revisions, the draft legislation was presented to the appropriate legislative committees in February, 1973. The Act was ultimately passed into law by the State Legislature with an appropriation of \$1.5 million for implementation.

Basic Assumptions of the Community Corrections Act

The rationale for the Act involves several basic assumptions. Most generally, the assumption is made that the reintegration of offenders must take place in the community and that it cannot be achieved unless a broad spectrum of community interests are involved in the task. The successful transition from a predominantly institutional to a predominantly community-based system of corrections will depend upon developing leadership, freedom for innovation, and commitment of human and financial resources close to the center of action rather than in geographically and hierarchically distant power centers.

1. Identification of Local Service Needs

Crime and delinquency are symptoms of failure and disorganization of the community as well as of individual offenders. These failures can be viewed as a lack of meaningful contact between offenders and the community institutions that are primarily responsible for the development of law-abiding contact - sound family life, good schools, employment and recreational opportunities. The task of community corrections, then, becomes one of defining needs at the local level and the development of solid ties between the offender and the community. The Community Corrections Act assumes that local communities are in the best position to define needs and in partnership with the state, develop solutions. Handling offenders closer to home provides more opportunity for maintaining family and community ties; it facilitates reintegration into community life. This is especially true in the case of juvenile offenders where rehabilitative efforts should be directed toward family members as well as the young offender. It is difficult to do so if the child has been transported hundreds of miles away from home to a state institution.

2. Organizational Coherence

Responsibility for the administration of correctional services in the 87 counties of the state is fragmented not only among levels of government - county, region, state - but also within single jurisdictions - juvenile and adult, probation and parole, institution and community programs. The present gaps and duplications caused by administrative fragmentation of the correctional enterprises can be resolved only by major changes in the organization and financing of services. Central to the Community Corrections Act is the assumption that correctional operations should be located as close as possible to the home of the offenders being handled and that a combined local corrections authority would facilitate the development of a more effective and efficient corrections delivery system. Specifically, such a local corrections authority would keep the management function close to operations and encourage creative leadership and program development. The state, as the larger governmental unit, should take responsibility for providing indirect services to smaller and less financially able units, helping them to develop and strengthen their correctional services.

3. Direct Community Involvement in Corrections

Corrections has too long been isolated from the mainstream of community activity. Corrections planning, program development, and operation have

commonly been imposed on local levels of government with little room provided for direct citizen involvement. A basic premise of the Community Corrections Act is the absolute necessity for systematic local involvement in developing local correctional plans as well as public interpretation and reaction to such plans. Through structured citizen involvement, it is expected that a continuing public dialogue on correctional development will be maintained at the county and regional level.

4. Community Based Corrections Programming

A central assumption of the Community Corrections Act is that when offenders can be shifted from custodial control within a large, state institution to a community-based program without loss of public protection, the economic and human costs involved require that such a shift be made. The Community Corrections Act is clearly based upon the premise that the majority of offenders can be handled within the context of the community without a loss of public protection.

Aims of the Act

1. Impact on local county

The Community Corrections Act is designed to impact upon local counties by:

- a) Providing a county or group of counties with the financial resources necessary to meet local correctional needs.
- b) Encouraging counties to assume direct operational responsibility for the delivery of correctional services at the local community level.
- c) Enabling counties to develop a coordinated planning, budgeting, and evaluation system for all local correctional services in compliance with standards formulated for the Act.
- d) Providing a financial disincentive for the use of state correctional institutions for all but the habitual or dangerous offender.
- e) Placing primary responsibility on local counties to identify correctional needs and develop programs and services to meet these needs.
- f) Structuring involvement of a wide variety of local citizens and elected officials through the Corrections Advisory Board.

2. Impact on the Department of Corrections

The Community Corrections Act is designed to impact upon the Department of Corrections by:

- a) Transferring responsibility for the direct operation of programs to the local county level.
- b) Providing financial and technical assistance for the development and operation of community-based programming.

- c) Setting standards for the operation of community-based programs and insuring their compliance.
- d) Developing and encouraging the development of model or demonstration corrections programs.
- e) Operating institutions for the habitual or dangerous offender.

3. Impact on County-State Relations

- a) Developing a cooperative relationship in which the county becomes the prime service provider and the state assumes the back-up role of providing supportive services and institutional programs for the habitual or dangerous offender.
- b) Developing a more rational corrections delivery system which minimizes the duplication of service providers at the various levels of government.

Rules, Regulations and Standards

The Commissioner of Corrections was required by Section 3 of the Community Corrections Act to promulgate rules for the operation of programs and the delivery of services in counties operating under the Act. The 'Rules, Regulations and Standards' which have been developed are divided into four sections:

A. Legislative Requirements

This section provides a detailed specification of the key ingredients of the Act. The elements covered here include the population requirement, the size and composition of the Corrections Advisory Board, the subsidy formula and allocation, per diem costs for use of state institutions, and requirements pertaining to the Comprehensive Plan.

B. The Comprehensive Plan

This section specifies guidelines for the format and content of the Comprehensive Plan. Included here are such areas as budget procedures and summaries, crime incidence and analysis, descriptive overviews of the local criminal justice system.

C. Program Budget Requirements

This section specifies uniform budget procedures and rules for the Comprehensive Plan, as well as guidelines for submitting quarterly financial reports and amended plans.

D. Operating Standards

This section provides a specification of the minimally acceptable level of service to be provided within the various program elements of the local community corrections system.

General Implementation of the Act

The Department of Corrections established the Community Corrections Subsidy Unit in August, 1973, to begin implementing the Community Corrections Act. Three professional staff were hired through an LEAA grant from the Governor's Crime Commission. An intra-departmental committee was also established to develop implementation strategy and to insure input from all divisions of the Department of Corrections.

Recognizing the need for a broad array of input from the state and local government in the development of the 'Rules, Regulations and Standards' for the Act, a State Advisory Committee on the Community Corrections Act was established. Members of this Committee included state supervisors assigned to designated pilot areas, a representative from the Governor's Crime Commission, representatives from the designated pilot areas, and Subsidy Unit staff.

The two primary responsibilities assumed by the Subsidy Unit were the development and dissemination of information and materials about the Act, and the provision of technical assistance to both designated and potential pilot counties in their efforts at coming under the Act. These responsibilities continue to be a major focus of the ongoing work of the Subsidy Unit.

General Fiscal Summary

The overall financial summary for the implementation of the Community Corrections Act in the three designated pilot areas is summarized below:

A. Eligibility

<u>COUNTIES</u>	(1) <u>ELIGIBLE ANNUAL SUBSIDY</u>	(2) <u>SUBSIDY OBLIGATION</u>
Crow Wing/Morrison	278,639.96	232,199.96 (10 mo.)
Olmsted/Dodge	312,264.46	338,286.50 (13 mo.)
Ramsey	1,808,816.49	1,808,816.49 (12 mo.)
TOTAL	2,399,720.91	2,379,302.95

Column 1 of this chart presents information on the amount of subsidy funds for which each of the pilot areas is eligible on a 12 month basis. Column 2 presents the costs based upon the actual start-up dates which are as follows:

June 1, 1974	Olmsted/Dodge
July 1, 1974	Ramsey
September 1, 1974	Crow Wing/Morrison

B. Net Figure

Total subsidy obligation	2,379,302.95
Legislative subsidy appropriation	1,500,000.00
Net obligation	879,302.95

The 'net obligation' specified above will be met by:

1. The transfer of funds from Department programs and services which are assumed by the pilot areas upon entrance into the Act (group home subsidy, regional jail subsidy, county probation subsidy, parole services, and community corrections centers subsidy).
2. Charges made to counties under the Act for the use of state institutions.

SECTION II - PILDT SUBSIDY COUNTIES; PROGRESS AND CURRENT STATUS

The implementation progress and current status of each of the pilot subsidy counties is detailed in this section. The pilot counties submitted Comprehensive Plans for the remaining portion of 1974: Olmsted/Dodge for the period of June 1 - December 31; Ramsey for the period of July 1 - December 31; Crow Wing/Morrison for the period of September 1 - December 31. New Comprehensive Plans are to be submitted in December for calendar year 1975.

Olmsted/Dodge CountiesA. Implementation Progress

8/16/73	Commissioner Schoen meets with County Commissioners. Study group created.
8/24/73	Weekly meetings of study group are initiated (Larry Agerter, Chairman).
9/18/73	Study group reports to joint meeting of County Commissioners with recommendation that resolutions be passed to participate in the Community Corrections Act.
10/3/73	Joint meeting of County Commissioners to receive recommended names for the Advisory Board; resolution passed to participate in the Act.
10/17/73	First meeting of Advisory Board; Christopher Batchelder elected Chairman.
11/21/73 - 4/11/74	Advisory Board meetings. Study group recommendation that one person be responsible for coordinating the development of the Comprehensive Plan.
11/21/73 - 4/11/74	Preparation of Comprehensive Plan.
4/11/74	Advisory Board approval of the Plan.
4/26/74	County Commissioners approval of the Plan.
5/8/74	Submission of Comprehensive Plan to Department of Corrections.
6/1/74	Olmsted/Dodge Counties begin participation in the Community Corrections Act.

B. Summary of the Olmsted/Dodge Community Corrections Comprehensive Plan

PROGRAM SUMMARY

The Olmsted/Dodge Comprehensive Plan was approved for the seven month period, June 1, 1974, through December, 1974. As approved, the Plan describes the existing corrections delivery system, identifies needs, specifies program goals and objectives, and calculates costs. The major ingredients of the Plan are summarized as follows:

1. Administration:

The Plan specifies that an Administrative Assistant will be hired to provide ongoing coordination among operating programs, collect and evaluate data and supply information to the Advisory Board as a basis for planning and operation. No central administrative capability previously existed for community correctional programs; instead, a number of overlapping authorities were in operation.

2. Prevention and Diversion:

The Plan calls for the ongoing documentation of needs for planning purposes. As a result of this process, the Rochester School Program involving three teachers and a joint effort on the part of the Department of Education and Corrections has been established. A pre-trial diversion program in the office of the County Attorney will be formalized and coordinated with the overall planning for service delivery.

3. Non-Residential Programs:

The Plan provides for the continuation of probation and parole services specifying that a new full-time position be established and located in Dodge County. In addition to traditional probation and parole services, a volunteer probation program is being run through the PORT facility. Future needs and resources are being considered as pertinent data is collected.

4. Residential Programs:

The Plan identifies two residential programs; a Group Home residence for juveniles and a PORT program for juveniles and adults. Both programs serve the community as alternatives to state institutions, and allow clients lateral movement between the program and the community.

5. Institutional Programs:

The Plan provides for one full-time jail employee known as a correctional worker who is responsible for designing rehabilitative programs for individual prisoners and for maintaining the necessary contacts with community resources to supplement such programs. To complement this program, remodeling was done in the jail to provide a setting conducive to rehabilitative programs.

Corrections Advisory Board Members

Members of the Olmsted/Dodge Counties Corrections Advisory Board are listed below:

Law Enforcement	Charles R. VonWald Olmsted County Sheriff
Chief of Police	Darold P. Quesnel Dodge Center Police Department
County Attorney	Dewayne Mattson Olmsted County Attorney
Judiciary Representative	Donald T. Franke Judge of the District Court
Judge of Municipal Court	The Honorable Robert Neseth
Education Representative	Dean E. Fritze, Ph.D. Hayfield Superintendent of Schools
Welfare Department	Carl J. Maeder Social Services, Olmsted County
Public Defender	Larry Collins Olmsted County
Probation Officer	Dave Griffin Olmsted County Court Service
Corrections Admin.	Jay Lindgren PORT Director
Social Service Agency	Anna McGee Ability Building Center
Ex-Offender	Sterling Jenkins
Licensed MD	Jane Duncan, MD Mayo Clinic, Psychiatrist
Citizen Member	Christopher Batchelder (Chairman) Mayo Clinic Administrator
Citizen Member	Tom Blaisdell Bank Cashier
Citizen Member	Neil Young Educator
Citizen Member	Isabel Huizenga Social Worker

Ex-Officio Members

Rosemary Ahman - Olmsted Board of County Commissioners

Lowell Trom - Dodge Board of County Commissioners

Financial Summary

This table provides the financial summary for the Olmsted/Dodge Comprehensive Plan 1974.

Financial Summary of Subsidy Funds - Olmsted/Dodge1. Administration:

Administrative Assistant	5,625.00
Evaluation and Training	4,756.00
Consultant Contracts	1,326.00

Total Cost of Administrative Structure:	\$11,707
---	----------

2. Prevention and Diversion Programs:

Rochester school program - combined efforts of Department of Education, Department of Corrections and Dodge/Olmsted Counties. (3 teachers, supplies, and training)	8,209.00
--	----------

Total Cost of Prevention and Diversion Programming:	\$ 8,209
---	----------

3. Non-Residential Programs:

Hire state agents previously serving Dodge/Olmsted Counties and continue to provide local probation and parole services.	61,704.00
Develop volunteer probation officer project.	9,173.00

Total cost of Non-Residential Programming:	\$70,877
--	----------

4. Residential Programs:

Group Home Project: Director, House Parents, Relief Parents, Secretary	2,792.00
--	----------

PORT Corrections Center: Director, Assistant Director, 2 program assistants, secretary, and staff training.	40,359.00
---	-----------

Total Cost for Residential Programming:	\$43,151
---	----------

5. Institutional Programs: (local)

Olmsted County Jail Program:

1 correctional officer	2,862.00
fringe benefits	718.00
travel	292.00
remodeling	16,000.00
furnishings	5,000.00

Total Cost of Local Institutional Programming: \$24,872.00

6. Estimated Use of State Institutions:

Juvenile	19,165.00
Adult	8,760.00

Total Estimated Use of State Institutions: \$27,925.00

TOTAL COST OF DODGE/OLMSTED COMMUNITY CORRECTIONS ACT SUBSIDY: \$186,741.00

Figure 1 presents the financial breakdown of the Olmsted/Dodge Plan in terms of the proportionate allocation of subsidy funds.

FIGURE 1: Proportionate Allocation of Subsidy Funds - Olmsted/Dodge

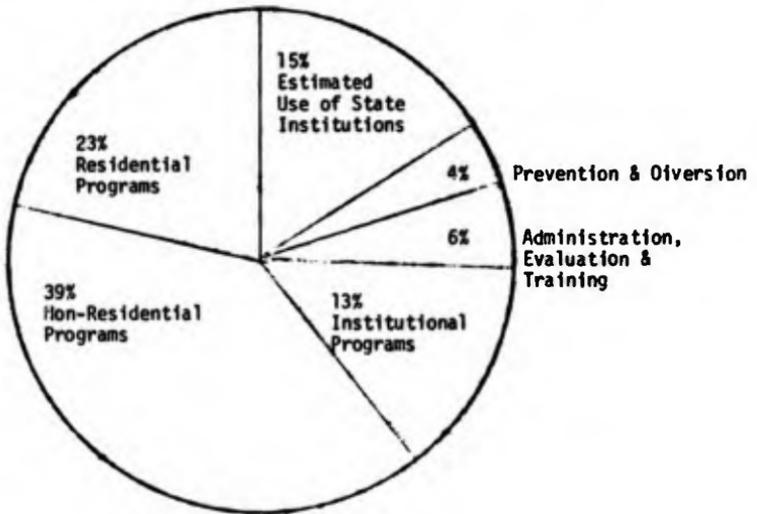


Figure 1 shows that the largest percentage of subsidy funds (39%) is allocated to Non-Residential Programming. This includes the cost of assuming state parole services, full funding of court probation services, the development of extensive probation service in Dodge County and continuation of the local volunteer services program. Residential Programming has been allocated the next largest proportion of subsidy funds (23%). This includes the PORT program and group home project. The counties estimate that approximately 15% of the subsidy funds will be charged back to the state for use of state institutions. The counties have designated 13% of subsidy funds for local institutional programming; specifically this involves implementation of a program for short term offenders in the Olmsted County jail. Also included in the plan is 6% for administration of the local corrections system and evaluation and training. The plan designated 4% of subsidy funds to prevention and diversion programming; this includes the development of the Rochester school program.

Proportionate spending by funding source for Olmsted/Dodge Counties is presented in Figure 2. This figure shows that the largest proportion of spending comes from the Community Corrections Act subsidy (63%). County funds (27%) are expended on partial support of administrative services, court services, group home, PORT program, and school program. Law Enforcement Assistance Administration funds administered by the Governor's Commission on Crime Prevention and Control represent partial funding of the volunteer program (10%).

FIGURE 2: Proportionate Spending by Funding Source - Olmsted/Dodge



Crow Wing/Morrison CountiesA. Implementation Progress

- | | |
|----------|---|
| 8/6/73 | Commissioner Schoen meets with Crow Wing County Commissioners on the Community Corrections Act. Creation of study group authorized to look at implications. |
| 9/10/73 | First study group meeting held. Series of weekly meetings initiated. |
| 11/28/73 | Crow Wing County Board authorizes investigation with Morrison County to consider possible multi-county unit. |
| 12/12/73 | Presentation made to Morrison County Board of Commissioners; study group created in Morrison County. |
| 1/3/74 | Initial meeting of Morrison County study group. |
| 2/1/74 | Complete study group meetings in Morrison County. |
| 2/15/74 | Joint resolution received from Crow Wing/Morrison County Commissioners for participation under the Act. |
| 3/15/74 | Creation of Crow Wing/Morrison Advisory Board. |
| 4/3/74 | Planning committee begins developing Comprehensive Plan. |
| 8/7/74 | Corrections Advisory Board recommendation for approval of Comprehensive Plan. |
| 8/12/74 | Submission of Comprehensive Plan to County Commissioners for approval. |
| 9/1/74 | Crow Wing/Morrison Counties begin participation in Community Corrections Act. |

b. Summary of the Crow Wing/Morrison Community Corrections Comprehensive Plan

PROGRAM SUMMARY

The Crow Wing/Morrison County Comprehensive Plan was approved for the four month period, September 1, 1974, through December, 1974. The major ingredients of this plan are summarized as follows:

1. Administration:

The Plan calls for hiring a central administrator to coordinate planning activities and a technical clerk to handle fiscal management of community corrections funds. Also included is program evaluation and training for local corrections personnel.

2. Prevention and Diversion:

The Corrections Advisory Board through a prevention and diversion subcommittee proposes documentation of what exists in the area of prevention and diversion and planning for identified needs in 1975.

3. Non-Residential Programs:

The Plan includes the continuation of probation and parole services in Morrison and Crow Wing Counties. The state agent presently serving these counties will transfer into the local system in January, 1975. Also included is the YMCA Detacher Worker program operating in Brainerd, which is presently LEAA funded and provides counseling services to youth referred from local service agencies (i.e., law enforcement, schools, juvenile court).

4. Residential Programs:

The Plan identifies the residential programs in Morrison and Crow Wing Counties. The Crow Wing County PORT project is jointly funded with state and federal monies. This 25 bed facility presently serves both male and female offenders. The Morrison County Group Home (MORAD) is a residence for both male and female juveniles. The Comprehensive Plan will document what needs exist in the area of residential treatment and will prescribe necessary remedies to meet those needs in the 1975 Plan.

5. Institutional Programs:

The major area of concern for the future is the provision of necessary programs and services to inmates of the soon to be constructed Crow Wing County Jail. The present plan specifies that existing social services will be coordinated and guaranteed to inmates through the involvement of community organizations and social service organizations.

b. Summary of the Crow Wing/Morrison Community Corrections Comprehensive Plan

PROGRAM SUMMARY

The Crow Wing/Morrison County Comprehensive Plan was approved for the four month period, September 1, 1974, through December, 1974. The major ingredients of this plan are summarized as follows:

1. Administration:

The Plan calls for hiring a central administrator to coordinate planning activities and a technical clerk to handle fiscal management of community corrections funds. Also included is program evaluation and training for local corrections personnel.

2. Prevention and Diversion:

The Corrections Advisory Board through a prevention and diversion subcommittee proposes documentation of what exists in the area of prevention and diversion and planning for identified needs in 1975.

3. Non-Residential Programs:

The Plan includes the continuation of probation and parole services in Morrison and Crow Wing Counties. The state agent presently serving these counties will transfer into the local system in January, 1975. Also included is the YMCA Detacher Worker program operating in Brainerd, which is presently LEAA funded and provides counseling services to youth referred from local service agencies (i.e., law enforcement, schools, juvenile court).

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5. Institutional Programs:

The major area of concern for the future is the provision of necessary programs and services to inmates of the soon to be constructed Crow Wing County Jail. The present plan specifies that existing social services will be coordinated and guaranteed to inmates through the involvement of community organizations and social service organizations.

Corrections Advisory Board Members

Members of the Crow Wing/Morrison County Corrections Advisory Board are listed below:

Law Enforcement	Charles Warnberg Crow Wing County Sheriff
Chief of Police	Clayton Olson Little Falls Police Department
County Attorney	Frederick J. Casey Assistant County Attorney
Judiciary Representative	Ben Grussendorf Judge of the District Court
Judge of Municipal Court	George Wetzel Morrison County Judge
Academic Administrator	Vernon Dowty Superintendent of Schools
Welfare Department	Robert Delane Social Services
Public Defender	Charles P. Steinbauer Public Defender
Probation Officer	Shirley Wright Morrison County Probation Officer
Correctional Administrator	Thomas Hegstad Crow Wing County
Social Service Agency	Ruth Thomas Northern Pines Mental Health Clinic
Medical Doctor	Milo Hansen, MD
Citizen Member	Glenn Tridgell
Citizen Member	James Fish
Citizen Member	James Anderson
Citizen Member	Michael Perry
Citizen Member	Connie Piggot

Financial Summary

This table provides the financial summary for the Crow Wing/Morrison Comprehensive Plan for the four month period, September 1, 1974, through December 31, 1974.

Financial Summary of Subsidy Funds - Crow Wing/Morrison1. Administration:

Central Administrator	4,643.00
Supplies	120.00
Technical Clerk	1,012.00
Fringe Benefits	121.44
Evaluation and Training	4,643.00

Total Cost for Administrative Structure: \$10,539.44

2. Prevention and Diversion Programs:

Continue documentation and Planning for 1975 through the use of Administrative structure and Prevention and Diversion Subcommittee.

3. Non-Residential Programs:

Continue probation services in Crow Wing/Morrison Counties. (State agent will transfer in 1975 Plan). 10,407.28

Total Cost for Non-Residential Programming: \$10,407.28

4. Residential Programs:PORT Project:

Administration Costs	393.33
Ass't. Director	4,833.00
Secretary	1,900.00
Cook	1,067.00
Travel, Supplies	403.00
Fringe Benefits	889.99

Total Cost for Residential Programming: \$ 9,485.32

5. Estimated Use of State Institutions: \$56,693.04

TOTAL COST OF CROW WING/MORRISON COMMUNITY CORRECTIONS

ACT SUBSIDY:

Less state salary for agent who will not transfer under 1975 Plan: \$92,879.96
-5,754.88
\$87,125.08

Figure 3 presents a financial summary of the Crow Wing/Morrison County Plan in terms of the proportionate allocation of subsidy funds.

FIGURE 3: Proportionate Allocation of Subsidy Funds - Crow Wing/Morrison

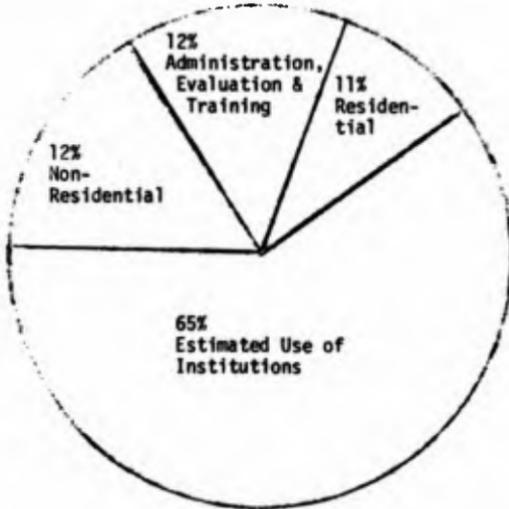


Figure 3 shows that the largest proportion of subsidy funds have been allocated for the estimated use of state institutions (65%). Clearly, the counties have purposefully overbudgeted in that area. The reason for this is because in 1973 Crow Wing County ranked fifth in adult commitment per 1000 of population. This was an atypical year for that county; as a result, it was the decision of the Corrections Advisory Board to proceed cautiously in regard to use of institutions. It appears that the counties will not come close to expending that sum of money. Non-Residential programming (12%) includes probation services in both counties. The counties plan to expend 12% of subsidy funds for administration, evaluation, and training. The remaining 11% will be utilized to support residential programming, which includes the PORT project and project MORAD.

The proportionate spending by funding source for Crow Wing/Morrison Counties is presented in Figure 4.

FIGURE 4: Proportionate Spending by Funding Source - Crow Wing/Morrison



Figure 4 indicates that a very small proportion of the total monies expended for corrections purposes are county funds (5%). This is the result of previous state subsidies paid to these counties. Both Crow Wing and Morrison Counties have received county probation officer subsidies and their correctional services were limited to probation. Also, when Crow Wing County developed the PORT program, the Department of Corrections and the Governor's Crime Commission (LEAA) jointly provided financial support, therefore requiring a minimum county expenditure. Most of the programs receive LEAA funds or were formerly subsidized by the Department of Corrections, which reflects the disproportionate spending pattern.

Ramsey CountyA. Implementation Progress

- | | |
|----------|--|
| 8/3/72 | Commissioner Schoen presents the Community Corrections Act to St. Paul-Ramsey County Criminal Justice Advisory Committee. |
| 9/27/73 | Presentation of Community Corrections Act to corrections delegation of St. Paul's Mayor Conference on Criminal Justice. |
| 10/15/73 | Presentation and discussion of the Act to corrections subcommittee of St. Paul-Ramsey County Criminal Justice Advisory Committee. Recommendation made to the full committee to recommend that County Board pass resolution to enter under the Act. |
| 10/24/73 | Meeting of Full Criminal Justice Advisory Committee. Recommendation to Ramsey County Board to pass resolution to enter the Act. |
| 12/3/73 | Ramsey County Board of Commissioners pass resolution to come into the Community Corrections Act. |
| 1/8/74 | Appointment of Advisory Board. |
| 6/1/74 | Development of Comprehensive Plan. |
| 6/8/74 | Advisory Board recommendation and approval. |
| 6/20/74 | County Commissioners approve Comprehensive Plan. |
| 6/21/74 | Submission of Comprehensive Plan to Commissioner of Corrections for approval. |
| 7/1/74 | Begin participation in Community Corrections Act. |

B. Summary of the Ramsey County Community Corrections Comprehensive Plan

PROGRAM SUMMARY

The Ramsey County Comprehensive Plan was approved for the six month period, July 1, 1974, through December, 1974. The major ingredients of the Plan are summarized as follows:

1. Administrative Structure:

The Plan calls for the centralization of planning, coordination, and budgeting of all correctional services in Ramsey County. In order to accomplish this task, a subcommittee has been formed to develop an administrative structure which can be agreed upon by both the County Commissioners and District Court Bench. This structure will carry out the administrative functions of all correctional services in Ramsey County and will include both evaluation and staff training.

2. Prevention and Diversion Programming:

The Plan calls for the continued documentation of existing needs and resources within the community in an effort to plan for specific programming in the 1975 Comprehensive Plan.

3. Non-Residential Programming:

The goals of the 1974 non-residential programming are to direct clients from the justice system and reduce commitments to state institutions. In an effort to meet these goals, the County has hired additional staff for the Juvenile Court and increased job training and employment opportunities for adult offenders through purchase of service contracts with community resources. In addition, planning is presently being conducted in this area to expand services to multi-problem families in 1975.

4. Residential Programming:

Residential programs have traditionally been developed as alternatives to state institutions with emphasis on treatment. As such, the 1974 Ramsey County Plan calls for the continued use of residential care for both juveniles and adults. This will be carried out through hiring additional staff for group home programming and increased residential care for 36 adults.

5. Institutional Programming:

The 1974 Plan within local institutions consists of:

- A) Creating an improved holding area within the juvenile court.
- B) Developing a group discussion program for juveniles.
- C) Determining the unmet needs of female adult offenders.
- D) Developing an education and rehabilitative program in the County Workhouse.

- E) Increasing the effectiveness of the work-release program.
- F) Reducing overcrowding conditions.
- G) Making County Workhouse more secure.
- H) Enlarging the north recreational area of the County Workhouse.

Corrections Advisory Board Members

Members of the Ramsey County Corrections Advisory Board are listed below:

Law Enforcement	George Weber Sheriff's Office
Chief of Police	Richard Rowan Chief of Police
County Attorney	Paul Lindholm
Judiciary Representative	Archie Gingold Judge of the District Court
Judge Municipal Court	Judge Bertrand Poritsky
Academic Administrator	Dr. Charles Hagen St. Paul Public Schools
Welfare Department	James Edmunds Director of Ramsey County Welfare
Public Defender Designee	Ronald Riach
Probation Officer	Robert Nelson Ramsey County Court Services
Correctional Administrator	Bernard Troje, Director Department of Detention and Corrections
Social Service Agency	Carol Flumbaum Union Gospel Mission
Ex-Offender	Carl Bishop Shoreview Treatment Center
Licensed Medical Doctor	Dr. James Janecek
Citizen Member	Pat Bellanger American Indian Movement
Citizen Member	Reverend Robert Johnson Zion Lutheran Church

Citizen Member	Elizabeth Kalisch
Citizen Member	Mrs. Ruth Benner
Chairman	Eugene H. Burns Ramsey County Court Services

Financial Summary

The financial summary for the six month period, July 1, 1974 - December 31, 1974, is presented in this table.

Financial Summary of Subsidy Funds - Ramsey County

1. Administration:

Technical support and program support. Includes a unit director, a research specialist, an administrative analyst, an accountant and a clerk-typist. Also includes \$11,795 for evaluation consultation contracts.

Evaluation	45,000.00
Staff Development (training)	45,000.00

Total Cost of Administrative Structure:	\$90,000.00
--	--------------------

2. Prevention and Diversion Programs:

1/2 time researcher to continue documentation and planning for Prevention and Diversion needs in 1975.	3,415.00
--	----------

Total Cost of Prevention and Diversion Programming:	\$ 3,415.00
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3. Non-Residential Programs:

Hire an additional probation officer to direct clients from the justice system.	7,132.00
---	----------

Hire one school social worker, a child welfare worker, and an additional clerk-typist to help reduce juvenile commitments.	20,690.00
--	-----------

Purchase of service contracts for 75 adults in job opportunity and job training programs.	5,644.00
---	----------

Hire state agents previously serving Ramsey County. (Supervisors, agents, clerical costs, supplies, travel).	178,987.00	
Total Cost of Non-Residential Programming:		\$212,453.00
4. Residential Programs:		
Continue to provide group home staff to recruit, certify, and coordinate group home programming in order to decrease the juvenile rate of commitments to state.	17,867.00	
Hire an additional group home recruiter.	7,723.00	
Hire a resource coordinator and program aid to enable staff to effectively use community-based resources.	12,260.00	
Continue to provide residential placement for 36 adults.	123,120.00	
Increase residential care for 36 additional adults (phasing in 6 per month).	71,820.00	
Total Cost of Residential Programming:		\$232,790.00
5. Institutional Programs: (local)		
(Juvenile Detention)		
Enlarge and improve holding area in Juvenile Court.	2,500.00	
Develop a group discussion program by hiring a group worker for juveniles in detention.	7,841.00	
(Adult Detention)		
Determine the current needs of the misdemeanor adult female offenders from Ramsey County by hiring a 1/2 time researcher to conduct and complete a study for the 1975 Plan.	3,415.00	

Improve the rehabilitative program at the Workhouse by hiring a Shop Foreman.	6,345.00	
Improve the educational needs of clients with the addition of a remedial reading specialist at the Workhouse.	7,131.00	
Increase the effectiveness of the Work-Release Program by adding a Work-Release Specialist and five additional staff. Together they will establish a halfway house program at the south wing of the Workhouse.	36,635.00	
Physical improvements at the County Workhouse totaled \$76,500. These improvements were disapproved by the Commissioner pending further investigation of their necessity. Presently, these improvements are being renegotiated within the limits of such spending in the Community Corrections Act.	76,500.00	
Total Cost of Institutional Programming: (local)		\$144,117.00
6. <u>Estimated Use of State Institutions:</u>		
Juvenile	86,875.00	
Adult	130,350.00	
Total Estimated Use of State Institutions:		\$217,225.00
TOTAL COST OF RAMSEY COUNTY COMMUNITY CORRECTIONS ACT SUBSIDY:		\$900,000.00

Figure 5 presents a financial summary of the Ramsey County Plan in terms of the proportionate allocation of subsidy funds.

FIGURE 5: Proportionate Allocation of Subsidy Funds - Ramsey County

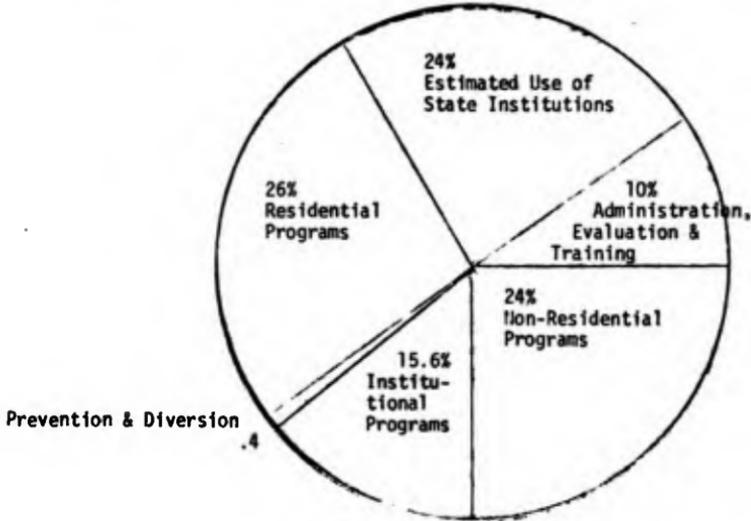


Figure 5 shows that the largest proportion of subsidy funds (26%) is allocated to residential programming. This includes the continued use of existing residential facilities as well as the development of new program resources. The next largest allocation of funds is non-residential programming (24%). This includes purchase of service contracts, hiring additional staff, and the assumption of state parole agents serving the county. Estimated use of state institutions accounts for 24% of subsidy funds. Local institutional programs account for slightly over 15% of subsidy funds. This includes the development of new programs, hiring additional staff and making the necessary remodeling to buildings. Evaluation and staff training account for 10% of the subsidy funds and involves technical and program support to the county correctional system. Prevention and diversion funding is the smallest category and essentially involves conducting a survey of existing programs and documenting needs for 1975.

The proportionate spending by funding source for Ramsey County is presented in Figure 6. This figure shows that federal revenue sharing and Community Corrections Act funds represent approximately three quarters of spending with approximately one quarter of the spending from the county.

FIGURE 6: Proportionate Spending by Funding Source - Ramsey County



General Problems

A number of problems have emerged in the course of implementing the Act in the three pilot areas. While a number of issues have been specific to particular pilot areas, several more general problems have arisen including the following:

1. To varying degrees, pilot counties have experienced difficulty in developing and formalizing the administrative structure responsible for the operation of the local corrections system.
2. The 'Rules, Regulations, and Standards' developed by the Subsidy Unit of the Department were unclear and misleading in a number of areas and as a result required policy statements for purposes of clarification.

3. A variety of technical and procedural issues arose as these related to the transfer of direct service responsibilities from the state to the pilot counties. These required legal interpretation and administrative decisions and resulted in some delay for the counties.
4. The development of comprehensive plans posed varying degrees of problems for the pilot counties. The fact that no planning funds or funds to cover travel expenses for Corrections Advisory Board members were available from the Department caused some problems, particularly for the non-metropolitan counties.

SECTION III - FUTURE IMPLEMENTATIONA. Selection Criteria

In developing an implementation schedule for the Community Corrections Act, the criteria and method of selection for additional counties to participate in the Act over the next biennium is very important. The present pilot counties - Dodge/Olmsted, Crow Wing/Morrison, and Ramsey - reflect a cross-section of the state's population clusters and the existence of community corrections resources. These three pilot areas represent rural, suburban, and metropolitan Minnesota, all of which have made substantial steps toward the development of community alternatives to state institutionalization. For further selection, the criteria have been expanded to include the following:

1. Use of State Institutions

The intent of the Community Corrections Act is to improve the level of corrections services at the local level through the provision of state funds to complement local corrections expenditures. However, one of the anticipated results is a reduction of commitments to state institutions. Therefore, as the Department of Corrections moves toward making substantial changes in its institutional spending, counties with high commitment rates will be very carefully considered for movement into the Act.

2. Desire for Entry into the Act

The desire by a county or group of counties to enter under the Act serves as a possible incentive towards successful implementation.

3. Funding Level

The amount of funds available to the county or group of counties after assumption of state costs in order to allow for expanded or new corrections programming.

4. Likelihood of Success

The likelihood of the county or group of counties to implement and meet the standards and requirements of the Act as indicated by the development of community-based programs.

5. Local System Rates

The caseload of the local criminal justice system is a major factor of consideration. Areas of concern here include general crime rates, court caseloads, county jail population, probation caseloads. This criteria serves as an indicator of local system needs.

6. Geography

In order to be consistent with the development regions of the state, it is important to consider geography. However, the development regions do not necessarily adapt to judicial districts or corrections service delivery systems. Because of this, implementation of the Community Corrections Act must consider location as well as multi-county combinations entering the Act.

B. Priority Counties

The following counties are areas under consideration for participation under the Community Corrections Act over the biennial period. All of the following counties have indicated their interest to participate with the exception of Cass and Big Stone Counties. (Note: Attachment A for copies of County Board Resolutions). However, in order to insure compliance with regional development legislation, these counties have been included in the computations.

1. Hennepin County

Because of population, Hennepin County is the largest user of state correctional services and facilities. Hennepin is a single county corrections operation and with its extensive experience in community corrections, the county could effectively participate under the Act. Because of its major impact on the corrections system, Hennepin County has to be the major consideration in the future implementation of the Act.

2. Region 3 (Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and St. Louis Counties)

Minnesota Development Region 3 includes the third highest user of state institutional services, St. Louis County. The region has been organized for mutual programming for some years and presently has several regionalized corrections resources. Implementation of the Community Corrections Act in all of Development Region 3 would allow a much more efficient utilization of corrections funds and resources and be consistent with local regionalized planning.

3. Anoka County

Anoka County is one of the fastest growing counties in the state. In the past, the county has utilized the two large metropolitan counties - Hennepin and Ramsey - for a number of corrections services. However, due to its growth, the county has been forced to expand its local services. During the period when the Community Corrections Act was being drafted and passed, Anoka County hoped to be designated a pilot county. The County is still interested and is ready to begin preparing for implementation of the Act when assured that subsidy funds will be available.

4. Red Lake, Polk, Norman

Red Lake, Polk, and Norman Counties in the southern half of Development Region 1, have developed their correctional services along a tri-county program and presently have a Regional Corrections Board. This Board has endorsed a schedule for the development of a comprehensive plan for implementation of the Community Corrections Act in the three counties.

5. Region 6W (Swift, Yellow Medicine, Lac Qui Parle, Chippewa, Big Stone)

Minnesota Development Region 6W is made up of largely rural counties. No two counties have populations totaling 30,000; therefore, to enter the Community Corrections Act, at least three counties must participate to achieve the required population base. All of the counties in this region, except Big Stone County, have expressed a desire to participate. Due to the lack of alternatives to juvenile institutions in this region, it is anticipated that participation under the Community Corrections Act would allow for the development of local alternatives.

6. Todd, Wadena, Cass

These counties represent the remaining counties in Development Region 5. The other two counties, Crow Wing and Morrison, are presently participating under the Act. Todd and Wadena presently operate under a single court services jurisdiction providing most of the corrections services in the two counties. Both counties have passed resolutions indicating their desire to participate and have begun local planning and anticipating participation under the Act should funds become available. Cass County has not expressed interest to participate in the Act, however, because the County does not meet the population requirement for participation and due to the implications on Regional Development, it has been included.

C. Costs1. Continued Funding of Existing Pilot Counties

Total Amount Eligible	
Dodge/Olmsted	312,264.46
Ramsey	1,808,816.49
Crow Wing/Morrison	278,639.96
	2,399,720.91
Total Obligation for Present Pilot Counties	\$2,399,720.91
Minus project savings from operating budget of the Department. (Includes county assuming responsibility for parole services; Centers Act funding; group home funding).	522,601.98
	\$1,877,118.93

<u>Minus</u> estimated charge-back for Use of State Institutions.	636,760.00	
Annual Front End Cost for Existing Pilot Counties.		\$1,240,358.93
2. <u>Proposed Implementation Counties</u>		
	Total Amount Eligible	
Hennepin	3,287,313.92	
Region 3	1,566,716.32	
Anoka	808,134.83	
Region 6W	166,079.14	
Red Lake, Polk, Norman	128,730.07	
Todd, Wadena, Cass	292,032.47	
Total Obligation for New Counties		\$6,249,006.75
<u>Minus</u> project savings from operating budget.	1,583,578.88	\$4,665,427.87
<u>Minus</u> estimated charge-back for Use of State Institutions.	2,241,422.00	
Annual Front End Cost for Additional Pilot Counties.		\$2,424,005.87
3. <u>Total Costs</u>		
Annual Front End Cost - Present Pilot Counties		\$1,240,358.93
Annual Front End Cost - New Counties		<u>\$2,424,005.87</u>
Total Annual Front End Cost		\$3,664,363.80
Biennial Cost		<u>\$7,328,727.60</u>
Inflation factor 26%		X.26
(Because the most recent data is not currently available, the equalization formula will be recalculated early in 1975 and reflect an approximate inflation factor of 26%.		<u>\$9,234,196.78</u>

The above figures are based on the 1972 original computation. Computations with more recent, but not current, data indicates that the amount of subsidy which counties are eligible to receive may, in some cases, increase. As a result, the staff will have to recompute the equalization formula early in 1975 to determine the exact amount of funds needed. If that figure is in excess of the inflationary factor included in these figures, the Department of Corrections will have three options:

1. To ask the Legislature for an increase in the front end load request.
2. Attempt to secure funds from savings in its operating budget during the biennium.
3. Stagger the starts of the suggested priority counties.

APPENDIX A:

County Board Expressions of Interest

Expressions of interest in entering the Community Corrections Act have been received from the following counties:

Lake County
Itasca County
Red Lake County
Polk County
Norman County
Carlton County
St. Louis County
Anoka County
Hennepin County
Todd County
Wadena County
Faribault County
LeSueur County
Martin County
Otter Tail County
Houston County
Winona County

RESIDENTIAL COMMUNITY CORRECTIONS PROGRAMS

(A Preliminary Evaluation prepared by Evaluation Unit, Governor's Commission on Crime Prevention and Control, April, 1975)

SUMMARY AND RECOMMENDATIONS

INTRODUCTION

From 1969 through 1974, the Governor's Commission on Crime Prevention and Control has awarded over six million dollars to the Department of Corrections and to local units of government to establish and operate forty residential community corrections projects throughout the State of Minnesota. Although the efforts of the Governor's Commission on Crime Prevention and Control are only part of a larger effort throughout the state, the Commission has been in the forefront of the community corrections movement.

The Commission's role in community corrections is in keeping with a Commission purpose—that of testing new approaches to the resolution of criminal justice problems. This purpose requires an objective evaluation of new programs to determine if Commission funds are achieving their hoped for results. The purpose of this evaluation is to provide information to the Commission and others in corrections on the effectiveness of residential community corrections programs and on the problems which impede their effectiveness.

This report is a preliminary evaluation and as such may raise more questions than it answers. But the report should be seen, not as a single product which will produce all answers, but as a beginning of a continuous process which will provide information needed by decisionmakers and managers to set policy and to effectively manage and improve programs.

This report is limited to a single aspect of community corrections—residential community corrections. Many community corrections programs do not provide residences for their clients. For example, pre-trial diversion projects, employment and drug treatment programs, and the traditional approaches to probation and parole may be viewed as community corrections programs. Nonetheless, residential programs are more often seen as direct alternatives to institutionalization and probation or as supplements to parole. In this context, residential programs assume great importance within the community corrections approach.

Most residential community corrections projects funded through the Governor's Crime Commission have not been designed to test specific theories of rehabilitation but, instead, represent a variety of treatment approaches, often with overlapping elements. For this reason, no attempt is made in this report to test particular hypotheses about community corrections or specific program components of projects. Instead, the report is concerned with the broader issues of problems encountered and results produced by projects. Thus, this report is an assessment of some of the Commission-funded residential community corrections programs as they have operated to date.

This report provides an overview of residential community corrections and as such does not focus on individual projects. Projects have been categorized into three project types: (1) *Halfway Houses*, which were designed as re-entry facilities for adult offenders being released from correctional institutions. The projects included in this study are Alpha House, Anishnabe Longhouse, Anishnabe Waki-gan, Pi House, Retreat House, and 180 Degrees. (2) *P.O.R.T. Projects*, which were designed as alternatives to incarceration for adults (and in some cases, also juveniles). These projects include P.O.R.T. Alpha, Portland House, Bremer House and P.O.R.T. of Crow Wing. (3) *Juvenile Residences*, which were designed to serve juveniles at all stages of involvement with the criminal justice system. Included in this study are Zion Northside, Turnabout, the Mansion, Northwest Regional Juvenile Training Center, Project MORAD, Winona County Group Home, Freeport West and Renville-Redwood Counties Group Home.

FINDINGS

A. Reasons for termination from projects

1. Residents of residential corrections projects were classified according to whether they successfully or unsuccessfully completed their programs. A client was successful if he completed his contract or the phase progression program for the residential period. Unsuccessful clients terminated residence without com-

pleting their contracts or programs. By project type, only 28.3% of the halfway house clients, 38.5% of the P.O.R.T. clients and 44.1% of the juvenile residence clients successfully completed their programs.

2. In each project type, approximately 50% of the residents fail to complete the programs because they abscond, fail to cooperate with the program or engage in criminal activity. Primary reasons for failure to complete the programs are absconding and lack of cooperation. Relatively few are terminated from the projects because of criminal behavior.

3. The fact that so few clients successfully complete the programs suggests that residential community corrections programs, for a variety of reasons are an inappropriate form of rehabilitation for a large percentage of persons for whom these programs are now being used. This suggests that either the programs should change to better accommodate the needs of clients or that more selective criteria are needed to limit the programs to persons amenable to this treatment approach.

B. Recidivism

Indicators of recidivism used in this study include arrests, felony and misdemeanor convictions, and revocation of parole/probation. After-the-fact comparison groups were drawn for P.O.R.T. and halfway house clients. These two comparison groups were selected from adult parolees released from Stillwater, St. Cloud and Shakopee during 1972-1973. The selection criteria for these comparison groups were the formal, objective criteria for entrance into halfway and P.O.R.T. projects. Because there are differences in the characteristics of these groups, differences in the rate of recidivism may be attributed to factors other than participation in the program. Because juvenile residences had few consistent and formal entrance criteria, the selection of a comparison group was made impossible. Consequently, recidivism information for juveniles focuses only on project clientele.

1. Halfway Houses:

a. Only 8.9% of the halfway house clients were convicted of new offenses while residing in the projects.

b. From the date of intake to the project through twelve months after termination from the project, 42% of the halfway house residents had been arrested, one-fourth convicted and 13% had dispositions pending for new offenses.

c. There were only slight differences in the recidivism rates of clients who successfully or unsuccessfully complete halfway house programs. These data suggest that whether a client successfully or unsuccessfully completes a halfway house program has little impact on recidivism after termination from the project.

d. There were no significant differences between the recidivism rates of halfway house clients and the comparison group in terms of arrest, felony convictions or total convictions and revocation of parole. These results suggest that whether parolees participate in a halfway house program has no relationship to recidivism after termination from the projects.

2. P.O.R.T. Projects:

a. Only 4% of the P.O.R.T. clients were convicted of new offenses while residing in the projects.

b. From date of intake to the project through six months after termination from the project, one-third of the P.O.R.T. residents had been arrested and one-fourth convicted of new offenses.

c. There were no significant differences in the recidivism rates of P.O.R.T. clients and the comparison group in terms of arrests, felony convictions or total convictions and revocation of parole. These results suggest that whether an individual participates in a P.O.R.T. project is not relevant to recidivism.

3. Juvenile Residences:

a. Only 7.3% of the clients of juvenile residences were convicted of new offenses while residing in the projects.

b. From the date of intake to the project through twelve months after termination from the project, over one-half of the residents of juvenile projects had been arrested and one-third had their petitions sustained in court.

c. Juvenile residents who fail to successfully complete juvenile programs were more likely to be arrested after terminating from the program than were successful clients. However, there were only slight differences in the rate at which petitions of successful and unsuccessful clients were sustained in the first six-

month follow-up period. These data suggest that successful completion of these programs has little impact on recidivism after termination from the project.

C. Occupancy rates

1. Residential community corrections facilities are underutilized by the criminal justice system. Despite the recent emphasis on community corrections, a number of projects were underutilized during the period of study. P.O.R.T. projects had higher occupancy rates than either halfway houses or juvenile residences. After an initial start-up period, P.O.R.T. projects' occupancy rates varied from 71.7% to 86.4%, with an average of 77.4%. The average post start-up rate for juvenile residences was 69.5%, with a range from 56.7% to 97.5%. Halfway houses had the lowest post start-up occupancy rates with a range from 37.9% to 58.6% and an average rate of 48.3%.

The low occupancy rates can be attributed to three major factors. First, by their very nature, community corrections projects are not closely affiliated with the criminal justice system and must independently recruit clientele. Second, some projects do not serve a large enough population to keep the project filled. Third, the occupancy rate of halfway houses is dependent, almost entirely, upon the policies of the Minnesota Corrections Authority.

D. Client costs

1. All halfway houses and P.O.R.T. projects operated at a cost greater than the Prison at Stillwater. One halfway house and all four P.O.R.T. projects operated at costs less than the Reformatory at St. Cloud. The costs of halfway houses varied from \$24.61 to \$59.81/client/day. For P.O.R.T. projects, the cost varied from \$20.76 to \$25.10/client/day. As a comparison, the costs/inmate/day were \$19.11 at the Prison, \$26.10 at the Reformatory and \$37.47 at Shakopee. Institutional costs are based on figures from November, 1973—October, 1974.

2. Most juvenile residences studied had operating costs less than the costs of care in a state juvenile institution. Costs of juvenile residences varied from \$17.69 to \$51.62/client/day. The costs of juvenile institutions varied from \$45.25 at Lino Lakes to \$33.02 at Red Wing. With two exceptions, the costs/client/day of juvenile residences were less than the cost/inmate/day of all three state juvenile correctional institutions. Of the two exceptions, Turnabout has closed and Zion Northside Group Home operated at a cost less than that of Lino Lakes, the juvenile institution most likely to accept Zion Northside clients.

3. Increased occupancy rates would decrease costs. If halfway houses and P.O.R.T. projects were to operate at 90% capacity, two halfway houses and two P.O.R.T. projects would cost less than the Prison; all would cost less than the Reformatory; and the women's halfway house would cost less than Shakopee. Although juvenile projects currently operate at a cost less than the state institutions, increased occupancy rates would also reduce their costs.

4. There are indications that the cost/inmate/day at state correctional institutions is increasing. However, these costs, like those of residential projects, fluctuate a good deal. Thus, cost comparisons must be based, not on monetary fluctuations, but on long-term patterns.

E. Project outcomes

1. One of the goals of residential projects is to increase education, employment or vocational training of clients. Progress toward this goal was measured by comparing clients' activities in these areas at intake and at termination. In all project types there was, between intake and termination, some increase in clients' activities in these areas. However, the increases in halfway houses and juvenile residences were minimal—less than 10%—whereas the increase in P.O.R.T. projects was over 40%.

2. Most of the increase in activity status in each project type was due to an increase in employment. The data show an increase in employment in all project types whereas attendance in academic and vocational programs was unchanged or decreased, with the exception of P.O.R.T. projects, which had a slight increase in attendance in academic programs. The data suggest that most clients are more concerned with the immediate economic benefits of employment than with the future benefits of increased education and training.

3. The increase in employment of successful clients was more than twice the increase of unsuccessful clients for all project types. Differences between success-

ful and unsuccessful clients in the other two activities were slight with one exception—successful P.O.R.T. clients had a greater increase in academic school attendance than unsuccessful P.O.R.T. clients.

4. Among all project types, there were only small decreases in the proportion of clients relying on governmental assistance and only a slight increase in the proportion of self-supporting clients. Decreases in reliance on governmental assistance and increases in self-support were greater for successful clients than for unsuccessful clients in each project type.

The fact that persons successful in the program show greater improvement in various program outcomes should not be misinterpreted. Persons who succeed in the program should be expected to improve their employment as such improvement may be part of their contract for completing the program. However, so few people successfully complete the programs that the overall impact of these projects, with the exception of employment, is slight.

5. Most of the clients placed in halfway houses on work release were successful in the projects and were granted parole at termination from residence. These data suggest that halfway houses can serve as placements for work release clients if the work release program of Re-Entry Center in Minneapolis is not appropriate.

6. P.O.R.T. projects are intended to serve as an alternative to incarceration, and successful completion of the program is theoretically required to avoid incarceration. Thus, one would expect that sentences would be executed for unsuccessful clients. However, less than one-quarter of the unsuccessful P.O.R.T. clients are incarcerated. It would appear that some clients who are placed in P.O.R.T. projects might otherwise have been placed on probation, not incarcerated. Thus, in addition to serving as an alternative to incarceration, P.O.R.T. projects may have been used as an alternative to probation.

F. Project efforts

1. **Staff-Client Ratio:** The staff-client ratios of project types through August, 1974, were as follows: 1:1.3 for halfway houses, 1:2.3 for P.O.R.T. projects, and 1:1.2 for juvenile residences. The higher occupancy rates of P.O.R.T. projects are reflected in these ratios. Because a major portion of operating budgets is staff salaries, improved staff-client ratios may be reflected in lower costs. In terms of program outcomes, it is, however, too early to determine what constitutes an adequate staff-client ratio.

2. **Needs and Services:** The data indicate that services provided by staffs and agencies are directed toward the needs of clients and are assisting clients in meeting these needs.

However, a number of problems are also indicated:

a. In some service areas, particularly employment counseling and placement, projects rely too heavily on staff counselors and, thereby, duplicate services already available in the community. Greater use of community agencies in these areas would free staff time for other services, and possibly, reduce project costs.

Project directors have often complained of the inadequacy of services and lack of cooperation they have received from existing employment programs. Thus, the failure to use community employment agencies is, in part, a response to the inadequacy of these services.

b. Failure to rely on community agencies may result in discontinuity of treatment after residence. Greater use of community agencies would improve continuity of treatment for problems, such as drug dependency and alcoholism, which cannot be resolved during relatively short residential stays. Again, in some instances, projects place greater reliance on staff counseling because of the lack of adequate community programs.

c. Many clients receive services for needs which were not identified at intake. Needs identified at intake are more likely to be reduced than needs identified after intake.

d. Data indirectly suggest an overreliance on group counseling. Projects using group counseling require residents to attend group sessions even though group counseling may not be perceived by staff as one of the client's most important needs. Furthermore, the data indirectly indicate the failure of group counseling to have any substantial impact on clients, as measured by outcomes discussed in this report.

3. **Staff Training:** Staff training appears to be conducted in a haphazard manner and, in some cases, little more than orientation to the project.

a. Two aspects of residential programs give rise to a need for staff training. First, these projects employ a large number of para-professionals who lack the

training and experience most of the professionals have. Second, staff turnover, including administrators, has been a problem with many halfway houses and juvenile residences and, to a lesser extent, with P.O.R.T. projects. The use of para-professionals requires staff training as the projects become operational. Staff turnover requires training of new members during operational stages. However, projects often do not have money budgeted to replace staff in training.

b. Staff turnover is often due to staff members accepting economically better positions. Corrections in Minnesota is losing a number of experienced para-professionals because there is little room for their promotion within corrections.

RECOMMENDATIONS

1. The Governor's Commission on Crime Prevention and Control should establish a moratorium on the funding of *new* residential community corrections programs. The sole exception to this moratorium should be those projects which test, under strict experimental controls, specific programmatic models. The Commission should determine if this moratorium is to take place with the awarding of 1975 funds or if it is to be placed in effect after the 1975 funding period.

Evidence from existing projects does not present a glowing picture of the impact and operation of residential community corrections programs. The dedication of project staff, the intensity of counseling, and the location of the programs in the community do not guarantee the success of these programs. Present data indicate that the majority of persons sent to these programs are not amenable to the rehabilitation programs offered by the projects. Further, evidence suggests that success in the program is not related to lower rates of recidivism. Finally, the data indicate that in terms of recidivism, the programs do no better, but no worse, than the traditional methods of incarceration and parole.

Most projects are underutilized by the criminal justice system. And while some projects operate at a cost less than the cost of traditional incarceration, others do not. It remains to be seen if projects can reduce their cost to a level comparable to that of the institution. The data also suggest that the projects have only limited impact on several measures of programmatic outcome. Although persons who succeed in the program demonstrate somewhat more positive improvement than those who do not successfully complete the program, so few successfully complete the program that overall impact is limited. Finally, the projects face several operational problems which must be resolved.

The evidence presented here does not mean that residential community corrections cannot be a viable concept. It is simply too early to tell. But the data does raise disturbing questions which must be answered before continuing unabated funding of these programs. The Governor's Crime Commission should proceed with caution, funding continuation grants and working toward improvements in the operation of existing programs before funding a large number of new projects. To do otherwise runs the risk of developing a series of residential programs before there are assurances that initial program problems can be overcome and before there are assurances that the concept itself is viable. The result could be a set of residential programs whose limitations are as debilitating as those of parts of the existing correctional system.

Information from existing facilities will provide data which indicate if present trends will continue and if operational problems can be rectified. Additional analysis can assist projects in determining which type of residents, if any, are amenable to these treatment programs and the program components related to post-residence success. This information will allow projects to be more selective in the entrance criteria and to alter their programs to better fit clients' needs. This additional information will permit the Governor's Crime Commission to make a responsible and deliberate decision with regard to the resumption of funding. If the data justify a resumption of funding, the Commission can do so with the knowledge that problems have been overcome and that residential community corrections is a viable concept.

Recommendations specifically related to resolving operational problems of existing residential projects are listed below. During the moratorium, Commission staff and sponsoring units of government should work with projects to implement the recommendations.

2. The Department of Corrections and the Minnesota Corrections Authority in conjunction with halfway houses should develop a more systematic referral mechanism for placement of parolees in halfway houses.

3. In order to increase occupancy rates and reduce costs, halfway houses should actively seek referrals of felons from district courts.

4. Projects should re-examine the role of group counseling. This re-examination should include consideration of more effective uses of staff resources to meet client needs.

5. Projects should make greater use of existing community services. To facilitate this use, projects, their sponsoring units of government and community agencies should develop service agreements in order that project clients receive services already available in the community. This cooperation will decrease unnecessary duplication and provide clients with continuity of service after termination from the project.

6. Projects should improve diagnostic procedures in order to gain more accurate pictures of clients' problems.

7. Projects, their sponsoring units of government and educational resources should explore and develop ways of improving the delivery of training programs to project staffs. Training programs for new staff members should be made available on a regular basis. New project administrators should receive training in administrative functions and responsibilities. College level courses with credit should be available to staff members.

8. Projects and their sponsoring units of government should include allowances in project budgets for replacing staff members who are attending training programs.

9. The Department of Corrections and sponsoring units of government should develop a "career ladder" for para-professionals so experienced project staff members may remain in corrections.

STATE OF WISCONSIN FINAL REPORT TO THE GOVERNOR OF THE CITIZEN'S STUDY
COMMITTEE ON OFFENDER REHABILITATION

The Wisconsin Council on Criminal Justice

CHAPTER ONE: THE NON-INSTITUTIONAL SYSTEM

Introduction and summary:

The Study Committee on Offender Rehabilitation has unequivocally established as its most fundamental priority the replacement of Wisconsin's existing institutionalized corrections system with a community-based, non-institutional system. Two questions come immediately to mind with respect to such a seemingly radical proposal: "Why, and what does it mean?"

Reasons for change

The answer to the question of why to change the system so fundamentally revealed itself gradually but relentlessly to the Study Committee: no amount of resources, however great, can enhance a convicted citizen's chances for productive re-entry to a democratic society when that citizen has been confined in an institution too large to provide individual services, too geographically remote to provide vital life-contacts, and too regimented to foster self-esteem. In short, current Wisconsin institutions cannot rehabilitate. That adjustment was predicated on the sometimes frustrating, sometimes angering and often depressing personal experiences of Study Committee members upon the occasion of visits to institutions and discussions with inmates and institutional personnel, and upon review of voluminous materials from throughout the nation. In retrospect and upon reflection, the carefully and painfully reached judgment against currently existing correctional institutions in Wisconsin seems so sensible as to cause one to wonder why it was so hard to reach. The logic of "the golden rule" is compelling: if you were required to live in a cell with few facilities, little privacy, limited access to language, limited mobility, limited contact with other persons significant to you, limited access to employment, and a high degree of authoritarian regimentation, how might you fare upon re-entry into the broader, more competitive society, there to be greeted by the stigma of having been "away"? The shared human response of many of the Study Committee members to the dehumanizing pattern of institutional life unquestionably moved the Study Committee members toward their conclusion.

More abstract but nevertheless important considerations relating to the enormous relative cost of institutional corrections added still further to the arguments for community-based corrections flexibly financed by a variety of purchase-of-service contractual arrangements. Although estimates differed, there was little question that de-institutionalization of Wisconsin's correctional system would, in the long-run, save considerable tax dollars.

To the human and economic benefits of community-based corrections the Study Committee added a sense, based on its readings, conversations, and contacts throughout the nation, that a consensus in developing at a rapid rate which strongly favors community responsibility for the community's dysfunctions, both individual and social. In that sense, it is not overstatement to say that a national movement away from large correctional institutions and toward a variety of community alternatives is underway. Massachusetts, California, Illinois, Minnesota, other states, the federal system, various local jurisdictions, numerous professional groups including the National Council on Crime and Delinquency, the United States Chamber of Commerce, the Committee for Economic Development, the American Bar Association, and a host of others all concur that large institutions cannot effectuate rehabilitation for democracy.

The meaning of change

The Study Committee's conclusion that current Wisconsin correctional institutions could not rehabilitate for democracy and overly burdened the tax system required careful consideration of alternatives. The best alternatives were determined to be those directly related to resolving the perceived failings of the current institutional system. Specifically, the Study Committee strongly urges direct relationships of offenders with their local communities and with other persons as the most effective mode of rehabilitation. Particular emphasis is placed on services suited to the individual needs of the offender. The fundamental importance of satisfactory personal relationships with significant others and of employment sufficient to provide minimum standards of life is believed to be the key to success in the community. All available resources, especially those previously expended for maintaining large correctional institutions, should be devoted to such community ties.

The Study Committee further recognized that a small percentage of those currently incarcerated in Wisconsin's institutions might be considered dangerous to the community. In consequence, the Study Committee recognizes the need for degrees of confinement suitable to afford community protection from those few persons. But those few persons must also have community resources, particularly specialized mental health services, readily available to them so that they too might more readily assume the burden of citizenship upon their eventual release.

Rate of change

The Study Committee's decision to recommend fundamental change of the current institutional, correctional system in Wisconsin and the development of community based alternatives generated one further important issue regarding the rate of change. After extensive debate, June 30, 1975 was selected as the target date. The purpose of the Study Committee in selecting a specific date was to underscore the imperative quality of its recommendations relating to the destructive nature of institutions and to focus on a clear objective by a certain date. The Study Committee was particularly concerned that the national history of failure or inaction with respect to previous penal reform recommendations not be repeated in Wisconsin.

1.01 Use of Correctional Institutions.—(a) Correctional institutions should be used only to restrain especially dangerous offenders who pose an imminent threat to the safety of the public-at-large.

Comment to Sub (a): This recommendation was given very lengthy consideration by the Study Committee. It was developed independently by three separate Subcommittees (i.e., Systems Analysis, Programs and Personnel, Community-Based Treatment Facilities) before it was approved by the Study Committee as a whole. Its rationale is determined by the following factors:

(1) *Age and Length of Stay of Inmates:* For the period 1967-1971, 76.6% of all adult inmates were less than 35 years of age while 50% were less than 26.6 years of age. The greatest number, 38.7%, were between 20 and 25 years of age. For the same period, 76.1% of all inmates were incarcerated for less than two years and 89.4% for less than three years. When these data are combined, it would appear obvious that the average inmate will be out of prison before he is

30 and certainly before he is 40 years of age. If one of the functions of prisons is to protect society by removing the offender from it, then the inmate must be incarcerated for a sufficient length of time to make society "safe." However, the great majority of inmates are not incarcerated long enough (i.e., 2-3 years) to make social protection viable. Thus, with respect to the great majority of inmates, Wisconsin's prison system does not perform the function of protecting society from them.

(2) *Parole Success:* The most accurate measure of an inmate's rehabilitation is his success on parole. In order to determine the role which a correctional institution plays in the rehabilitation of inmates, it is necessary to examine the individual demographic factors which constitute parole success.

(i) *Percentage of Time Employed:*

Percent of time employed:	Parole success rate (percent)
75 to 100.....	75.7
50 to 75.....	56.8
25 to 50.....	45.8
0 to 25.....	44.3

The above figures indicate that the greater the percentage of time a parolee is employed in his community, the greater chance he has for parole success.

(ii) *Average Gross Monthly Income:*

Monthly income:	Parole success rate (percent)
More than \$400.....	92.1
\$200 to \$400.....	76.1
Less than \$200.....	49.6

The above figures indicate that the greater the amount of money a parolee earns from employment in his community, the greater chance he has for parole success.

(iii) *Use of Institutional Job Training:*

Use of training:	Parole success rate (percent)
Yes.....	62.8
No.....	60.6

The above figures indicate that the parolee who uses his institutional job training while on parole has approximately the same parole success rate as the parolee who does not use such training. The 2.2% difference in success rates between those parolees who do use their training and those who do not is not statistically significant.

(iv) *Dependency Obligation:*

Dependency obligation:	Parole success rate (percent)
Supported others and self.....	75.7
Supported by others.....	50.5

The above figures indicate that those parolees who support others and themselves will have a significantly higher success rate than those who are supported by others.

(v) *Residence:*

Residence:	Parole success rate (percent)
Live with spouse.....	77.7
Live with other relatives.....	64.1
Live alone.....	57.5
Live in "other residences" (undefined).....	43.9

The above figures indicate that those parolees who live with their families will have a significantly greater chance of success on parole than those who do not.

(vi) *Marital Status:*

Marital status:	Parole success rate (percent)
Married.....	77.6
Single.....	58.9
Divorced.....	43.5

The above figures indicate that those parolees who are and remain married will have a significantly higher success rate than those who are not or do not remain married.

The data presented in (i)-(vi) clearly indicates that meaningful rehabilitation (i.e., parole success) does not occur within the confines of Wisconsin's correctional institutions. Only those demographic factors which are inextricably bound to an offender's *community* (e.g., family status, employment, obligation to support dependents) are significant for success on parole. Demographic factors directly connected to an offender's incarceration in an institution (e.g., use of training) are *not* significant for success on parole. Indeed, the incarceration of an offender in a correctional institution would appear to *inhibit* those community-related demographic factors which constitute parole success.

(3) *Financial Cost of Institutionalization*: The Division of Corrections presently operates with an annual budget of approximately \$40 million. The Division uses this money to carry out its responsibility to control and rehabilitate approximately 31,500 offenders under commitment or sentence in Wisconsin. Approximately \$5 million (12.5% of the budget) is used to supervise 28,200 (89%) of the offenders on probation and parole. The remaining \$35 million (87.5% of the budget) is used to incarcerate 3,300 (11%) of the offenders resident in Wisconsin's correctional institutions.

4. *Conclusion*: The factors delineated in (1)-(3) above indicate that Wisconsin is spending \$35 million annually to support correctional institutions which do not effectively protect society from 90% of the offenders incarcerated therein and which effectively inhibit rehabilitation (i.e., parole success). It is on this basis that the Study Committee makes the above recommendation.

(*Note*: Statistical data and budgetary information contained in this comment were supplied by the Division of Corrections; however, the analysis thereof is attributable to the Study Committee. See Appendix B, Cost of Institutions.)

(b) The kind of correctional institution used to incarcerate especially dangerous offenders should be small in size and located as close as possible to the communities in which the offenders formerly resided.

Comment to Sub (b): Correctional institutions for especially dangerous offenders should be small in size so as to allow for the greatest amount of individual treatment possible. Large institutions have continuously failed to meet the individual treatment needs of their inmates. Instead, the needs of a particular institution prevail (e.g., population requirements, prison industry and maintenance.)

Since 99% of all prisoners are presently paroled, it is important to locate institutions in or near heavily populated areas (from which most offenders come) so that family ties may be more easily maintained (a significant factor in parole success).

It must be noted here that some difficulty remains with identifying the especially dangerous offender. For example, it is clear that the nature of the offense is an insufficient basis for identification, since persons convicted of first-degree murder are the best parole risks. However, the Study Committee feels that this difficulty can be overcome, provided the Division of Corrections is given the capability to develop and analyze in depth information about all of the offenders which have been, are and will be under its supervision (cf. Recommendation 2.45, Correctional Information System).

1.02 *Community-Based Treatment Systems*.—(a) Wisconsin should close all of its major juvenile and adult correctional institutions by June 30, 1975, and replace them with a community-based treatment system, reallocating existing correctional resources to that end.

Comment: (1) Incarceration in maximum security institutions does not aid the rehabilitation of the great majority of Wisconsin's offenders. Not only are our prisons extremely expensive to operate, they do not protect society from the great majority of offenders who are released within a comparatively short time and, moreover, they inhibit those community-related demographic factors which constitute parole success (cf. Recommendation No. 1.01, Use of Correctional Institutions).

"Experience has shown that, as opposed to isolation and punishment, community-based corrections which permits a person to live in his own community and maintain normal social relationships, while providing control, guidance, and access to rehabilitative resources and services, is a more efficient, economic and more humane approach to the treatment of the offender. A considerable and impressive body of evidence has been accumulated indicating that corrections in the community is more effective in reducing recidivism than severe forms of punishment.

"Because the community-oriented approach is almost always more economical, it enjoys a substantial cost/benefit advantage. Experience has revealed that if

one-third of the offenders currently held in institutions were transferred to probation along with their share of the correctional budget, they could be placed in caseloads of 10 or less. This would provide the opportunity for more individual attention and enhance chances for probation to succeed. Under present circumstances, however, judges face the dilemma of having to choose between the worst of two worlds; whether to utilize already overburdened probation services, or whether to commit the offenders to an institution which is ill-equipped to rehabilitate at all." (U.S. Chamber of Commerce, "Marshaling Citizen Power to Modernize Corrections", Wash. D.C. 1972, pp. 8-9)

While this recommendation calls for massive change in Wisconsin's correctional system, it is not novel. Indeed, other states are already proceeding along these lines. Massachusetts recently made the commitment to end the "revolving door" of institutionalization of its juveniles and to reallocate existing resources into community corrections. The Director of Corrections, Jerome Miller, stated: "We made a basic decision after I took this job two years ago that it would do no good to pump more money and more programs into the existing system because the system can chew up reforms faster than you can dream up new ones. It is a sick system that destroys the best efforts of everyone in it and we decided to look for alternatives." (New York Times, January 30, 1972). In less than three years, Massachusetts has successfully completed the transfer of all juveniles from their existing institutions into community facilities and programs.

Due to probation subsidy programs in California, at least four youth institutions and one adult prison have closed. New Jersey institutions commissioner, Robert Clifford, has stated that easily half of the 1300 inmates of the Trenton Prison could be released to community programs without a substantial increase in crime or loss of public safety. New Jersey has recently reversed its commitment to building any new facilities and will concentrate its expenditures in community programs and services (Criminal Justice Newsletter, N.C.C.D., Vol. 3, No. 9, April, 1972).

Shortly after the Study Committee passed this recommendation, Governor Patrick J. Lucey received a letter from Milton Rector, Executive Director of the National Council on Crime and Delinquency, dated May 30, 1972, which indicated that:

"The Task Force is quite correct in its general assumptions that prisons are not rehabilitative institutions and that far better results are obtained from community correctional programs. We have learned this from both experiments in this field and extensive practical experience.

"The trend toward community treatment is steadily growing throughout the country. Hawaii has 85% of all its offenders on probation. Massachusetts is closing all its state operated youth training schools. Kentucky has already done so. California's adoption of probation subsidy programs has closed four youth institutions, one adult prison, and another one soon to close.

"Lest you or the Wisconsin legislature feel that closing prisons and state training schools would severely increase the danger of crime to the community, let me assure you that no significant increase in crime has taken place in any situation where men have been placed in community treatment programs

"On the contrary, relevant research reveals that men released from prison are often more anti-social and potentially dangerous than before they were admitted."

This experience in other states was, ultimately, the deciding factor for this recommendation.

(2) Community based treatment programs should, above all, concentrate on the delivery of services which assist full employment of the offender and the maintenance of family ties (the most significant factors for success on parole). On the whole, there are seven areas of services which need to be provided in place of institutions: educational alternatives, crisis intervention programs, psychological support services for offender and/or family, employment opportunities and training, residential care, intake and referral service, and advocacy agencies. This framework applies to both juveniles, adults, men and women. It is a much more applicable system for planning purposes than defining services by sentences or offenses, because it allows for the individual difference of the offender. It is important that when community based facilities replace the institutions, at least some component of each one of these services be available in various forms.

The cost of such programs is given by the table below. The cost figures were supplied by the Wisconsin Council on Criminal Justice, and are based upon grants made by the Council to various community-based treatment programs.

(3) The appropriate mechanism for channeling offenders into these services is through pre-sentence investigations. Only in unusual circumstances should the offender be sentenced and referred to an intake and referral service, such as when the pre-sentence examination is not successful and more time is needed for adequate placement.

(4) The offender and his family should be directly involved in the selection of the particular agencies.

(b) Individual programs within a community-based treatment system should be community controlled.

Comment to Sub (b): (1) "Community" is defined as those local persons who have expressed a concern and desire to cooperate in a specific community-based treatment program, and those clients and their families who are to be served by the program. This definition is intended to include local police, courts, neighborhood residents, local business, municipal and county governments and other community agencies.

(2) It is important that community-based treatment programs remain within the control of the community rather than the Division of Corrections. The Division, like any bureaucracy, must, in order to continue growth and expansion, respond to the needs of its own staff and the demands of the public before it meets the needs of its client population (i.e., offenders). This is true because offenders have no power to affect the actions of the Division. On the other hand, the Division must and does respond to the needs of its staff by providing job security and advancement possibilities. In addition, state legislators are most receptive to an institution in an economically depressed area of their district, and are favorably disposed towards saving the taxpayer's money through the use of prison industries and other forms of inmate labor.

By contrast, a small, community-controlled and based treatment program exists only to provide services to its clients. It is not large and (therefore) powerful enough to remain unaffected by the demands placed upon it by its clients. Indeed, only those programs which deliver the best service will survive.

(3) A corollary of the above is that where two community-based programs of equal quality are competing for the same funds, preference should be given to the community-run program over the state-run program.

(c) In addition to funding community-based treatment programs through the department of local affairs and development and the council on criminal justice, probation and parole officers should be provided with substantial sums to purchase services which are offered by such programs.

Comment to Sub (c): It is the opinion of the Study Committee that purchase of service by probation and parole agents is one of the best ways to finance a community-based treatment system. Quality control of the programs would be insured through economic means: If a program offers services that are needed it will receive payment from probation and parole agents; if the program does not offer services which are needed or offers poor services, it will receive no payments because clients will not be placed there. Funds for purchase of services will become available when Wisconsin ceases to spend \$35 million per year to operate its large correctional institutions.

(d) As an immediate first step toward the establishment of a community-based treatment system, a pilot project should be initiated whereby essential services will be provided for a limited number of offenders. Contractual arrangements should be entered into with local agencies for the purpose of providing essential services to a selected group of offenders. Coordination will be the essential condition in the contract. Centers for this pilot project should be established in a large metropolitan area such as Milwaukee, a medium-sized urban area, and a rural multi-county area.

Comment to Sub (d): The proposed service system should be developed initially for a selected client population in order to allow a concentration on development of the program.

An offender's return from institutional exile demands a high level of sophisticated services to ease the cultural shock of reentry into society. The impact of the sudden change from a situation where everything is controlled and provided, to one in which nothing is provided, should not be underestimated.

It is this first three months, indeed, the first one which is critical to the chances for the offender's returning to the institution. Appreciations of this fact, and the understanding of the extremely limited resources with which one offender leaves an institution, forms the basis for the Study Committee's call

for a mechanism that can guarantee delivery of needed assistance immediately upon release for as long as help is needed.

The Study Committee would envision the Department of Health and Social Services formally agreeing to fund a specific community controlled organization who would, in turn, formally agree to see that certain services would be provided. The contractee would not perform or actually deliver any of the services, but would act as a service broker guaranteeing that services will be provided to the benefit and satisfaction of the offender.

Each provider of services would also be a party to the contractual agreement, but the Study Committee envisioned different possibilities for organizing the local services:

1. The service broker could be a unit of a large organization already providing a wide array of services. To be sure, many of these existing agencies have been organized to provide services for other people and offenders may not fit in well. However, it is the concept the Study Committee wishes to stress, of providing a broad scope of service under strong coordinated supervision.

2. The service broker could be a single organization who would formally contract with other independent organizations to provide for all the services a particular person might need. Each organization could continue to operate in a particular area at a small level, but the formal arrangement would guarantee availability of other services.

It should be clear that these services presently exist, to a greater or lesser degree, in most communities. It is notable that the Study Committee is not proposing that new services, or types of activities be created. It is also clear that these services are not getting to offenders. If the state is going to be concerned about the problems of offenders, this situation must be turned around. But the delivery of services must occur at the local level—where people live and where opportunities exist. The Study Committee believes that such a mechanism as proposed here is an important first step.

CHAPTER TWO: INTERIM MODIFICATIONS TO THE PRESENT SYSTEM

The Study Committee recognizes that transition to a community-based treatment system of corrections will require a period of time. That time can be well invested by utilizing existing correctional personnel and inmates to develop a planning capability to make the transition to community-based corrections. During that interim period humanizing changes may be accomplished throughout the currently operative system. The basis for such interim modifications is the Study Committee's conclusion that current allocation of correctional manpower and resources and current institutional programs and practices tend to devalue individual dignity and to alienate the various constituencies of Wisconsin's prison communities from each other.

Presently Wisconsin spends nearly 80% of its annual \$40 million budget for the custody of the approximately 13% of its offender population that is incarcerated in its institutions. At the same time only approximately \$4.5 million is invested in providing services to the approximately 87% of its offender population that is supervised on probation or parole. The Study Committee's recommendations indicate that resources currently allocated to institutional custodial services should be made available for a range of services specially suited to the individual requirements of the particular offenders. Release into the community without adequate supporting resources and services substantially inhibits probation and parole success.

In addition to substantial improvement of community supervision resources and services, there should also be significant modification of present institutional programs and practices. Every effort must be expended to value the decision-making prerogatives of those persons most directly affected by the particular decision. The Study Committee intentionally chose to forego recommendations detailing new programs "for inmates" and chose instead to favor collaborative institutions where group decisions would be consensually developed. To facilitate the development of genuinely democratic internal decision-making and to encourage better interpersonal relationships the Study Committee further recommends substantial retraining programs for current correctional staff.

In addition, specialized treatment programs for specialized social problems such as alcoholism, drug abuse, sexual deviancy and various medical concerns are recommended.

FINAL REPORT OF THE OHIO CITIZENS' TASK FORCE ON CORRECTIONS

(To the Honorable John J. Gilligan, Governor)

Judge Bernard Friedman, Chairman

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OHIO TASK FORCE ON CORRECTIONS,
 Columbus, Ohio, December 15, 1971.

HON. JOHN J. GILLIOAN,
 Governor, State of Ohio
 State House, Columbus, Ohio

DEAR GOVERNOR GILLIOAN: In accordance with your directive to the Citizens' Task Force on Corrections, I have the honor of transmitting the *Final Report* to you for your consideration and action. This *Final Report* contains the findings and recommendations of the members and consultants, and represents a long-overdue addition to our knowledge of Ohio's failure to provide needed services to both the public and its criminal offenders.

It is the feeling and intention of the Task Force that these recommendations for change be carefully considered and immediately implemented.

As Chairman, I prefer that this committee not be terminated completely, and respectfully request a time be set for reconvening its members to review implementation of recommendations by the Division of Correction and other responsible State Units. Further, the Task Force strongly recommends the creation of a Citizens' Advisory Board to further oversee and assist the actions of the Division of Correction in effecting the needed and vital changes recommended herein.

In attempting to fulfill its charge in the total perspective of corrections in the State of Ohio, the Task Force on Corrections has concluded that serious consideration must be given to the need to examine both juvenile and misdemeanor corrections (jails and workhouses). As a group, we would strongly recommend that citizens' task forces be created to examine these vital areas.

For the Task Force, may I thank you for the privilege of serving our fellow citizens, and for the opportunity of assisting the State in its attempts to meet the challenge of crime in a free society.

Sincerely yours,

BERNARD FRIEDMAN,
 Chairman, Citizens' Task Force on Corrections.

THE FINAL REPORT: AN OVERVIEW AND SUMMARY

Introduction

The Ohio Citizens' Task Force on Corrections was officially created in February, 1971, in response to grievances of employees and inmates, and difficulties facing correctional administrators—all symptomatic of broader, deeper, and more complicated issues. Because governments are creations of the people and can function effectively only with participation of the people, Governor John J. Gilligan established a Citizens Task Force to examine and evaluate the very nature of the correctional system itself, and to offer recommendations for solving these immediate and long-range problems.

In the ten months that this group has been assembled, we have examined the areas of administration, institutional processes and services, correctional law and inmate affairs, and community-based services. The findings and recommendations contained herein represent the outcome of our examination and investigation into the nature of Ohio's correctional system, and are presented for immediate implementation and action.

Overview

The State's adult correctional system is one of the major divisions of the Department of Mental Hygiene and Correction, and contains seven major correctional institutions housing some 9,100 inmates, as well as an Adult Parole Authority which provides a variety of services to approximately 4,900 persons, the majority of which are on parole.

The major institutions range in size from 2,152 (Ohio State Reformatory) to 283 (Ohio Reformatory for Women). In general, the prison population is young, disproportionately black, from the lower class strata, predominately male, disadvantaged, and suffers from a variety of educational, vocational, social, medical, psychological, and psychiatric handicaps.

More than 70% have been previously incarcerated, at an average per person annual operational cost to the State of \$2,513. Over 95% of those incarcerated will eventually be released to society, and the majority of these will be paroled—at an annual cost per person of approximately \$400. Of those paroled, approximately one in ten will fail ("recidivate") while still on parole, and will be returned to prison for their actions. In total the estimated annual financial cost of crime in Ohio in 1971 will exceed one billion dollars.

In addition, the State is currently building a maximum security institution in Lucasville, designed to house 1,500 inmates, at a building cost—to date—of over \$42 million. The Lucasville institution is archaic, already obsolete, and recognized as a testimonial to the ignorance of corrections in the 19th century, of which it is an excellent example.

The adult correctional system and the proposed new facility at Lucasville are predicated on an assumption that long sentences further the correctional rehabilitation of offenders. This is a patently false assumption. Most of Ohio's correctional administrators agree that: (a) sentences are generally too long, and (b) many inmates derive the maximum benefit of incarceration during the first few years and often tend to go "downhill" in their behavior and attitudes after that, with resultant hostility and increased potential for further crime after release.

Long sentences are self-defeating.

In attempting to evaluate the correctional system, the Task Force asked: "What should Ohio expect of a correctional system?" Before any realistic and intelligent assessment of the State's prison system could be undertaken, that fundamental question had to be answered. The Committee suggests that the question can be answered in one word: *Protection*.

A correctional system should provide maximum feasible protection against violence, invasion of property rights, and all other kinds of lawlessness. The entire program of the system should be aimed toward that single objective. Mounting fear and anxiety engendered by the gigantic increase in lawlessness threatens the basic fabric of society. A free society simply will not endure in the atmosphere of pervasive terror which has emerged as a result of what appears to be a steadily increasing vulnerability and exposure of each and every citizen to criminal acts.

The increase of crime is a phenomenon which cannot be attributed entirely to the existence of a woefully inadequate correctional program. But the system of prisons we have established in the State of Ohio must share at least part of the

blame. Prisons have been justly labeled schools of crime. An intolerable rate of recidivism overwhelmingly attests to the bankruptcy of rehabilitative and educational programs in the penal institutions to which we send those who have already proven themselves threats to the peace and tranquility of our society.

If the correctional system is to begin to achieve the sole purpose which can be legitimately assigned to it, that of protecting against the enormous cost and burden of criminal conduct—a cost which must be measured in loss of life as well as loss of property—basic changes must be made with all deliberate speed. Basically these changes reflect the following notions:

(1) Human beings cannot be placed in barbaric institutions, subjected to a total deprivation of any semblance of dignity and respect, with any reasonable expectation that upon their release they will suddenly begin to conform their conduct to the requirements of the law and to act in a responsible fashion.

(2) If prison society is itself lawless, if life within prison walls is regulated without regard to basic notions of justice and fair play, those who emerge from that society are apt to conduct themselves outside of prisons in the same manner in which they have learned to survive within prisons.

(3) The rules which regulate those who are incarcerated should be designed to instill a respect for the rights of others and an awareness of the responsibilities of living in a free and open society.

(4) Incarceration is employed altogether too frequently as a means of dealing with criminal offenders. Every conceivable alternative to imprisonment should be explored before any individual is committed to an institution.

The Task Force, coming to grips with these problems, has kept in mind the overwhelming public interest and stake in a safe and decent society. We assert that *we Ohioans must cease sending so many people to prison as a "solution" to the crime problem, and that wherever possible, alternatives to incarceration must be found.*

The public has been led to believe that the Criminal Justice System—particularly corrections—prevents crime. As presently structured, it does not; corrections cannot deal effectively with the problems of crime. Consequently, alternatives to incarceration are publicly being examined and accepted by more citizens across the nation today than ever before, due to news media coverage of the Criminal Justice System, public forums, citizen task forces, and economic realities—all of which contribute to widespread questioning of the traditional correctional processes for handling and correcting law offenders. The use of correctional programs based in the community is not new; however, their potential has yet to be recognized and developed by corrections, and their effectiveness and economy has yet to be supported and accepted in Ohio.

Included in the concept of community-based corrections are effective probation and parole services, selective use of work-release, study-release and home-furlough programs, and the development of halfway houses and pre-release guidance centers. *Ohio must begin to institute and establish such programs, if the public is to be served and protected.*

Findings

On the whole the Task Force found a dedicated staff working amid considerable handicaps. These handicaps are related to budgetary shortcomings, legislative actions and needed changes, and management and administrative policies. In general, the staff are aware of the shortcomings and needs. Under the new Commissioner, initial steps are being taken designed to remedy these shortcomings and needs.

Since the *Interim Report* of June 15 (and as a result of previous recommendations), changes have occurred within the Division of Correction, including:

A. the abolition of censorship of first class mail;

B. changes in the "use of force" report, requiring a direct report to the Central Office, hopefully designed to reduce brutality and to establish a process for removal of less desirable correctional officers from direct contact with inmates;

C. hiring a Labor Relations Expert;

D. elimination of "accessed time" procedures and implementation of a new "Conduct Report Procedure";

E. hiring ministers (Imams) for the Ohio Penitentiary and Ohio State Reformatory Black Muslims;

F. hiring a consultant to attract and retain Black employees in the Division of Correction;

G. receiving a grant and beginning to evaluate vocational and academic education; and

H. initial planning for strengthening of the Central Office, which is expected to continue and increase under the new Commissioner.

Based on our study and evaluation, the Task Force concludes that the adult correctional system fails to correct most offenders and thus protect society; is more custody than treatment oriented; puts relatively more emphasis on routine procedural requirements than on innovative treatment programs and practices; is characterized by both overt and covert resistance to innovation and change; has little system-wide consensus on ordering of priorities: is bureaucratically "bottom heavy"; has failed to retain many qualified personnel due to inadequate salaries, low morale and frustration; has failed to adequately reward dedicated and competent workers; has failed to rid itself of undesirable personnel; has not evidenced good management policy and procedures; has not engaged in long-term planning, with disastrous results in some instances; has not conducted necessary outcome research, operating instead at the level of a "primitive art"; has systemic communication problems, both within its units and with the public; serves, to a large extent, as a training agent for career employment in *other states*; and has suffered from a lack of leadership by the Central Office.

The reasons for this less than ideal situation are numerous, some of which are lack of adequate appropriations by myopic legislatures; chronic bad press, which has been more concerned with sensationalism than with assisting corrections in meeting its public charge; failure of corrections to educate the public and to elicit support, resulting in the public's emotional reactions, non-support of correctional reform, and holding negative stereotypes of offenders: political pressures and influences which have affected the Division and to which the Division has responded with political expediency, resulting in a lack of protective management and leadership; and low visibility of correctional institutions, which has maximized the secrecy of operations within the system.

Thus we conclude that the adult correctional system is not a system *per se*. It is in reality a series of poorly articulated, multi-purpose and philosophically incompatible sub-systems. There is little consensus on long-range goals; little intra-system coordination of activities; inadequate machinery for resolving legitimate staff and inmate grievances; self-defeating procedures; no coherent ideology; and little attempt to dissolve system boundaries to improve the overall functioning of the system.

The time has arrived for the Division of Correction and the public to take significant steps in improving the correctional system, with the objective being a more unified and effective adult correction system. In order to effectuate the necessary changes we submit the following recommendations with one caveat.

The public has been led to believe the Division of Correction (as presently structured) prevents crime. It does not and cannot. Even if all the recommendations concerned with operations within the institutions were immediately implemented, corrections would not be appreciably altered and the public would not be protected one iota more. "We must cease depending on institutionalization as an adequate response to the law offender and protection of the public. Instead we *must* develop a system of community-based alternatives to institutionalization: these are the most effective, fruitful, and realistic solutions to the proper handling of offenders." The emphasis of the future must be on alternatives to incarceration. The rule, duty, and obligation of this Task Force is to communicate this vital conclusion to the public.

Recommendations

The following recommendations are offered for revamping and changing the Division of Correction. Such changes are imperative if the public is to be protected, if the streets are to be made safe, if the costs of crime are to be reduced, if crime is to be controlled, and if Ohio is to be made safe for all its citizens. These recommendations should be implemented as soon as possible, and we call upon the Executive, Legislative and Judicial branches of the State government to take the necessary actions to implement these recommended programs, changes, innovations, and practices.

I. ADMINISTRATION

A. Management

1. The present Division of Correction is in need of administrative restructuring on a functional basis to reflect high quality leadership and effective management. It is imperative that the Central Office, the individual institutions, and the Adult Parole Authority be melded into a cohesive, well-run, total organization with well-defined lines of authority and responsibility, from top to bottom. There is need for operations at each institution to become standardized, and if necessary, to be organized by the Central Office.

2. There is a serious lack of communication throughout the system, often resulting in a lack of consistency between one institution and another, poor staff and inmate morale, and lack of trust within the Division of Correction. The Task Force recommends that the Central Office devise new methods and avenues of formal and informal communications within the system. It is recommended further that the Division improve communication between institution staff and parole personnel, relative to the exchange of social and diagnostic information on released law offenders.

3. A management information system is needed to improve avenues of communication between the courts, parole and probation personnel, and institution staffs. It is recommended that federal grants continue to be used to fund such a program.

4. The Division of Correction should promulgate policies and guidelines for institutional rules and regulations dealing with racial issues, provide for periodic review of institutional compliance with these guidelines and policies, and take swift action against any institutional infractions.

5. It is recommended that an ombudsman be hired for each institution, totally independent from the Division of Correction and from the Executive branch of the government. It is assumed the ombudsman will report to the Citizens' Advisory Board, work closely with the proposed legal services program, and increase the visibility of the institutions. The function of this ombudsman would be to evaluate the grievances of staff and inmates and to use his persuasive powers and that of his office to effect change.

B. Personnel

1. We recommend upgrading of salaries at all levels, such salary levels to reflect realistic qualifications based upon professional job description analysis.

2. We recommend that all administrative positions within the Division of Correction be placed in the Unclassified Civil Service, enabling the Division to place highly qualified professional personnel in these positions and to encourage career service in the Division.

3. We recommend that a system of incentives be created for the purpose of attracting and retaining qualified personnel in the field.

4. All persons hired for the management of prisoners should be thoroughly screened through the use of written tests and psychological interviews. This screening process should be followed by at least six months, and perhaps a year, of probationary status.

5. The Division of Correction should actively recruit qualified urban personnel for employment.

6. The Division of Correction should give attention to the "generation gap" problem by recruiting young staff and including them in the planning, treatment, and training programs for both employees and inmates.

7. The Division of Correction should actively recruit not only black correctional officers but black professionals at all levels. We further recommend that institutional job assignments be made equally available to black and white inmates.

8. We recommend that equal employment opportunity be afforded to women in the Adult Parole Authority, particularly in supervisory positions.

9. The Task Force recommends that the Division establish a notification procedure for both staff and the public, listing all vacant positions and job qualifications for all levels of employment.

10. Promotions and salary increases should be contingent on the successful participation in and completion of in-service training programs, as well as performance on the job.

11. We recommend that the Division of Correction employ increasing numbers of women at male institutions and men at female institutions for the purpose of improving the social atmosphere by lessening the coarseness which characterizes most total institutions.

12. Our initial investigation revealed complexity of union representation within the various institutions, and the Commissioner is to be complimented for hiring a labor-relations expert to deal with problems concerned with union representations and related matters. We reiterate the further need for trained personnel to deal effectively with the complexity of these problems.

C. Training

1. All correctional and parole officers should receive basic correctional training at the Training Academy *before* being assigned to work with offenders. Such initial preservice training should be *mandatory* and should conform to established professional standards.

2. The Training Academy should be moved to a more centrally located area close to a university. The staff of the Training Academy should be professionally trained persons with degrees in sociology, social work, psychology, corrections, and education. It is further recommended that continued in-service training be made mandatory at the Academy and in the institutions, with special emphasis on the behavioral sciences and penology, and that the State commit itself to ongoing appropriations for the improvement of these training programs.

3. We recommend that educational leave with pay be permitted for selected personnel at all levels to take correctional training at other institutions in other states.

4. It is recommended that in the absence of available medically trained personnel, special training programs akin to those for military medical corpsmen be used to train nonmedical personnel.

5. We recommend that local technical schools throughout the State offer courses in corrections, and that job applicants or employees be given an incentive of Civil Service points for completing these courses, additional credit toward promotion and/or salary increases, or some increase in starting wage. We further recommend that staff who earn advanced degrees be provided commensurate promotional and/or special advancement opportunities.

D. Planning and research

1. We recommend long-term comprehensive planning. Changes that have taken place in the past have been the result, in most cases, of piecemeal, crisis-oriented responses, often reflecting political expediency. As a result the Division of Correction is faced with an almost insurmountable task of staffing and programming a facility which by its very size and location is already an obsolete institution.

2. Because Ohio already has several large institutions, we recommend that future institutions should be small (a maximum of 400 beds), emphasizing greater programming and treatment opportunities. Such institutions should be specialized and reflect an emphasis on community-based programs.

3. The Task Force recommends that the entire Ohio State Reformatory complex be razed, and concrete plans be made and implemented immediately to transfer all inmates of this institution to other already existing (but not the Ohio Penitentiary) or new, small institutions. New, small-type institutions (with a maximum of 400 beds) should be designed, emphasizing community-based treatment programs.

4. We recommend that a central reception, diagnostic and classification center for all adult felons be established, preferably in or near the city of Columbus, and staffed with the necessary diagnostic personnel. Genuine classification and re-classification programs must be developed and geared to inmate needs. Implicit in this recommendation is a provision not only for adequate diagnostic personnel but also for the genuine development of *facilities* to carry out recommended programs.

5. We recommend that the institutions within the system be specialized, according to treatment programs, so that inmates can be assigned according to their individual needs.

6. We recommend, as does the National Council on Crime and Delinquency, that research be conducted on outcome of treatment and programs within the entire Division, and particularly within the Adult Parole Authority.

7. Present vocational programs should be modernized and upgraded.

8. We recommend that inmates, custodial officers and professional staff meet regularly to discuss mutual problems and their possible solutions.

9. A cost-effectiveness evaluation of the Ohio Penal Industries should be undertaken to determine if they contribute to the reintegration process *in any way*, and to make them relevant to employment in the community.

10. We recommend that inmate pay be revised to provide greater incentives and to reflect more realistic needs.

11. Institutional commissary prices should be examined to determine if they are realistic and fair. Standardized provisions for auditing these accounts should be developed.

12. We recommend a feasibility study for the purpose of establishing a credit union in Ohio's correctional institutions.

II. LEGISLATION

1. We support legislation to separate the Division of Correction from the Department of Mental Hygiene and Correction (H.B. 494), which has passed the House of Representatives, and call upon the Senate to act with all deliberate speed to pass this Bill during this term.

2. We recommend that the Legislature give serious consideration to the following: a substantial reduction in both the length of sentences (H.B. 511) and the variance between minimum and maximum sentences; enact legislation requiring a written pre-sentence investigation report in all felony cases; provide for the disclosure of the contents of the report, except material deemed potentially detrimental to the offender's best interests; determine sentence by a panel of three judges (rather than just one); require the sentencing court to set forth reasons for the imposed sentence; and provide for statutory authorization for an appellate review of sentences.

3. We recommend the enactment of legislation that will remove restrictions on the sale of inmate manufactured goods and restrictions which can be used to limit entry into certain occupations.

4. The Task Force support the expungement bill (H.B. 511), and recommends its passage.

5. It is recommended that legislation be proposed that would provide for a State Adult Probation Subsidy Plan, which would provide Courts of Common Pleas with State funds to develop and/or increase adequate probation services which *must* comply with established professional standards.

6. We propose that legislation be enacted which would increase the membership of the Parole Board from seven to eleven members to handle the increased caseload and new duties of the Parole Board as specified below.

III. INSTITUTIONAL SERVICES AND PROCESSES

A. Programs

1. The services of the Division of Psychiatric Criminology should be vigorously evaluated by professionals in the field of mental health.

2. Work assignments should be incorporated into the total treatment program, and programmed and supervised to eliminate feather-bedding, to develop basic work habits and attitudes, and to establish meaningful production operations and standards.

3. We recommend that institutions be integrated to minimize racial and cultural problems presently found.

4. We recommend the increased involvement of citizens (civic groups, church groups, volunteers, and outside professionals) in group programs in our institutions.

5. We recommend that qualified treatment personnel be brought in from the community for assisting individual and group counselling. Privileged communications inherent in therapy must be respected, and we strongly endorse the professional principle of confidentiality.

6. We recommend that the Division of Correction cease transferring institutional trouble-makers to Lima State Hospital if they, in fact, do not require psychiatric care and treatment.

7. Sexually vulnerable inmates should be identified and protected as soon as possible.

8. We recommend that the Division of Correction use the new techniques in drug maintenance and control.

B. Education

1. We recommend that the State provide funds necessary to give every inmate an employable skill, and that *money be budgeted for that express purpose.*

2. We recommend the immediate implementation of education and work furloughs as provided in H.B. 567 upon its effective date.

C. Visitation

1. The Task Force recommends the standardization of all institutional visiting rules, and the abolition of all *a priori* restrictions on who may visit and how frequently.

2. Visiting hours should be extended to weekends and evenings at all institutions, even if this necessitates hiring additional staff. Visiting areas should be substantially expanded, upgraded and remodeled.

3. The Division of Correction should permit families to visit an inmate if they believe excessive force has been used against him. If they desire an outside physician to examine the prisoner, this must be granted without delay, in accordance with rules to be promulgated by the Division of Correction. Copies of all "Use of Force" reports should be made available for inspection by the inmate's family or a designated representative.

4. We recommend that the Division of Correction apply for LEAA funds to establish a pilot project for transporting indigent wives, family, and parents to institutions from major metropolitan areas.

5. It is recommended that legislation allowing home furloughs be proposed, one advantage of such a program being that relevant information can be given to the Parole Board on whether an inmate is ready for release.

6. The Task Force upholds the right of an inmate's attorney to visit him in strict privacy whenever requested, and recommends that such a policy be formally issued and enforced by the Central Office of the Division of Correction.

D. Legal aspects

It is recommended that a Legal Assistance Program be implemented by the Division of Correction as soon as possible.

E. Procedures and rules

1. A division-wide set of rules of conduct should be written, clearly specifying all offenses and punishments, and distributed to all institutional personnel and inmates.

2. We propose the following recommendations concerning the Rules Infraction Board proceedings and conditions of correctional cells:

a. An inmate accused of a rule infraction should not be placed in a correctional cell while awaiting his hearing unless *necessary* for his or other's protection, or unless he is creating a major disturbance in his cell area or dorm.

b. An inmate who is scheduled for an appearance before the Rules Infraction Board should be given *written* notice of the charge against him. This notice should describe with reasonable specificity the alleged misconduct.

c. The correctional officer who wrote the ticket should be present at a contested hearing. If the inmate's story differs substantially from the officer's, the Board should make a genuine effort to investigate the matter with reasonable thoroughness.

d. An accused inmate should be permitted to call a reasonable number of witnesses in any case where he is charged with a major offense (i.e., one which could result in several days of correctional cell confinement).

e. The correction officer who wrote the ticket should *never* sit on the Board which hears an inmate's case.

f. All proceedings of the Rules Infraction Board should be electronically recorded.

g. An inmate found guilty of an infraction of rules should have a right to appeal his conviction to the managing officer or Commissioner.

h. Use of "strip cells" should cease entirely.

i. Inmates confined in correctional cells should not be denied full rations (except perhaps condiments and desserts) and should never be denied needed medication.

j. Any inmate confined to a correctional cell who is enrolled in an educational course should be permitted to take his textbooks with him. Clergymen and social services personnel should have unrestricted access to inmates incarcerated in the correctional cell. Inmates not in school should be allowed some reading materials.

k. In conjunction with a prior recommendation concerning division-wide standards as to the proper quantum of punishment for the various offenses, there should be a uniform, division-wide policy as to the maximum length of time for which inmates could be confined to correctional cells.

3. We recommend the abolition of mail censorship of publications.

4. It is recommended that the Division of Correction promulgate policies and guidelines for institutional rules and regulations, and review all present rules and procedures to insure that the demands of security do not negate the objectives of treatment.

5. Reasonable physical force should be used against an inmate only when it is *necessary* for his or another's protection; to stop major property damage; or to prevent escape. Officers who brutalize or harass inmates should be dismissed. Currently there exists a very discernable hesitancy to take decisive action in relation to such persons for fear of "sick outs", etc. by correctional officer personnel.

6. In cases where force has been used upon an inmate, a report should routinely be submitted directly to the Commissioner by the prison physician and by the inmate.

7. Inmate councils should be established at all correctional institutions.

8. Inmates who suffer sexual attacks and who ask for protection should be recommended for protective reassignment.

9. When available, seminary students should be used to augment chaplaincy services.

10. Inmate nurses should be removed from all hospitals and dispensaries in the Ohio system, and replaced with professional civilian nurses. Women nurses should be employed whenever possible. Medicine should only be given at a central drug center by an appropriately trained employee and be administered in liquid form as far as possible. No one subject to temptation—financial or otherwise—should have access to any drug.

11. Special diets and kitchens should be provided at each institution for those individuals whose religion forbids eating of certain foods.

12. In regard to the Muslim faith, we recommend that Islamic inmates should be permitted to proselytize among their fellow inmates.

IV. ALTERNATIVES TO INCARCERATION

A. Probation and parole

1. We recommend the addition of a parole officer level for advancement purposes in conjunction with salary increases.

2. It is recommended that there be improvement in the overall working environment in local offices by application of modern management methods and in the improvement of physical working conditions. A professional management analysis of the operation of local offices would be most profitable.

3. We strongly recommend that the Adult Parole Authority cooperate fully with the State Bar Association in setting up seminars dealing with parole procedures and processes.

4. In regard to the Parole Board and its operation, the Task Force recommends the following:

a. The current functions of the Parole Board should be reappraised to ascertain new roles and a more effective use of the professional resources of the Board's membership.

b. The Parole Board should establish and publish guidelines defining what will constitute cause for continuance.

c. An inmate should be released at the expiration of his minimum term in the absence of compelling reasons to the contrary. There is no evidence that longer incarceration improves an inmate's chances for community success; there is abundant evidence that it does not. The burden of proof, after the minimum sentence has expired, should be upon the Parole Board to show why he should not be released.

d. It is recommended that an inmate have access to information in his file bearing on his parole hearing (except information the Parole Board deems potentially detrimental to the inmate's adjustment), in order that he may be able to intelligently respond to inquiries of the Parole Board regarding the contents of his file.

e. We recommend that the Parole Board advise inmates of their decision for continuance, explicitly setting forth their reasons for the denial in writing, as soon as possible.

f. Parole Board hearings should be subject to the Administrative Procedure Act, which provides for review and appeal.

g. The Institutional Parole Officer should participate at parole hearings, counsel with the inmates afterwards, discuss parole decisions with them, and follow-through on program recommendations.

1. The Citizen's Advisory Board, inmate advocates, and ombudsmen should have unrestricted access to parole board hearings and records.

5. It is recommended that parole violation hearings be conducted in the city or locality where the reported violation occurred—where the witnesses and evidence are accessible to both sides. The quantum of proof should be at least "clear and convincing proof" and the parolee should have the rights to retain counsel and to call witnesses. Where it is determined by the Adult Parole Authority that the parolee's return to the institution is warranted, the parolee shall be so notified in writing before re-institutionalization. The notice shall state with specificity the reasons for his return; all decisions on parole board hearings should be appealable as a matter of right.

6. We recommend that a special Cleveland demonstration project be established, designed to deliver more adequate direct correction services in the face of problems of an urban-crisis community through an innovative program.

7. We recommend the following as does the National Council on Crime and Delinquency in their appended report:

- a. use of individual treatment plans and parole supervision.
- b. contracting for services of private agencies to implement treatment goals.
- c. employing staff specialists with specific skills and training to work with specialized caseloads.
- d. simple research to test effectiveness of policy changes and innovative programs.

B. Community-based services

1. We recommend that the Division of Correction adopt the standards for community-based treatment centers as prescribed by the American Correctional Association.

2. Small community-based correction centers should be established in which training may be given nearer the individual's home in existing community facilities.

3. We recommend that state-operated community treatment facilities such as pre-release guidance centers and halfway houses be developed. We further recommend that the Adult Parole Authority should increase subsidies to approved halfway houses and encourage and assist development of additional private halfway houses.

4. The use of ex-inmates as para-professionals in community-based programs should be initiated.

5. *We strongly urge the Courts of Common Pleas to use local community-based correctional treatment facilities as an alternative to institutional commitment.* We further urge the Adult Parole Authority to use such facilities as a condition of parole.

V. MISCELLANEOUS

1. We recommend that the Division of Correction make every effort to minimize the isolation of the institution at Lucasville by:

- a. establishing a shuttle service from northern Ohio cities to Lucasville to transport visitors and employees to the institution, as well as a shuttle service between Lucasville and the institution.
- b. building low-cost lodging adjacent to the institution for families who wish to stay overnight.

c. giving consideration to assigning men who are from northern Ohio to Marion or London, rather than to Lucasville, unless program needs take precedence over facilitating family visiting.

2. It is recommended that the Ohio Youth Commission be charged with the responsibility of housing all youthful offenders, including those now housed in the "separate" facility at the Ohio State Reformatory.

3. We recommend the creation of an on-going Citizens' Advisory Board to the Division of Correction, appointed by the Governor, with members representing a cross-section of the community, in order to bring a more dynamic, objective approach to the problems of control and treatment of the offender. Appointments should be staggered and should be for a period of four years. Consideration should be given to "specialized advisory committees" to advise and assist the various institutions and divisions of the proposed Department of Correction.

4. The Task Force recommends that state-assisted universities establish centers for the study of crime and delinquency.

Conclusion

The above recommendations—summarizing many of the recommendations in the body of the text that follows—are predicated on protecting the public. If crime in Ohio is to be reduced, if the streets are to be made safe, if the public is to be protected, and if law is to prevail and order established, then the adult corrections system must be altered, renovated, and changed until it is an effective unit of government. At present, corrections is a well-documented failure. Institutionalization *increases* rather than decreases crime. The use of long sentences further increases the probability of this undesirable outcome. *These changes are mandatory.*

Some of the recommendations can be effected by administrative and/or executive orders, while others will require legislation and additional funds. It is fully anticipated that resistance will be encountered, both from without and from within the Division of Correction, to these needed changes. The Task Force unanimously offers these recommendations for improving the Division of Correction, and urges all governmental units to support both correctional reform and the Commissioner in implementing these changes. To do less is to abandon our fellow citizens in the face of threat and societal danger.

The requisite drive, potential leadership, expertise, and competence are available within the State to implement these recommendations and achieve these goals. We must find ourselves capable of rising to the challenge facing the State of Ohio in its correction of the crime problem. The challenge of crime in a free society is the responsibility of all its citizens.

REPORT OF THE MAYOR'S CRIMINAL JUSTICE COUNCIL'S COMMITTEE TO REVIEW THE NECESSITY AND THE SITE SUITABILITY OF THE FEDERAL DETENTION COMPLEX

(Submitted to the Honorable Mayor Joseph L. Alioto,
May 30, 1973, San Francisco, Calif.)

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BACKGROUND

The committee

On February 13, 1973 the Board of Supervisors of the City and County of San Francisco requested the Mayor's Criminal Justice Council to "undertake a study of the need for a Federal Correctional Facility in San Francisco; recommend, in conjunction with the Federal Government, alternative sites, and assign

priorities thereto; and prepare for submission to this Board of Supervisors recommendations for interrelational use of any such facility with appropriate local correctional authorities." (Resolution 78-73.)

In response to this resolution Mayor Joseph L. Alioto, Chairman of the Mayor's Criminal Justice Council, appointed the following to this Committee:

Mark Dowie, Director, Coordinating Council on Prisoners' Organizations.

Dr. Frank M. Ochberg, Association Regional Health Director for Mental Health (NIMH), HEW Region 9.

Dr. Richard Fine, Coordinator, Security Ward, San Francisco General Hospital, Steering Committee, Medical Committee for Human Rights.

Richard B. Morris, General Counsel, The Bar Association of San Francisco.

The Reverend Glenda Hope, Organizing Pastor, City-Wide Young Adult Ministry.

Joseph Roberts, Deputy Chief Probation Officer, U.S. Probation Office.

Ernest Mitchell, Executive Director, Community Defender Program, Bayview-Hunters Point.

Jimmie D. Fruchey, Regional Parole Administrator, State of California (Adult Authority).

Ms. Margaret Baer, Regional Supervisor of Parole, State of California (Youth Authority).

Kurt W. Melchior, Esq., Chairman, Special Penal Reform Committee, The Bar Association of San Francisco, ex-officio and non-voting.

Steve Grzegorek, Acting Chief Facilities Development, United States Bureau of Prisons, ex-officio and non-voting.

Subsequently, Mayor Alioto appointed James F. Hewitt, Federal Public Defender, as an ex-officio and non-voting member of the Committee.

Members of the Committee reflect the diverse views of most of the public and private agencies in San Francisco which are concerned with correctional matters.

At its first meeting the Committee elected Richard B. Morris as chairman. Grant Mickins, Deputy Director of the Mayor's Criminal Justice Council, was assigned by the Council as staff liaison with the Committee.

The committee's work

The Committee met privately on five occasions, usually for the greater part of a day. On March 9 the Committee met privately with: Steve Grzegorek and Fred R. Dickson, representatives of the Bureau of Prisons; Sheriff Richard D. Hougisto; John Gruber, research staff on corrections for the Mayor's Criminal Justice Council; and Robert Bales, staff for corrections of the California Council on Criminal Justice. On March 30 the Committee met with representatives of the General Services Administration and Coldwell, Banker & Co., San Francisco realtors involved with property negotiations, to discuss site considerations. In addition to these five meetings, the Committee met as a whole on two other occasions: On April 3 it met with Mayor Joseph L. Alioto to review its work and discuss his views regarding the proposed jail; and on April 10 the Committee held public hearings on the proposed jail.

Attached as Exhibit A is the notice of hearings held April 10. The notice was sent to over a hundred interested persons or groups throughout San Francisco and the Bay Area, including representatives of the fifteen Counties which comprise the Northern District of California in the Federal Court system. (Exhibit B is a map of the Northern District.) A list of witnesses who addressed the Committee at these hearings is attached as Exhibit C.

On several other occasions members of the Committee met with various persons to discuss the proposed Center and subsequently reported back to the full Committee. Such persons included Edward Velt, Executive Officer, Board of Corrections of the State of California, Robert Passmore, Assistant Zoning Administrator, City Planning Department, and Michael Canlis, Sheriff of San Joaquin County, past president of the California State Sheriff's Association, and nationally recognized authority on correctional goals and programs.

The proposed metropolitan correctional center

A. Program.—When the Committee began working in February, the Bureau of Prisons described the proposed jail as a Metropolitan Correctional Center (hereinafter called the "Center"). The Bureau proposed to build the Center as a 13 story building located on the approximately 10,000 square foot, North West

corner of the intersection of Turk and Larkin Streets. In an October, 1972 statement the Bureau summarized Center programs as follows:

General outline and capacity detention facility

Include housing for pre-sentenced and short-term sentenced offenders. Youth will be separately housed from the adults in both male and female sections. The housing is broken down into 'functional units' of approximately 40 single rooms each. All activities and services for the detainees will, whenever possible, be provided within the functional unit.

Multi-purpose activity space for chapel services, library and group therapy activities in the functional unit.

Outdoor Recreation.

Program space for educational, vocational training or correctional therapy activities in the functional unit.

Infirmary for general examination and treatment, including a 10 bed in-patient nursing suite and a dental clinic. Major diagnostic and surgical work will be contracted for outside the Center, making use of resources already available in the community.

Food will be prepared centrally and served in each functional unit.

Normal administrative and service functions, including casework services and visiting facilities.

Diagnostic center

Psychiatric, psychological and casework services.

Testing and interview facilities, including vocational testing.

Community treatment center

Casework services.

Resident living facilities for 30.

Capacity

	<i>Beds</i>
Male -----	126
Admission -----	14
CTC -----	30
Medical:	
Detoxification and psychiatric -----	5
Infirmary -----	5
Total -----	180

Square footage—75,000.

Staff

Employees.—The foregoing description was the principal subject of the Committee's studies. It also constituted the focus of testimony received by the Committee, for example, when Bureau representative described the Center to the Committee privately on March 9th, and at the April 10 public hearings.

However, on May 4 the Bureau of Prisons submitted to the Committee an eleven page statement entitled, "Projected MCC Program," which varied considerably from the foregoing description, especially with respect to projected inmate populations for each of the distinct Center programs. According to the May 4th statement, the Center would administer the following programs for the following populations:

Crisis intervention program

(First 72 hours—population 14.) This unit receives all persons and provides in-take services.

Facilitative program

(Pre-sentence and over 72 hours—population 40.) This unit is designated to house arrested persons during the remainder of detention while pre-sentenced.

Therapeutic community program

(Sentenced offenders—population 40). This unit houses persons given short terms, i.e., one to ninety days. Its Bureau programs " * * * will have a therapeutic community flavor with the major program orientation centered around in-house problem resolution and self government."

Evaluation program

(Population 40.) This unit provides study and observation for various types of cases, including persons referred from another facility in the federal system for a particular study work-up. The courts will use the unit for pre-sentencing purposes and psychiatric evaluation.

Medical and diagnostic program

A major responsibility of the diagnostic program is psychological and psychiatric evaluations for the various types of study cases. This unit includes five beds in the infirmary for medical cases that need to be separated from the main population, and five beds for psychiatric and detoxification patients.

Community treatment center or "CTC"

(Population 30.) This unit provides effective community re-entry for individuals, primarily expected to be residents of San Francisco, completing prison terms in Bureau facilities.

In addition the May 4 statement seems to suggest capacity for 6 female inmates. Without them total population drops to 174.¹

The Center is one of five similar units being developed by the Bureau of Prisons: New York (450 inmates); Chicago (399 inmates); San Diego (500 inmates); Philadelphia (300 inmates). Except in New York, where the Center replaces an out-dated detention facility, all these Centers are new Bureau programs, and taken together reflect a new policy of the Bureau of Prisons, namely to administer its own pre-trial detention facilities, albeit in a facility calculated to accomplish several other correctional objectives. In the past federal policy has utilized local jails to house federal offenders prior to trial and sentence.

According to the Committee's information, the Center in New York is under construction, following litigation regarding the Center's environmental impact in which the Bureau of Prisons prevailed. Construction has been halted on the Center complex in Chicago pending trial over its environmental impact. The Center in San Diego is under construction as part of the federal building complex in that City. Proposed construction in Philadelphia is several months away.

The Bureau asserts that the Centers are being developed to implement the following policies enunciated in paragraph 6 of President Richard M. Nixon's November 13, 1969 statement on national correctional goals: "A great number of existing city and county jails are antiquated and overcrowded. Correctional experts believe that the local jail concept should be replaced with a comprehensive, community-oriented facility which would bring together a variety of detention efforts, adult and juvenile court diagnostic services, treatment programs both for those who are incarcerated and for those on supervisory release, and the halfway house concept. Pilot projects along these lines have already been designed for New York City and Chicago. They should be given the highest priority and available funds should, wherever possible, be used to encourage other centers of this sort."

The full text of Mr. Nixon's statement on this occasion is attached as Exhibit D.

A majority of the Committee disputes the Bureau's interpretation of this policy. On the contrary, they contend that the Centers are inconsistent with the President's statement of national policies. Their views are elaborated below. (Committee recommendation.)

One of the important keys to understanding the problems inherent in the proposed Center is the Bureau's laudable attempt to design floor space which is flexible in usage both for security within the building and for "livability" for the inmates. This it has done with a so-called "functional unit." In the Center each functional unit is divided into 4 branches of 10 beds each, plus modest recreation and living space, which surround a larger, multi-use, living area shared by all 40 persons. Each functional unit is two floors in height, although only the common multi-use area has two-floor ceiling height.

From the Bureau's point of view the functional unit has one other desirable feature: Its physical layout can be easily converted from one institutional use to another. In this case, for example, the entire building could be converted from

¹ On May 23, the Committee received a third description of the MCC. Its principal variation from the May 4 statement is the dropping of inmate projections for pre-trial detention, therapeutic community and evaluation unit. It makes no reference to female inmates.

four programs (the May 4th statement) to any one of the four, i.e., pre-trial detention, housing short-term offenders, evaluation of convicted offenders, or as a "CTC" for graduated release services. While architectural flexibility to meet changing program needs is a virtue, in the absence of definite programs for the foreseeable future, there is no guarantee that changes in use of space will be constructive. Because the Bureau has failed to demonstrate what its needs are, notwithstanding repeated requests for information, and has failed to clearly commit itself to ascertainable programs, the "functional unit" plan becomes for the Committee not an asset, but a definite liability. Thus, in the Committee's view the last thing San Francisco needs or wants is a building which is potentially little more than a high-rise jail for pre-trial detainees.

In the light of the foregoing discussion about the Center, it is with a sense of deep regret and profound frustration that the Committee must state that its findings are inconclusive regarding what precisely is being proposed by the Bureau as the Center in terms of the program, related inmate populations, and supporting data. This conclusion is discussed again below in connection with the Committee's findings, and also with respect to both Committee and minority recommendations.

B. Physical design.—The project is in the conceptual design stage only—15% completion by the architects. The main street level entrance to the building, including an extensive reception/mezzanine area, is open and accessible to the public. Its exterior appearance, owing to the use of high-strength laminates of glass and plastic, will give it the appearance of an apartment building.

The 13 story building will have a floor area of approximately 75,000 square feet, including space for eleven interior parking spaces. The Center incorporates elements of a humane, physical environment, both within and without. In general, the Committee concurs with the following statement of Friedner D. Wittman, architectural consultant specializing in institutional buildings, who addressed the Committee both orally and in writing: "The architects are to be commended for an excellent design that takes maximum functional advantage of limited area."

However, in contrast to the foregoing, this same witness advised the Committee of a major design deficiency. In a letter to the Chairman dated April 23, 1973, Mr. Wittman wrote: "First, the design of the facility is extremely tight, based for the most part on minimum functional sizes. From the Hearing Room/Magistrate's Office complex on the ground floor to the Recreation Area on the roof, the rooms throughout are absolute minimum sizes for the activities to occur within them. People will constantly be at one another's elbows."

Security is not the least problem of such physical overcrowding. A representative of the Northern California Psychiatric Society predicted frustration of therapeutic and evaluation programs intended for the Center, (though the Bureau's program intentions are exceedingly vague) if its design resulted in a "boxed-in" psychological environment. Finally, it would be ironic to build a \$6 million federal jail which ends up overcrowded, in reliance on the proposition that San Francisco's present jail is overcrowded.

Another matter of criticism relates to parking. Only eleven spaces are provided, and none of these will be for visitors to inmates. The Bureau's intention is to discourage auto traffic primarily for security reasons. However, its parking policy will also discourage visiting, an important right of inmates, especially those awaiting trial and not convicted. (*Brenneman v. Madigan*, Memorandum Opinion, N. D. Cal., May 18, 1972.) Visiting would also seem an important privilege of those confined for short-terms, and those undergoing evaluation or confined to the CTC.

Need

A. Introduction.—On March 15 of this year Federal Judge Robert H. Schnacke ruled as follows: "It must be concluded and declared that the San Francisco Jail System is operating in violation of the Eighth and Fourteenth Amendments in failing to provide an adequate program of medical care, in failing to conform to the Minimum Jail Standards established by the laws of California, in the method of imposing discipline, and in the manner of holding detainees." (*Smith v. Hongisto* Opinion, pp. 19-20.)

Judge Schnacke noted that the evidence he relied on related to conditions in 1971. Although those conditions have improved somewhat, the Committee is fully aware that San Francisco jails are "desperately in need of reform," as Mayor

Alloto wrote the Board of Supervisors on January 11, 1973 expressing his support for the Center. As recently as April an inspection team from the California Criminal Justice Council designated San Francisco the second most needy system in the State, and apparently failed to give it first priority only because Contra Costa County was found to be more willing than San Francisco to improve its comparably inhumane jails. The inspection team completed its findings regarding San Francisco with the following revealing statement: "They [the Board of Supervisors of San Francisco] should also be urged to immediately undertake planning and formulation of a long range design that would provide new facilities and the type of correctional programming that exists in nearly all other major metropolitan areas. Until San Francisco itself makes commitment, little could be done with the limited amount of money available from CCCJ."

Presently federal offenders awaiting trial in custody are housed in Bay Area County jails, primarily San Francisco (and even San Quentin when these are too crowded). For this reason, most federal offenders are subjected to the inadequate jail system which is San Francisco's. The Center is proposed by the Bureau of Prisons to meet the jail needs only of federal offenders. It is not proposed either as a full scale substitute for or even a major improvement of the San Francisco jail system, although it would ease overcrowding at Bryant Street. This point bears emphasis, since even if the Center is built, San Franciscans must still act to improve their jails to comply with Judge Schnacke's order and to meet the CCCJ inspection team's admonition.

B. *The Bureau of Prisons' Justification for the Center.*—Presented below is a point-by-point analysis of the Bureau of Prisons' claim regarding the need for the Center. Each claim is important and relevant to the question of what improvements are needed. As reading will make clear, however, what is primarily wrong with the Bureau's case is not its claims about what the Northern District Federal Courts need. The Bureau's case fails because (i) the Bureau is ambiguous about its plans to meet the need; and (ii) the evidence it offers in support of its ambiguous intentions is not reliable.

The Bureau has engaged this community in over six months of public discussion about the Center. The Center was proposed, Bureau representatives said last Fall, primarily to accommodate the projected expansion of Federal arrests and, therefore, increased housing needs for pre-trial detainees. On May 4, however, the Bureau submitted the most specific description of its program yet, a description which has never been publicly disclosed. The programs called for in this statement *cannot* occur if the Center is primarily for pre-trial detention. On the other hand, it appears inevitable that many federal detainees will remain in San Francisco jails even if a Center is built, if it is the Center outlined in the May 4 statement. Until the Bureau stamps one plan or the other "official," no one can know what the Center is.

Questions regarding the evidence presented by the Bureau with respect to the Center's programs are discussed below.

The principal reasons advanced by the Bureau of Prisons in support of the Center are:

Overcrowding of local jails where federal prisoners are now housed during the period commencing with arrest and ending with release or referral to custody elsewhere.

Overcrowding of prisons where persons sentenced for short terms are housed. (For the purpose of this report a short-term is considered one to ninety days.)
The need for more comprehensive services to inmates.

The need for a community treatment center, a "CTC," primarily to aid the re-entry of persons returning from federal facilities to society; but also as a condition of probation in a few cases.

The need for diagnostic capability in San Francisco to assist the federal courts.

The need to eliminate the costs and security risks of transportation between the Northern District and (a) the local jails; (b) diagnostic resources outside San Francisco, e.g., Englewood, Colorado; Lompoc, California; Springfield, Missouri; and Terminal Island, California; and (c) other federal facilities for custody in the same areas mentioned in (b) and McNeil Island, Washington.

The desirability of providing a model which will demonstrate how comprehensive correctional services to benefit courts and community can be delivered from a single facility located in a metropolitan area.

Overcrowding with respect to pre-trial detainees

The Committee agrees that the San Francisco men's jail facility known as County Jail #1 is overcrowded. In his March 15 decision noted above, District Court Judge Robert Schnacke found ". . . that cells in the felony wing of Jail #1 have frequently been overcrowded." (*Smith v. Hongisto, et al.* Opiulon, p. 6.) The Special Penal Reform Committee of The Bar Association of San Francisco made a similar finding in its November, 1972 report concerning certain pretrial detention problems at the San Francisco Hall of Justice. (See Report, pp. 6-14.)

Substantial question exists, however, regarding the number of federal prisoners suffering from these overcrowded conditions. In other words, given overcrowding at the San Francisco jail, the question is what size federal facility would be needed, assuming on all relevant grounds a separate facility would be proper.

Evidence submitted to the Committee on this point is seriously incomplete. Bureau representatives advised the Committee that the average daily pre-trial population was 65.5 for the Northern District in 1972. Projecting this figure at 2% annually, the Bureau states that 168 detainees will need to be housed by 1993. (Additional data was supplied by the Bureau with reference to current inmate populations, but these statistics tend to confuse the issue because they include totals for female inmates, and in-transits and parole violators. The Bureau has not detailed the relationship of these latter inmate categories to the Center.)

The Bureau did not supply the Committee with sufficient information for it to accept either the 2% projection, or the usefulness of the base population. No ranges of inmate population were given. Nor was information given, as requested, regarding trial calendars, or number of arrests for reasonable periods of time to allow analysis of projections. As to arrest data, while Bureau representatives stated that federal law enforcement resources, including grand juries, have been significantly increased recently, no attempt was made to specify with precision what added inmate population would result.

It is interesting to note that the Bar Association Penal Reform Committee found an average of 43 federal prisoners in the San Francisco County jails in connection with its study in 1972. This figure comes very close to the Bureau's projected 40 pre-trial detainees for the Facilitative Unit described in its May 4 statement.

A problem for the Committee equally significant as the lack of reliable data, is the Bureau's failure to give serious attention to two aspects of the County jail population picture for which change appears to be imminent. The first relates to the removal of public inebriates under the provisions of Penal Code 647 (f). It is the Committee's understanding that the City and County of San Francisco expects to open facilities this year for public inebriates now housed in the City Prison. This is a substantial population, approximately 50 persons daily. Such facilities would in all likelihood be permanent, since San Francisco would hardly return to incarceration for alcoholic arrests once this past policy had been shelved.

A second and related imminent change is implicit in the Mayor's Criminal Justice Council's April 3 resolution that the 6th and 7th floor jails at the Hall of Justice be consolidated. This step was fully discussed in the Bar Association's Penal Reform Committee report. (See pages 8-11.) Both Chief of Police Donald M. Scott and Sheriff Richard D. Hongisto are committed to developing a plan of transition. With the Mayor's Council's backing and the pressure of a pending federal court order to remedy jail conditions, the Board of Supervisors should find consolidation a welcome method of improving the situation. Consolidation of these two facilities plus removal of public inebriate would permit much greater flexibility in using space and would substantially eliminate the overcrowding problem. There is already a great deal of unused space at the City Prison on the 6th floor. The Bar Association found that for the months of July and August of 1972 an average of 38 men were sleeping on the floor of the 7th floor jail, while an average of 123 beds were open on the 6th floor during the same period.

In summary, while overcrowding of local jails is a fact, the Committee lacks reliable evidence to determine what size facility is necessary or proper for federal pre-trial detention. Furthermore, the Committee believes that San Francisco has the capacity now to substantially eliminate overcrowding for all pre-trial detainees, including federal.

Overcrowding with respect to short term offenders

As noted, the Bureau also contends that housing facilities for inmates given short terms (1-90 days) are also overcrowded. The Bureau of Prisons submitted no evidence to the Committee to establish the number of sentenced offenders who fill this category, or population conditions in terms of rated capacity at federal facilities presently housing this category of offenders.

The Committee is generally sympathetic to the principle that all prisoners, short term prisoners especially, should be confined as closely as possible to their homes. Because of the lack of evidence, however, the Committee cannot determine to what extent such facilities are needed in the Northern District.

Comprehensive services

The Committee agrees with the Bureau's view that more comprehensive services are needed for its inmates. In general, the Committee is sympathetic with the service goals which the Bureau proposes. Regrettably, the Committee must repeat that the Bureau has failed to produce reliable evidence regarding the specifics of the need or the nature of programs to carry out such goals.

C.T.C.

The Committee believes that additional graduated release services and facilities are needed for the Northern District, and specifically for San Francisco. Although relying more on the expertise of its members than on the supporting data presented by the Bureau, the Committee concurs in the Bureau's finding regarding the need and encourages the Bureau to develop even greater resources to fill it. If anything the Bureau's statistics show the CTC rudely proscribed so as not to grow. Thus, the Bureau has projected a growth for pre-trial detainees, but a fixed need for its CTC. No explanation has been provided for these inconsistent plans.

Notwithstanding the admitted need for a CTC, the Committee rejects the Bureau's plan to place the CTC at the top of the Center. Such a location will frustrate the CTC program, and therefore interfere with fulfilling the need. The great majority of persons who communicated with the Committee opposed physical incorporation of the CTC in the Center. One witness summed up the concern this way:

"Now in the transition facility, it is important, I think, that the living accommodations emphasize experimentation and practice with living in the community, not with the kind of lessened bonds brought about by the surrounding institutions.

"Just for one brief example, it's very reasonable to want to invite someone to your home when you are out living in the community, a girlfriend, an acquaintance one develops at work, something like that. And I just ask the question for people on a prerelease or parole status, who would want to take a friend up to the 13th or 14th floor of this facility and have a cup of coffee and chat? Now that is the gist of the argument in a nutshell of an example."

The Bureau contends that the economies of its plant and staffing call for such integral program design. An experienced law enforcement witness advised that the proposed location was necessary because a half-way house is difficult to locate in residential areas of any city. In contrast, experts in such fields as mental health, institutional building design, half-way house programs and social services uniformly held that if the CTC is located as proposed its program cannot succeed. Based on their experience they recommend severing the CTC and relocating it apart from the Center in a different section of the City.

Diagnostic services

With respect to the Center's proposed diagnostic or "Evaluation Unit," the Committee agrees in general that this is a need for all criminal courts, federal or state. However, conflicting statements were submitted to the Committee to establish the number of persons who would need such services. Lacking reliable evidence the Committee cannot comment intelligently with regard to either the diagnostic capability described in the original Bureau program, nor in the 40-bed Evaluation Unit specified in the May 4 program statement. (See discussion above, p. 6.)

The Committee is conscious of the Board of Supervisors' request for recommendations regarding "alternative sites," and "interrelational use." Accordingly, the Committee points out that with increased support, such as new contracts with the Federal Bureau of Prisons, existing agencies in San Francisco could supply the medical and psychiatric diagnostic and treatment needs of the pro-

posed "Evaluation Unit." Professional expertise and institutional capacity already exist. The security ward 54 of San Francisco General Hospital provides these medical services for City and County jail as well as some federal prisoners from County Jail #1. The criminal justice unit of North East Mental Health District provides psychiatric evaluation, diagnosis and treatment for the City and County jail population, for the courts, and in the jails. Although a new program, it has demonstrated professional competence in this area.

Transportation

With respect to problems of transportation to out-of-city diagnostic resources or custody, the Committee believes that it is self-evident that all involved with the administration of criminal justice benefit from a close physical proximity of the court, prosecutor, the defense, probation officers, and corrections including diagnostic resources. Again, however, the Committee is forced to conclude that the evidence supplied by the Bureau on this point is not sufficient to determine the dimensions of the transportation problems affecting the administration of justice in the Northern District of California. For example, no statistics were given as to the number of prisoners sent out of San Francisco for diagnostic services, of the distances travelled annually, or of the costs involved. Also, as already noted above, no statistics were given as to the number of prisoners nor the distance travelled or costs involved for short term sentences.

With respect to the transportation of prisoners from the Hall of Justice to the Federal District Court, the Committee was advised verbally that the U. S. Marshal needed four hours to escort a prisoner to Court, and four hours to escort a prisoner back to prison. Again, however, no reliable evidence in support of these claims, e.g., the Marshal's dispatch schedules, were provided the Committee notwithstanding repeated requests to Bureau of Prisons' officials and the U. S. Marshal's office.

The Committee believes that transportation is always more or less a problem for the federal system. For example, by permitting the Evaluation Unit (May 4th statement) to serve federal facilities outside San Francisco, the Bureau appears to be building in a new transportation problem. The dimensions of the problem in the Northern District have not been demonstrated. Except for the Center, no alternate solutions, e.g., contracts with local medical facilities for diagnostic and evaluation service appear to have been studied. In our view, transportation problems of themselves do not justify building this Center.

Model correctional facility

The Committee's inability to make final judgments about Center programs hinders its consideration of the Center's "model" characteristics. Based upon the evidence it appears that the Bureau's primary method of projecting these will be confined to its administration of the Center as a multi-service correctional institution. Thus, building plans do not provide extensive space for training and research, whereby non-Bureau professionals particularly might study Center operations and consult with its staff.

Site suitability

The site proposed is zoned for usage consistent with the Center, and as noted the Center complies with height and bulk regulations. Its primary value is its proximity to the Federal Courts, located in the Federal Building immediately to the South. (It should be noted that some federal criminal trials take place in Santa Clara County. The site's location is obviously of less significance for these trials.) Physical coordination of the criminal justice system in this jurisdiction at least will enhance its administrative coordination, with benefits to all involved, including the inmate and defense counsel.

Actual connection with the Federal Courts is expected to be made via a tunnel under Turk Street. At this date it is not certain that the tunnel is either feasible or permissible, and the Committee has no basis to predict whether the tunnel will or will not be constructed.

As proposed (the design is only at the 15% completion stage) the roof recreation layout is problematic. Aside from being minimally adequate in size at best, the applicable height limit precludes the necessary wall or fence size to make the open roof secure.

Alternative sites

The Bureau has not been authorized to spend site money. Therefore, it has considered only the Turk and Larkin site on the basis of making an exchange

of federal property with the private owners of that site, and one other presently government owned piece, 50 Fell Street. This latter location was rejected following discussions with City officials last Fall.

No serious consideration has been given to such possibilities as the Federal Building itself, the Hall of Justice on Bryant Street, or any other site.

Economic factors

If constructed the building will provide about 80 jobs for Center staff. The payroll projection has not been made available to the Committee, notwithstanding requests for it, but is estimated to exceed one million dollars annually.

If the real estate exchange proposed to acquire the Turk and Larkin site goes forward, the City will probably gain in tax revenues, even after allowing for the loss of taxes from the Turk and Larkin site.

The Committee received no information regarding the dollar amount of goods and services to be purchased by the Center for operation of its programs each year.

Approximately \$4 million will be spent for the construction job itself. Additional costs amounting to \$2 million will be incurred, primarily for developing the interior for residential use and the Center's other programs.

The Committee does not consider such economic benefits of great significance insofar as the decision to build the Center is concerned. For example, the Bureau has constantly stated that existence of the Center would facilitate closing of older prisons, distant from San Francisco. If this is true, Center jobs would likely go to existing Bureau employees. Furthermore, use of tax and construction data necessarily assumes that no other use exists for the site, and that no other options exist for the Bureau of Prisons. Neither assumption is true. In fact, the City's greatest need is for private housing, and for this particular site the City's Master Plan recommends multiple residential uses. Options for the Bureau of Prisons have already been noted, and others are discussed below.

Environmental impact

The Bureau has advised the Committee that it intends to file an Environmental Impact Statement. At date of writing no such statement has been filed, nor has the Committee seen such a statement.

RECOMMENDATION

This Committee recommends to the Mayor and the Board of Supervisors of San Francisco that *no* metropolitan correctional center be built by the Federal Bureau of Prisons.

The bulk of the evidence and conclusions on which we base this recommendation are included in the Background comments. Additional reasons are as follows:

A. *The plan calls for an enormous outlay of taxpayer money for a facility which is intended to serve a small minority of pre-trial offenders in San Francisco.*—A Metropolitan Correctional Center designed only for federal offenders would create an inordinate and unfair contrast between the conditions of pretrial detention for federal and non-federal offenders.

Estimates of the total acquisition and construction costs have varied from \$3.8 million to \$6 million. Estimates of annual operating expense vary from \$1.5 million to \$1.7 million. In either case, this seems an inordinate expenditure of tax dollars for a 180 bed facility. The same funds, wisely invested in a program of "community corrections" would greatly improve our ability to bring justice and rehabilitation to offenders under all jurisdictions in the Bay Area.

See attached statements from the National Council on Crime and Delinquency and the Committee for Prisoner Humanity and Justice, Exhibit E.

B. *Evidence of the need for the facility as described and documented by the Federal Bureau of Prisons is not substantiated and is totally unconvincing.*

C. *In keeping with trends and informed judgments in modern penology and corrections, the model for local corrections should not be a one jurisdictional detention and/or treatment and diagnostic center but rather should be integrated into the total San Francisco correctional plan now being developed by the Mayor's Criminal Justice Council.*—There was no evidence presented to this Committee that the planning for the Center was coordinated with local agencies, both governmental and private, and citizens, nor was there any indication of a desire or a willingness on the part of the Bureau of Prisons to coordinate with local citizens in the administration of the proposed Center, if constructed. Moreover, with a view to a regional correctional agency's servicing the projected popula-

tion and with an emphasis on community corrections, it is disturbing to find San Francisco caught between two federal agencies concerned with local criminal justice. LEAA refuses to spend large sums of money in San Francisco until there is a coordinated program of corrections. The Bureau of Prisons' Center proposal fragments regional corrections with its own prison. Such governmental practices appear to clash with federal-local revenue sharing policy.

See attached excerpts from the Keldgord Report, the Northern California Ecumenical Council, the Statement by the President of the United States (Thirteen Point Program) on November 13, 1969, the Omnibus Crime Bill and Safe Streets Act of 1968, and the California Council on Criminal Justice, February, 1973, Exhibit F.

D. *Professional opinion from persons with acknowledged expertise in the field of penology as it was presented to this Committee overwhelmingly asserts that the facility as proposed is not well-planned and innovative despite Bureau of Prisons protestations to the contrary.*—At various times, the Committee was presented with three totally different and unsigned plans. We were never able, however, to secure a detailed program plan or staffing pattern for the proposed Center. There has been no evidence presented to show that the Bureau has consulted with local experts on penology in the various academic settings in the Bay Area. The Committee heard expert architectural testimony to the effect that the proposed Center was a prison with extremely close confinement, with no room for large muscle activity and with virtually no access to sunlight and fresh air. Related testimony from a representative of the Northern California Psychiatric Society confirmed this judgment and added that psychological testing and diagnosis under such conditions would be unreliable.

Inasmuch as the Center is projected chiefly as a pre-trial detention center, it must be recognized that it is intended almost exclusively as a lockup since the law specifically forbids "rehabilitation" or "treatment" to be imposed on prisoners who have not been convicted of any crime.

E. *Projections for pre-trial detention ignore the potential impact of increased utilization of the Federal Bail Reform Act, the Magistrate's Act and the summons release procedure.*—See attached statement interpreting these laws plus statement from the American Friends Service Committee, Exhibit G.

F. *No evidence was presented to the Committee that the Bureau had considered alternative plans that make more extensive use of community resources which currently exist in San Francisco.*—For example, the North East Mental Health Center's newly formed and operating Criminal Justice Unit is providing psychiatric-diagnostic skills to San Francisco's local jails. The proposed MCC would have only 5 beds for psychiatric/detoxification purposes and only 14 for admissions/diagnostic purposes. Why establish an entirely separate set of staff persons and related services for such a small number? It would be a far better use of money on the part of the Bureau to invest funds in this program, thus improving the program for all prisoners rather than a limited few.

G. *Inadequate pre-trial conditions for all prisoners in San Francisco can better be met by combining city and county jails and investing a smaller sum of money (than that allocated for the proposed Center) to bring them up to prescribed standards.*—According to the evidence presented to this Committee, the Bureau presently spends \$8 per day for a federal prisoner held in San Francisco county jails. In contrast to this sum, the Bureau plans to spend approximately \$25 per day for each inmate held in the proposed Center.

H. *One alternative to the proposed Center which is suggested by this Committee is that the Bureau of Prisons lease space in the soon-to-be combined 6th and 7th floors of the Hall of Justice, 850 Bryant Street, in which to house federal prisoners.*—They could remodel and staff this themselves, thereby providing an on-the-spot model for local corrections to emulate. The funds used for leasing this space should be made available to the 850 Bryant Street facilities in order to aid in bringing them up to standards prescribed by state and federal authorities.

Such an arrangement would provide a transition into the multi-jurisdictional arrangement discussed above and would facilitate immediate cooperation and exchange of expertise between local and federal corrections personnel.

I. *Professional, religious and residential community opposition as presented to this committee was almost unanimous.*—An example is the statement by the Committee on Social Justice of the San Francisco Catholic Archdiocese: "For the past several years the most respected voices in penology have called for a

moratorium on prison construction among them the United States Chamber of Commerce and the Keldgord Committee. Yet, the Federal Bureau of Prisons is proposing to construct 66 new facilities throughout the country. It is time that we started listening to the growing voice of those who oppose such plans. We urge the Committee to oppose the construction of the Metropolitan Correctional Center anywhere in San Francisco."

It is worth noting that the California Council on Criminal Justice supported the Board of Supervisors of Ventura County in its opposition to a proposed new Bureau run youth prison in that County. Also, a citizens' group in Chicago has obtained an injunction halting further construction on the Center planned for that City.

MS. MARGARET BAER,
MARK DOWIE,
RICHARD FINE, M.D.,
REVEREND GLENDA HOPE,
ERNEST MITCHELL.

SAN FRANCISCO, CALIF., May 30, 1973.

MINORITY STATEMENTS

We respectfully disagree with the foregoing recommendation. It is our conclusion that *plans to build an MCC in San Francisco* should proceed, subject to the following conditions:

(a) *Full Disclosure.*—A full disclosure of programs planned for this facility should be made available to the people of San Francisco for their comment and criticism. In our judgment, the Bureau of Prisons failed to do this, providing instead a brief program outline to this Committee, weeks after public hearings on the proposed facility. We recognize that over the years the Federal Bureau of Prisons has established a record of progressive policy, espoused standards of inmate supervision consistent with human dignity, sought to increase program alternatives for offenders who do not require institutional confinement, promoted training, research, technical assistance, and innovations in the correctional field, and expressed sincere concern for local participation in the planning process. Having entered discussions with all the people in San Francisco, not merely local representatives of the Federal government, it behooves the Bureau to reopen these discussions in a spirit of cooperation and candor, in order to present fully and thoughtfully its proposed correctional program.

(b) *Severance of the community treatment center.*—No matter what emerges as the Bureau's program for the MCC, the Community Treatment Center should not be physically incorporated in it. Its need is imperative. However, the weight of testimony and evidence received by this Committee supports the necessity of locating such a facility apart from a jail. Its proposed height is not the objection. Rather, to fulfill its purposes the CTC's environment should be physically separate from a jail environment.

(c) *Establishment of need and consideration of alternatives for planned therapeutic community and evaluation unit.*—The Bureau's May 4 statement anticipates a larger population for the Therapeutic Community and Evaluation Unit than heretofore considered. While sympathetic to the philosophy of these programs, we doubt that the Northern District generates the inmate numbers predicted, i.e., 40 per program. We request of the Bureau verification of the need. Furthermore, we require more detailed program description in order to comment intelligently on the suitability of the proposed architectural design for these two programs. As the Committee notes (pages 20-21) psychiatric and general medical evaluation is currently provided to the superior and municipal courts in the existing facilities. We urge that plans to expand such resources to meet needs of the Federal courts be seriously explored as a potentially superior alternative from a programmatic and fiscal point of view. Some medical experts advised the Committee that evaluation at a location apart from the MCC would increase diagnostic accuracy.

(d) *Citizens Advisory Board.*—The Committee has noted that the Center's functional unit design makes conversation to different programs relatively easy, no matter what may be the benefits or drawbacks of new programs. It has also noted the Bureau's equivocation about its planned programs. For these reasons and for others, we believe that San Franciscans should be continuously informed about the operations of any jail within its boundaries. Community awareness of what goes on "inside" would help assure that program changes would be

constructive. Our belief is strengthened by our awareness that Washington, D.C. can be a long way from San Francisco.

To this end, we urge that if the Center is built, a five to nine member board of San Francisco residents be appointed by the federal judges, in consultation with the Mayor of San Francisco, to (i) counsel regularly with Center administrators regarding Center policies, and (ii) report publicly at least once each year on the Center's operations.

Discussion.—While the Committee's job may be completed, the City and the Bureau have not completed work to plan and build a thoroughly sound Metropolitan Correctional Center. Like the design itself, the planning process is about 15% complete. It is good that this is so, since views of the Committee about the jail plan, and more important, the views of the people of San Francisco, can be presented before it is too late for them to matter.

We believe that the goals and programs outlined skeletonally in the Bureau's May 4 statement are generally progressive. However, these programs are not sufficiently detailed, nor have viable alternatives been seriously considered, nor have plans been drawn for ongoing, meaningful San Francisco citizens participation in the MCC program. Therefore, in our judgment strong conditions must be placed on the acceptance of the Bureau's plan by the people of San Francisco.

We see substantial merit in much of the rationale provided for the Committee's recommendation. However, its recommendation would force the Federal government to tread water indefinitely while San Francisco catches up (hopefully) to the Federal correctional goals and standards. It is our judgment that San Francisco is jails poor. Therefore, Federal action on behalf of Federal inmates should not depend exclusively on San Francisco cooperation. The City is having a hard enough time running its jails in compliance with the United States Constitution. The Committee's implicit finding (p. 17) that the City intends to eliminate overcrowding does not change our view. The City has not in fact appropriated funds to do so. Furthermore, even if it does (and we urge it to do so) we are extremely skeptical of the City's ability to meet the level of correctional standards adopted by the Bureau of Prisons for the MCC. They go well beyond the elimination of overcrowding alone.

We note that it is the Federal Bureau of Prisons and not the City and County of San Francisco which has budgeted and obligated sums sufficient to bring about dramatic improvement in jail conditions. Granted that this action would result in humane jail conditions only for Federal detainees in separate Federal facilities, given the total financial picture, it does not seem fair or wise to ask the Federal government to abandon plans and policies meaningfully directed at improving the condition of their charges. The Federal judges and other officials of the Northern District have been among the most zealous advocates of jail reform in this community for years. Their efforts to better serve all people in the fifteen counties of the Northern District should not be unreasonably thwarted. Ideally, a jail system serving both Federal and local needs according to high standards acceptable to both governments is most desirable.

Summary.—The position of this minority of the Mayor's Committee is one of conditional approval. We urge an intensification of the planning process, but an interruption of the construction schedule until assurances are received by the City of San Francisco that the Federal Bureau of Prisons intends to comply with the conditions stated above.

JIMMIE D. FRUCHEY,
RICHARD B. MORRIS,
FRANK M. OCHBERG, M.D.

SAN FRANCISCO, CALIF., May 30, 1973.

One member of the committee, while understanding the reservations of the minority statement, is unalterably of the opinion that the Federal Metropolitan Correctional Center should be constructed without further delay and with the community's encouragement rather than opposition. In light of the local federal judges' tradition of leadership in jail reform and the acknowledged position of the Bureau of Prisons in progressive and enlightened penal administration, the imposition of conditions or modifications seems superfluous.

For every day of delay in the construction of this long needed Center, additional Federal pre-trial detainees and convicted Federal defendants serving short-term sentences will be subjected to the chronically substandard conditions of the San Francisco County Jail. This facility, despite changes in administration, repeated professional studies, countless proposals for improvement and

recent enlightened Court directives, has steadfastly maintained its position as one of the poorest County Jails in any Metropolitan community in this state. Construction delay will also perpetuate the need of the Federal Courts in San Francisco to send some criminal defendants serving short sentences and other defendants requiring diagnosis, study and observation a minimum of 300 miles away and, all too frequently, half way across the continent for this service. This inefficiency is costly to taxpayers, but more importantly, needlessly traumatic and disruptive for the defendant and his family. For the Bureau of Prisons to contract for such services with existing local agencies is neither statutorily possible nor provided for budgetarily.

In the view of this committee member, a sound and realistic solution to both of the above described problems is now available in the form of the suitable site and a line-budgeted, innovatively designed, esthetically acceptable and professionally administered correctional Center. In short, the proposed MCC is an essential adjunct to the Federal Courts and, located physically adjacent to the Courts, would provide humane conditions of detention, a wide range of diagnostic services as well as important rehabilitative programs administered by an agency which has long enjoyed a position of leadership in this field. Moreover, while the MCC would serve the full Northern California area, San Francisco residents would benefit most through fewer instances of family ties being severed by defendants being moved to geographically remote institutions.

San Francisco should appropriately offer a welcome mat rather than an obstacle course to the Metropolitan Correctional Center construction.

JOSEPH ROBERTS.

SAN FRANCISCO, CALIF., *May 30, 1973.*

ACKNOWLEDGEMENTS

The Committee wishes to formally note the generous cooperation it received from the following:

Grant S. Mickins, Mayor's Criminal Justice Council.

Ren Riley and Martha Cutshall, staff of the Bureau of Prisons' regional office in San Francisco.

The Judges of the Federal District Court for use of its facilities for Committee meetings.

The San Francisco Unified School District for use of its facilities for the April 10 public hearings.

Michael N. Canlis, Sheriff of San Joaquin County, Edward Veit and Edgar Smith of the Board of Corrections for special consulting services to the Committee in connection with correctional issues.

In addition, the Committee wishes to express its deep appreciation to the many persons whose research and testimony provided the Committee with many important facts and insights regarding the issues. In particular the assistance of Friedner D. Wittman was invaluable to the Committee in appreciating the pros and cons of the Center's design.

[From *Federal Probation*, a journal of correctional philosophy and practice, Mar. 1973]

THIS ISSUE IN BRIEF

BEHAVIORAL TECHNIQUES FOR SOCIOPATHIC CLIENTS

Dr. Richard R. Parlour describes a County Mental Health Day Treatment Program (receiving half of its caseload on referral from the Criminal Courts and Probation Department) which focusses on responsibility training, utilizing practical behavioral techniques along with other modern treatment modalities. To succeed with sociopaths, he asserts, the therapist must exercise precise control of the client's freedom, allowing only as much as the client can responsibly use and giving only as much as he earns. The concepts and techniques of Responsibility Therapy, he maintains, give counselors greater precision in therapeutic judgment applicable in sociopathy and other mental disorders as well.

DIVERSION PROGRAMMING IN CRIMINAL JUSTICE: THE CASE OF MINNESOTA

The five authors of this article observe that the use of discretionary authority to divert offenders from full or partial penetration of the criminal justice

system is receiving increased attention. This current interest in diversion has prompted them to describe for FEDERAL PROBATION'S readers four Minnesota diversion programs operating at the levels of the police, the prosecutor, the judge, and the parole board, and to analyze them in relation to central issues in operationalizing discretion and diversion.

CLIENT DISSIMULATION: A KEY PROBLEM IN CORRECTIONAL TREATMENT

Client dissimulation, defined as putting on a false appearance, is viewed by Dr. Joseph B. Bogan as an inherent result of the social and psychological systems operative in the correctional environment and a treatment process which uses positive incentives to induce client participation in treatment. It is a key problem for corrections and, if not dealt with directly, undermines programs and reduces their effectiveness. Dr. Bogan believes the best way to cope with the problem is to have programs which are comprehensive and deal with the client as a whole human being functioning within his environment.

AGGRESSIVE BEHAVIOR AND VIOLENCE OF YOUTH: APPROACHES AND ALTERNATIVES

Professor Man Keung Ho of the University of Oklahoma School of Social Work describes the nature of and differences between aggression and violence; emotional hazards (such as projection and withdrawal of correctional workers in dealing with aggressive and violent youth); correctional workers' use of self; and interdependent attitude. Techniques and skills involving the catharsis principle, playing out to talking out, doubling, integration, drawing, and limits in working with aggressive and violent youth also are illustrated and discussed.

ESTABLISHING BEHAVIORAL CONTRACTS WITH DELINQUENT ADOLESCENTS

Dr. Robert Rutherford of the University of Southern California presents a system for establishing behavioral contracts as an aid to parents, teachers, probation officers, social workers and other mediators in the modification of adolescent delinquent behavior. He discusses the applied analysis of contract behaviors and the rules for establishing behavioral contracts and includes cases and sample behavioral contracts from the home, school, community, and institution.

A COMMUNITY ALTERNATIVE TO COUNTY JAIL: THE HOPES AND THE REALITIES

Psychiatrist H. Richard Lamb, M.D., and psychologist Victor Goertzel, Ph.D., describe a residential community corrections program which is operated within a county probation department and serves as an alternative to county jail. Results of a controlled study during its initial 3 years show recidivism is the same as that in the control group but employment is higher. The project demonstrates that it is possible to have an unlocked rehabilitation facility in the community with an active therapeutic program for serious offenders.

VOLUNTEERS INTERACT WITH THE JUVENILE JUSTICE SYSTEM

The Justice for Children Task Force of the National Council of Jewish Women presents in this article some examples of programs and projects resulting from the Justice for Children survey of local criminal justice systems throughout the Nation. More than 120 NCJW affiliates (Sections) participated in the survey in which local volunteer committees visited courts, detention centers, and institutions and talked with lawyers, judges, probation officers, as well as children and their families. They found that most professionals in the system welcomed community understanding and involvement.

COMMUNITY SERVICE IN ENGLAND: AN ALTERNATIVE TO CUSTODIAL SENTENCE

Professor Howard Standish Bergman of Manchester (Connecticut) Community College describes Community Service, an innovative program in England, authorized by the Criminal Justice Act of 1972. The program provides an alternative to the traditional sentencing of an offender by having him complete a specific number of hours of unpaid, voluntary community work. The project is run under the aegis of the Probation Service with the cooperation of voluntary organizations in the community.

THE PROBLEM ORIENTED RECORD USED IN A PROBATION SETTING

Casework reporting traditionally has been a diary of chronological events of the client's life prior to and during his or her agency involvement, according to Robert M. Smith, probation officer for the State of Vermont. This "running" record more than often becomes too voluminous to be of much help to the worker, he adds, following with a description of how the Vermont Department of Corrections, through its Probation Office in Burlington, seeks to make the case record not only a functional tool but a design for effective casework.

A COMMUNITY ALTERNATIVE TO COUNTY JAIL: THE HOPES AND THE REALITIES

(By H. Richard Lamb, M.D., and Victor Goertzcl, Ph. D.¹)

To what extent can community rehabilitation programs replace jails? How successful are these programs? Who can be served there? On October 1, 1974, we completed a 3-year controlled study² designed to provide some answers to these questions. Together with the San Mateo County Probation Department, we set up Ellsworth House, a therapeutic residential facility in the community in lieu of county jail. This was not simply a work release or work furlough program, but a facility that is unlocked, is in the midst of the community, and centers about a therapeutic program in the evenings.

The program, originated by a psychiatrist and a psychologist, was located within the County Probation Department for several important reasons. A progressive probation department can combine a rehabilitation orientation with a thorough knowledge of the criminal justice system and already established good working relationships with the courts, the district attorney, the jail system, and the police. Further, we wanted to make this program one that could be replicated elsewhere. Since every metropolitan community has a probation department, there is the potential everywhere in this country to have programs such as this one. We felt that it would be important not to have this program run by a police or sheriff's department whose primary focus is law enforcement. It is difficult for a police department, no matter how progressive, to have the responsibility both for the apprehension of offenders and then their rehabilitation in an intensive residential setting.

We wanted this program to serve men who have committed serious crimes and in fact this has happened. Offenses have included armed robbery, burglary, grand theft, receiving stolen property, assault with a deadly weapon, various drug offenses, forgery, auto theft, and both voluntary and involuntary manslaughter; 77 percent were classified as felonies and 23 percent as misdemeanors. The only offenders who were excluded from consideration for selection were those who were judged from experience to be serious escape risks, those who had a history of heavy involvement in the sale or use of hard narcotics, and those who posed a threat of uncontrollable physical violence.

We also wanted this program to be a true alternative to incarceration rather than simply an enrichment of probation. Therefore, selection was made *after* sentencing. This prevented the court from sentencing a man to Ellsworth House who would otherwise have been put on probation. The courts were in no way involved in the selection process except that after a man had been selected for Ellsworth House a request was made to the judge to modify the sentence so that he could come to this program rather than remain in the jail system to which he had been sentenced. Only those men who had been sentenced to 4 months or more in the county jail were eligible for the program. We felt initially, and experience has not changed this feeling, that 3 months is a minimum amount of time needed for the program to have an appreciable impact upon a man. We arrived at the 4-month minimum sentence because after deducting time off for good behavior, work time, and credit for time served, the minimum sentence of 4 months generally lasts about 3 months. Many men have, of course, been in the program much longer.

Ellsworth House is located in a medium-sized city in the suburbs south of San Francisco. It is in a residential area, but not far from a downtown shopping

¹Dr. Lamb is psychiatric consultant to Ellsworth House and chief of rehabilitation services, San Mateo County (California) Department of Public Health and Welfare. Dr. Goertzcl is research psychologist at Ellsworth House.

²This study was supported in part by a grant from the California Council on Criminal Justice.

area. Located in a converted mortuary, Ellsworth House can house 20 adult men. The director of the program is a supervising probation officer from the County Probation Department. The House counselors who work under him have at least 2 years of college and are selected for their ability to work with the offender population both individually and in groups. There is staff coverage 24 hours a day, 7 days a week but there are no lineups or uniforms either for staff or for residents of the program.

Two County probation officers work under the Ellsworth House director and maintain their offices in the House. The probation officers not only carry on their caseloads all the men currently in the House and those who have graduated from the House, but also participate in regular staff meetings and staff-resident meetings. An important goal of the project is to help the offender, at an early point in his involvement with the criminal justice system, see his probation officer as a helping professional rather than simply as a person who keeps him under surveillance. Vocational rehabilitation counseling is built into the program. A vocation counselor from the County Rehabilitation Service is assigned to Ellsworth House on a part-time basis to provide vocational evaluation and counseling. There is also assistance in job placement from the Probation Department's job placement specialist.

Men in the program are referred to as residents. One of our aims is to help change the sense of identity of the residents. We do not want them simply to see themselves as criminals, nor do we want them to go to the other extreme of seeing themselves as mental patients. We do want our residents to see themselves as people who have problems which have led them to antisocial behavior and thus brought them into conflict with the criminal justice system. Once the offender recognizes that he has problems, other than having been caught, we expect him to use the program to work on these problems and change his life style. If he is unwilling to do this he is first confronted with his attitude and behavior by his peers and the staff, and if there is still no change he may be returned to the jail system. There are group meetings four evenings a week, one including the entire group of residents and staff, two in which the residents meet as small groups each led by a House counselor, and one that includes all the residents but no staff. A goal (insofar as possible) is peer confrontation where a man's fellow residents discuss with him his problems, life style and what needs to be changed. Coming from his fellow residents this kind of feedback may have much more meaning than coming from staff. There is also individual counseling from both the House counselors and the probation officer to help a man change his point of view and his behavior. There must be continual reinforcement of the milieu, with its emphasis on discussing and clarifying problems in order to change life styles. This reinforcement comes both from staff and from peer pressure from "old timers" in the House.

The program is designed around the therapeutic community concept and gives a significant share of the responsibility for decisions to the residents themselves. The residents choose their own resident chairman, whose duties are to preside over the weekly resident-staff meeting, to prepare its agenda in conjunction with staff, to be a member of the resident council, and to sit in and actively participate in the weekly staff meetings. The resident council is elected by the residents and consists of four residents plus the resident chairman. This council makes decisions on many problems that arise in the House, and it also makes recommendations to the staff concerning the overall program.

Being on the resident council can be an eye-opening experience for an offender. When he himself has to deal with the antisocial behavior of his fellow residents, the offender gets some insight into what society, the criminal justice system, and his family and fellow citizens experience in trying to cope with people like himself. The experience of being in a position of authority to discipline other residents helps him to develop a sense of responsibility for himself and for others.

BEHAVIOR MODIFICATION A CENTRAL CONCEPT

No part of the Ellsworth House program is more important than the behavior modification system of rewards and punishments. Every effort is made to see that the program matches increased privileges with increased responsibility. The behavior modification aspects include the granting of such privileges as weekend passes to those who earn them by securing steady employment, making a genuine attempt to change their life styles and ways of relating to other people, and performing chores and abiding by the rules of the House. Behavior may be pe-

nalized as well as rewarded; a resident may be jailed for a weekend or a week or even longer when he has not responded to lesser sanctions.

One of the fundamental concepts of the program is that we must help the men see that actions have consequences. The long, drawn out process of the criminal justice system, with its attorneys, plea bargaining, and dead time in jail, reinforces the offender's feelings that he is being treated unjustly and obscures the potential behavior modification aspects of a system of appropriate sanctions on criminal behavior. At Ellsworth House there is an immediacy of appropriate rewards and punishments—rewards when the resident's behavior is leading toward a resolution of his problems, punishment when it is simply a continuation of his antisocial patterns.

Another aspect of this approach is the small group system. The residents of the house are divided into four small groups; if any man in one of these groups creates a problem, the entire group loses either half or all of its privileges for the next week. The peer pressure thus mobilized has played a major part in creating significant changes in some of the men. It helps them to see that their actions affect not only themselves but others, both in the house and in their lives outside of it. This is one of the ways we help a man see that there are profound consequences for his family, friends, and others close to him when he engages in antisocial behavior.

In order to put the behavior modification concepts into practice we divided the Ellsworth House program into three phases. On entering the House a man spends at least 30 days in Phase I. During this period he may leave the House on weekdays for work, school, or training. All residents must participate in some constructive full-time activity, be it employment, college, or training program. At all other times they are restricted to the House although they may receive visitors and make phone calls. Visits and group activities with family and friends help prevent a man from becoming isolated from his family and community. All cooking, cleaning, and simple maintenance of the House is done by the residents. At the end of 30 days the man comes up before the entire group of residents and staff and presents, as he sees it, what he has accomplished and why he thinks he should be admitted into Phase II. Each resident and staff member has one vote on this as in all other issues, and the decision is made by a simple majority. The director of the House, however, maintains a veto, which he uses sparingly, to prevent inappropriate decisions from being carried out.

Phase II offers the resident more privileges, in return for which he is expected to assume increased responsibility. This does not mean responsibility just for housekeeping chores, since this would perpetuate a game that the men are only too willing to play—the county jail game—the game of getting privileges and time off for good behavior. We want to do more than simply run a nice jail.

Responsibility at the House means taking a meaningful part in the evening groups, being willing to take a good look at one's self and one's problems and beginning to take steps to resolve these problems. The resident is also expected to take responsibility for his fellow residents, both inside and outside of the House.

In this program we emphasize the whole man. What is the resident doing in the community to find and hold a job, to get along with his boss and co-workers? What is he like when he returns to the House after work? What progress is he making toward resolving his family problems, toward learning to use his leisure time? How is the resident using the overall program of the House in all aspects of his life to change his pattern of behavior so that there will, in fact, be a change when he returns to the community?

Upon entering Phase II the resident is allowed 12-hour passes on the weekend and permitted to go on short errands in the neighborhood. After 2 weeks, if all goes well, he is allowed 24-hour passes on the weekend. If after 1 month in Phase II the man continues to make good progress he is allowed 48-hour weekend passes.

In a sense this program has much in common with the education process. And we have data which suggest that the program is especially helpful for school dropouts who have also had a chaotic unstructured family life and inconsistent parenting. Here the discipline of the daily routine of school might have compensated for the deficiencies at home. With a young offender Ellsworth House may serve a similar function.

A man spends the same amount of time in the residential phase of the program as he would have in the jail system. At this point he enters Phase III for the duration of his probation, is released to the community, but returns to the House to see his probation officer on a regular basis, and, if he chooses, to socialize

with the staff and men still in the House. At these times he is expected to exert a positive influence on the men who are currently living in the House.

Although jail is a dehumanizing and unpleasant place, it can also be a sanctuary. It is a place where a man is taken care of and is not expected to cope with his outside responsibilities. And the ticket of admission is simply to commit another antisocial act. Our goal at Ellsworth House in Phase III and beyond is to help the graduate of our program learn to turn to his probation officer or the House staff for help at a time of crisis before he commits a crime. If necessary, a former resident may return to live in the House until the crisis has passed.

EVALUATION

Ellsworth House in its first 3 years was run as a controlled study. After sentencing, probation reports were obtained for all offenders sentenced to 4 months or more in the county jail. Men were screened out for the three reasons mentioned earlier, namely: heavy involvement with hard drug sales and usage, high escape risk, and uncontrollable violence. Another sizeable group was eliminated because of technical complications in the criminal justice system such as hold orders in other counties. At this point half of the men were selected by means of a table of random numbers for the Ellsworth House group and the remainder went into the comparison group and remained in the jail system. In this progressive county there is an honor camp and a work furlough facility. Approximately three-fourths of the comparison group served their sentences at the honor camp and approximately one-fourth at the work furlough facility.

The random selection and the existence of a comparison group insured that there would be an objective evaluation of the results of this program. We are firmly committed to the belief that new social programs should be designed as controlled studies so that honest and scientifically valid analyses can be made of the program's effectiveness and so that areas of strength and weakness can be identified. Otherwise it is all too easy for a program to emphasize its successes, not mention its failures, and in many cases justify the continued existence of a program which in fact may be less effective than existing or other alternative programs.

How well has the program worked? Approximately one-third of the men eligible for our program were screened out because of the nature of their offense or their history of violence or escape. Approximately half of those excluded were serious drug offenders—confirmed heroin addicts or persons involved in substantial sales of illegal drugs. Since the men eligible for our program were those who were sentenced to jail for 4 months or more, and since these represent the more serious offenders held in the county jail, the fact that we were able to accept two-thirds of these men into our community program is, in our opinion, significant.

Only one-fourth of the comparison group were felt by jail system officials to be suitable for the work-furlough facility and thus available for employment in the community while serving their sentences. All of the men in Ellsworth House were of course available for employment in the community. Further, Ellsworth House is located right in the midst of a residential district and is an unlocked facility. We feel, therefore, that we have demonstrated that many more incarcerated men are suitable for community programs and employment than had hitherto been thought. Since four times as many Ellsworth House men were available for community employment than those in the comparison group, our results showed, not surprisingly, that four times as many Ellsworth House men were engaged in paid employment in the community while serving their sentences. They earned four times as much money with all this implies in terms of supporting their families and eliminating the need for welfare while in jail.

The difference between the groups after release from confinement was less striking. Recidivism was defined simply as any offense that would result in a jail sentence or revocation of probation. Recidivism at 1 year postrelease followup has been almost exactly the same for the Ellsworth House (30 percent) and comparison group (32 percent). We do not yet have enough men in our 2-year followup group for meaningful results but early figures indicate that this finding of equal outcome with regard to recidivism is continuing. This is disappointing but not surprising, as it is consistent with similar programs such as Crofton House.³ But there are other benefits of community rehabilitation programs. Paid employ-

³ Bernard C. Kirby, "Crofton House: An Experiment With a County Halfway House," *FEDERAL PROBATION*, March 1969, pp. 53-58.

ment has been consistently higher after release for the Ellsworth House men. At 1-year followup only 15 percent of the Ellsworth men were unemployed as compared to 29 percent of the comparison group. Part of this is probably accounted for by the larger number of Ellsworth House men who continued their regular job or obtained community employment while still under sentence as compared to the comparison group, three-fourths of whom were isolated in a rural honor camp. Community rehabilitation programs also help the offender maintain his self-respect and hopefully leave him better prepared for his return to the community to begin the long process of moving from an antisocial to a prosocial stance, a process that may take years.

DIRTY DATA

Early in the project as the first 6-month followup postrelease data came in we could see that recidivism was much higher for the Ellsworth House group than the comparison group, even though the small numbers involved prevented this data from being statistically significant. This kind of preliminary data, small numbers which lack statistical significance, is often referred to as dirty data. Dirty data, however, can be suggestive and often crucial for evaluation in the early stages of a project. Accordingly we used these early tentative results as a signal that we should reexamine and scrutinize our program from top to bottom. And what we saw was extremely revealing. Initially, supervision of Phase III men, those who had graduated from the residential phase of our program, had been done primarily on a group basis, while the men in the comparison group received close one-to-one supervision from their probation officers. The men in our program generally have poor impulse control and need to be given a generous amount of support, crisis intervention and firm, consistent limits. Furthermore, in our initial concern with setting up the program we had involved the Ellsworth House probation officer extensively in helping with the inhouse program, thereby reducing the amount of time he could spend on followup of released offenders. The Ellsworth House graduates clearly needed more support and structure and at this point we freed the probation officer's time to allow for intensive individual followup supervision and toward the same end added a second probation officer to the program.

Perhaps more importantly our reevaluation uncovered some deeper issues. It became clear to us that there had been a hesitancy on the part of our rehabilitation oriented staff to set adequate disciplinary limits on the offenders, especially in the residential, but also in the postresidential phases of the program. In our efforts to be "therapeutic" some of the staff had lost sight of the behavior modification aspects of the program, namely the need to reward positive efforts to change one's life style and punish or at least not reward the opposite. The men themselves had been telling us, "You're running the program too loose." Steps were taken to remedy this laxness, including giving unannounced urinalyses to all residents of the House at random times and whenever there was any suspicion of drug use. More emphasis was placed on verifying employment and attendance at college and training programs by the probation officer who also increased his unannounced visits later on to the resident's place of employment or training. This greatly decreased the number of men who said they were leaving the House during the day for employment but were in fact spending time in the community with their former delinquent associates. Even more important, the staff and the residents together began spending more time trying to identify specific time-limited goals for each resident to work toward so that he would not simply drift through the program without being affected by it. Such goals included vocational planning to increase job satisfaction and work adjustment, resolution of family problems, learning how to make satisfying use of leisure time, finding new friends who do not have a delinquent orientation, and becoming involved in psychotherapy where indicated. In particular the staff began to look more closely at themselves and their own actions which tended to defeat the behavior modification aspects of the program. This meant looking at the staff's ambivalence, where it existed, about setting limits and imposing appropriate penalties for antisocial behavior.

The results of this evaluation and program change were dramatic. There was an immediate drop in the recidivism in the Ellsworth House group to the level of the comparison group and this has continued to the present time.

PROBATION—A THERAPEUTIC PROCESS

At this point some observations about probation generally might be in order. Our experience in the probation system has led us to the conclusion that a disturbingly large number of probation personnel sell short what they do. Looking at it as mental health professionals and outsiders we have been very much impressed by what can only be termed the therapeutic effects of the basic tools of probation, namely, setting limits, providing support, and confronting offenders with their motivations and ways of reacting to stress. We have seen many probationers, who we feel could not have been reached in any other way, helped not only to avoid antisocial behavior but to function better in other areas of their lives as well.

Why then should so many probation officers denigrate what they do and the ways in which they do it? First of all, doing the same job year in and year out of setting limits and giving support gets wearisome for many probation officers. They want something different and exciting so that their work does not become too boring and even depressing. They are looking for something to revitalize themselves and their work.

Working intensively and closely with people and putting your guts into it without being able to help everyone leads to frustration and eventually to a quest for psychological magic. Further, the process of helping people involves giving to them. Some of the newer psychological approaches like Transactional Analysis and Gestalt therapy, while they have their place in the probation process, also enable one to intellectualize what one is doing. In using these approaches the therapist is enabled to give less of himself; in fact in enjoying the process he derives gratification and feels given to.

Still another problem for some is being able to set limits without feeling guilt. While there is certainly far more to probation than setting limits and surveillance, the probation officer who constantly complains, "I didn't go into probation to become a cop" is clearly feeling guilt-ridden about enforcing the conditions of probation, or has a need to always be the good guy with his probationers. In some cases difficulty in setting limits is indicative of a lack of real caring for his probationers.

Where, then, should the emphasis in probation lie? In our opinion it should begin from a feeling of comfort in stressing the fundamentals of probation, namely, giving support, setting limits, consistent and reasonable insistence that court orders be followed, utilization of community resources, and helping the offender reexamine his life style. These, in our opinion, are the cornerstones of probation about which no probation officer need feel ashamed. Rather than emphasis on highly sophisticated and esoteric treatment modes, there should be pragmatic adherence to the terms and conditions of probation with specific goal planning and intensive involvement with probationers. If training is added in the areas of self-awareness and sensitivity, family dynamics, goal planning and short-term crisis intervention, one has a powerful therapeutic armamentarium to help the offender.

IMPLICATIONS FOR REDUCING THE JAIL POPULATION

We have described a program which demonstrates that serious offenders can serve their sentences in a community setting in which they can engage in competitive employment, keep in contact with their families in the community, and participate in a therapeutic program. And we have shown this can be done without increasing recidivism even though we were competing with an excellent county correctional system that includes a rural honor camp and a work furlough facility, both of which programs are followed by sophisticated probation supervision. But what of the wider applicability of programs such as Ellsworth House? Can they in fact significantly reduce the county jail population? Our answer would have to be a qualified one at this point. For one thing a large proportion of persons in the jail system are awaiting trial or sentencing. This group for the most part do not yet accept their need to be in a rehabilitation program, nor would they feel free to talk openly in a therapeutic program about issues which might be incriminating and affect their situation in the criminal justice system. Therefore, this group is not suitable for a community rehabilitation program. However, this County is instituting a replication of

the Des Moines Plan⁴ one of whose specific objectives is the reduction of presentenced men in the county jail.

What is the potential impact of an Ellsworth type program on the persons that it is designed to serve, namely those already sentenced? A survey of all adults in custody in San Mateo County on September 2, 1974, revealed a total of 424 persons. Of these 161 were presentenced persons. This leaves 263 sentenced persons, 249 men and 14 women. Of the 249 men, 17 were in Ellsworth House, 91 were in Honor Camp, 90 in work furlough and 51 were in the main jail. For the purposes of this survey we assumed that an Ellsworth type program might take men with 3-month sentences (which would allow them about 2 months in the House) even though we feel it is difficult for such a therapeutic program to reach a man in this short period of time. Even so, approximately two-thirds of the men in the Honor Camp and work furlough had sentences of less than 3 months or were too heavily involved in the sale, or use of hard narcotics (the latter all housed at the Isolated Honor Camp) and thus by our criteria were not suitable for an Ellsworth type program. The sentenced men in the main jail would also not be suitable; they included men with hold orders from other jurisdictions, men serving sentences of less than 90 days, and a few judged too aggressive or too much of an escape risk even for the Honor Camp.

Of the 14 sentenced women eight were in the main jail, and all eight had hold orders or short sentences. Six others were participating in a recently created Ellsworth House type facility for women.

Thus, a total of 83 persons⁵ out of a total of 263 sentenced persons, or 32 percent of those sentenced and currently in custody, would by our criteria be suitable for a community rehabilitation program.

CONCLUSIONS

We have demonstrated that it is feasible to have an unlocked rehabilitation program in the community with an active therapeutic program for serious offenders. Further, even though located in a residential neighborhood such a program can gain community acceptance. In this case, at the expiration of the Federal grant which made possible this 3-year demonstration project, the program has been continued as a regular part of the County Probation Department funded by the County. The program has not decreased recidivism, but it has not increased it either. It has increased employment, especially during the period of incarceration, and has demonstrated that many more men are able to continue community employment while under sentence than had heretofore been thought possible even in this progressive County. Further, hopefully this program is laying the foundation for the offenders' long range rehabilitation in terms of their overall adjustment to the community. Enthusiasm for such programs must be tempered, however, by the knowledge that, with county jail populations made up largely of presentenced men and those serving short sentences, community rehabilitation programs have a limited applicability in regard to emptying county jails. Further reductions in county jail populations could be achieved by such means as greater flexibility in dealing with persons with hold orders from other jurisdictions, greater use of release recognizance, more creative use of restitution and fines, and increased use of community residential programs designed specifically for hard narcotics addicts as an alternative to jail.

A PROGRAM FOR PRISON REFORM

The Final Report

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⁴ *An Exemplary Project—A Handbook of Community Corrections in Des Moines, U.S. Government Printing Office, Washington, D.C. 1973.*

⁵ This includes 17 in Ellsworth House, 31 men from Work Furlough, 29 from the Honor Camp and 6 women.

IMPRISONMENT AND ITS ALTERNATIVES

(Gerhard O. W. Mueller, Professor of Law, Director, Criminal Law Education and Research Center, New York University)

Part I: The Present System

INTRODUCTION

In Part I, I shall attempt to describe the system of punishment and corrections in the legal structure.

The most retributive punishment, capital punishment, is being virtually abolished. Only forty states still threaten capital punishment, among them is New York, which punishes capitally only for the murder of a law enforcement officer. The number of actual executions has dropped from 47 in 1962 to 21 in 1963, 15 in 1964, 8 in 1965, and none since. Moreover, the 1972 Supreme Court's death penalty cases hopefully will further hasten the demise of capital punishment in the U.S.A. (*Moore v. Illinois*, 92 S.Ct. 2562, 1972).

The advent of the new correctional system is equally obvious in terms of the changes in the punishment of imprisonment. In 1963, the world-famous or infamous Federal penitentiary at Alcatraz was closed down, and replaced by a new structure at Marion, Illinois, with roomy, airy and bright buildings, in which the emphasis is on prevention by rehabilitating the individual human being.

Whether the actual changes are all to the good remains to be seen. There certainly is a danger that high walls might be replaced by the all-seeing-eye of closed circuit television, that bars might be replaced by thought control and that the punitive legality might be replaced by a rehabilitative anarchy. These, indeed, are crucial problems confronting American penology today.

I. The theories of American penal law

It seems that the "new"—as yet undefined—penology has led to widespread experimentation in the many courts of the United States, with gross and often unjustifiable divergencies in criminal sentences. Appellate review for the sake of creating uniformity has been largely unavailable; but if Appellate review is available, the question immediately arises, what legal standards must an Appellate court apply in determining whether the trial court applied the right standard, and which is the right standard which the trial court should have used? All of a sudden, we begin to realize that the criminal law itself has given the judiciary no guidelines on the purposes of punishment and the criteria for sentencing. No such problems existed in classical penology when every crime carried its own specific punishment.

In lieu of definitive standards or statements of clear objectives, our system has muddled along with vague expressions like "sound exercise of judicial discretion," "consideration of the crime and the criminal," the "gravity of the deed," "the guilt of the perpetrator," or "the protection of society". None of these slogans is law. Appellate review, however, has been customarily available for judicial violations of law—not of slogans, and it is arguable that slogans are not entitled to Appellate review.

Analysis and observation show what the real criteria may be which prompt the courts to play with legislative choices in sentencing. These criteria appear to be conditioned by the infinite variety of life itself, as it manifests itself both in the perpetrator and his crime, but always limited by the scope of the penal purpose. And this scope, whether we like it or not, extends to retribution for the wrong committed, neutralization of the still dangerous actor, deterrence of potential wrongdoers and, above all, resocialization of the offender, all for the purpose of protecting the members of society from initial or repeated harm through crime.

Let me make this quite clear: the retributive urge amongst most human beings is still very strong, as our psychiatrists tell us. Even the perpetrator himself realizes the virtual inevitability of retributive consequences. We are stuck with retribution unless and until human emotions are made to change radically. Quite obviously, the new penology emphasizes aspects other than retribution, noteworthy the rehabilitation of the offender through every effort and every method at society's command, but also the general preventive (deterrent) effect which almost any threat of negative consequences entails. We are realistic enough to

understand that these generally preventive effects are more powerful in calculated crimes than in emotional ones, and we suspect that there is a direct coordinate relationship between the emotional involvement or content of a given crime or crime type, and the deterrent effect. Thus, the deterrent effect is bound to be greater in commercial crimes than in homicides.

Most importantly, however, restraint by imprisonment is often called for by the need of controlling a still dangerous human being so as to prevent him from committing crimes, and so as to have him available for rehabilitative efforts. It can, thus, be easily seen that restraint will remain a significant ingredient of the new penology, as it was of the old one.

We have asked ourselves frequently whether our criminal laws are too retributive for modern times, and whether they are out of step with world developments in penology. The following chart proves to me that, while our sentences have a potential of being far too retributive, the rest of the world is little better off. We all punish too much and too often, we hurt too much, when service would probably get us further. But more about that later.

On the question of the death penalty, the United States of America still finds itself in one camp with the Asian countries, the socialist countries and the authoritarian countries, Greece, Turkey and Spain. Northern and Central European countries—France, excepted—have abolished capital punishment. As regards the range of prison sentences, American statutory sentences are generally twice or thrice as long as those of other countries—even authoritarian countries even though American prisoners, on the whole, serve only from one-half to two-thirds of their sentences.

	Murder 1	Repe	Undiff. larceny			
Norway.....	6 to life.....	233 1 to 10.....	192 1 to 3.....	25.		
Denmark.....	5 to life.....	253 1 to 16 (life)...	216 Maximum 2...	276-28-		
Sweden.....	Maximum 10 or life.....	3.1 2 to 10.....	6.1 Maximum 2...	8.		
Germany draft.....	Life.....	135 Maximum 10..	204 Maximum 3...	235		
Germany.....do.....	211	1 to 15.....	177 1 day to 5 yr..	242-16		
Australia.....do.....	134-136	5 to 10.....	125-126 6 mo, 1 yr 1-5.	171-178		
Switzerland.....	5 to 20.....	111. 1-35. 1	1 to 20.....	187-35. 1 Maximum 5...	137. 1	
Germany, Federal Republic of.....	Death or life..	211-24	1 to 15.....	177-14 1 day, 5 yr....	242-16	
Czechoslovakia.....	(Death) 1 to 15.	216	5 to 10.....	238 Maximum 2...	247	
Hungary.....	(Death) 15 to life.	253	2 to 8.....	276 6 mo to 3 yr..	296	
U.S.S.R.....	(Death) 8 to 15 plus exile.	102	5 to 10.....	3 to 7, maximum 3.	118 Maximum 2...	144
Yugoslavia.....	Minimum 10..	135	Maximum 10..	179 Minimum 3 mo, maximum 5.	249	
Greece.....	Death or life..	229	Life.....	336 Minimum 3 mo.	372	
Turkey.....	24 to 30 yr (death).	448	7 mo to 25 yr..	416-13 6 mo, 3 yr....	491	
Italy.....	21 to life.....	575-576	3 to 10.....	519 Maximum 3...	624	
France.....	Death.....	296-302	5 to 25.....	332 1 to 5.....	379-401	
Spain.....	Life, death...	405-406	20 to 30.....	440-30 1 mo.....	514	
				1 day.....	515	
				6 mo.....	30	
Argentina.....	Life.....	80	6 to 17.....	119. 3 1 mo, 1 yr....	162	
Japan draft.....	Death/life minimum 15.	268	3 to 15.....	311 Maximum 7...	337	
Japan.....	Death/life minimum 3.	199	Minimum 2...	177 Maximum 10..	235	
Korea.....	Death, 5 to life.	250	3 to 15.....	29 Maximum 6...	329	
China.....	Death, 10 to life.	271	Minimum 5...	221 Maximum 6...	320	
New York.....	Death (life)...	125. 25, 125. 35, 70.00	Maximum 25...	130. 35 Maximum 1 (4 yr).	155. 05, 155. 25, 70. 15, 70. 00	
Indiana.....	(Death), life..	10-3401	2 to 21.....	10-4201 1 to 10.....	10-3001	
MPC.....	(Death) 1 to life.	210. 2	1 to 3, Maximum 10..	213. 1-6. 06 1 to 2 maximum 5, 1 to 3.	223. 1, 6. 06, 6. 09	

2. The procedure of sentencing

In considering the American penal system, it is important to keep the procedural framework in mind, a framework which is totally different from the European one. The American criminal trial consists of two rigidly separated phases. In the first phase the court is concerned only with establishing the facts of the crime: did the defendant commit the prohibited act of which he has been accused, with that requisite criminal intent which renders the act blameworthy. A defendant who admits his criminal liability, by pleading guilty, may skip the first phase entirely. If the facts of the crime charged are not contested, they need not be proven. Typically, in the Federal system over ninety percent of criminal defendants convicted have pleaded guilty, and less than ten percent have been convicted at trial, two-thirds of them by a jury, and one-third by a judge, without a jury. (It is a defendant's choice in most cases whether he wishes to be tried by a jury.) During this phase of the case, the characteristics, the background and the personality of the defendant play no role. They remain hidden from the triers of fact, for fear that they may prejudice them into finding an innocent man guilty only because of a sinister background.

But after a defendant has been found guilty in the first phase of the trial, there begins a totally different second phase. During this second phase formalities are reduced to a minimum. In almost all cases the proceedings take place before the judge only. The sole question now is what to do with the offender, within the framework established by law. At this point the defendant's character and personality needs are the prime concern. It is at this point that the judge must have full information on *this human being before him*, on the sentencing choices open to him as a judge, and on the purposes which the sentence is to serve.

The law (Federal Rules of Criminal Procedure Rule 32(c)) requires the probation service of the court to make a pre-sentence investigation and to report to the court before the imposition of the sentence or the granting of probation. This investigation usually takes a few weeks, during which time the probation service will gather all the facts it can find. These facts must extend to any prior criminal record, personal characteristics, circumstances affecting the behavior, etc. The legal rules of evidence which apply during the first phase of the trial do not apply during this second phase. This is perhaps a necessary procedure but it demonstrates the dangers which inhere in the new penology: the reputation of the defendant is a very important factor in sentencing, so are his honesty or his dishonesty, his humaneness or inhumaneness, etc. But how can one establish these factors except by interviewing friends, neighbors and fellow employees? The interview results find their way into the pre-sentence report. It would be impossible to grant the defendant the customary right of cross-examination of, and confrontation with, such "witnesses." Yet, on the evidence before the sentencing court, gathered and presented perfunctorily, depend years of the life of the convict.

3. Sentencing alternatives under Federal law

Rule 32a of the Federal Rules of Criminal Procedure simply provides that the judge, after a judgment of guilty, shall impose any legal sentence, meaning usually imprisonment or fine, or the court may impose probation. This sounds simple enough, but in fact, the choices are quite multifarious.

Let us consider first that the Federal criminal statutes are meant to apply to adult offenders. In days past, the concept of an adult offender included persons above age 14, or potentially as young as the age of seven. More frequently today in Federal law, adult offenders are persons above the age of 16 or 18—except for capital offenders for which the various jurisdictions have drawn the line at a slightly earlier age. A very substantial number of all criminal wrongs are committed by persons within the juvenile age limit. Measured in terms of arrests in American cities, and based on the 1970 Uniform Crime Reports, 25.1 percent of all major offenders are committed by youngsters below age 18. These many offenders—punishable as adults in many penal codes of the world—are not convicted in America, but are adjudicated juvenile delinquents and sentenced to rehabilitative measures. These measures are often associated with confinement up to the minor's reaching the age of 21, but for no longer than the limit of the criminal sentence which would have been imposed on an adult offender.

Our arrest statistics tell us that nearly 40 percent of all major crimes are committed by persons below the age of 21. Federal law recognizes, since 1950, the category of youth offenders below age 22 at time of conviction. It is

recognized that many of these young people are salvageable by lesser means of treatment than the punishments available for hardened adult offenders. Hence, the law provides (18 U.S.C. § 5010) that any such offender may be placed on probation, regardless of the nature of the crime. Moreover, in lieu of imposing imprisonment, the court may sentence such a youngster to the custody of the Attorney General for treatment and supervision. Detailed provisions of law authorize the detention and treatment of the youth offender for as much as six years, or even for an extended period (18 U.S.C. § 5010(c)). Such long periods of detention may be called for by considerations of social defense and rehabilitation. But the six-year detention for treatment in lieu of a maximum of one-year imprisonment (also with treatment, it is hoped) for a petty thief is totally at odds with traditional considerations of legality and retributive justice. Need we go as far, may we go as far, as that under the tenets of the new penology? Some American judges have rebelled against this extension of the State's power over the individual. Can we blame them?

Lastly, our arrest statistics tell us that 51.7 percent of all crimes are committed by young persons under 25 years of age. The percentage is especially high for some crimes: 86.5 percent for auto theft, 82.7 percent for burglary, 77.6 percent for larceny and 77.4 percent for robbery. Federal law now provides that persons above the youth offender age, i.e., up to age 26, may be treated as youth offenders rather than as adult criminals. This finally makes it quite clear that the social defense philosophy has won a decisive victory in America. When the adult criminal law, with its classic emphasis on legality and retribution, is no longer applicable to a potential majority of all criminal offenders, when protective and rehabilitative ideals apply regardless of the penal framework envisaged by the legislature, social defense, we must say, has arrived.

I shall now turn to those dealt with as adult offenders. In this case, the court is primarily confronted with the choice of whether to send the convict to prison or whether to place him on probation under supervision (18 U.S.C. § 3651). Both imprisonment and probation may be for any period which the legal framework permits. This framework is stated in terms of a minimum and a maximum term. Probation may be imposed when "the ends of justice and the best interest of the public as well as the defendant will be served thereby." In over ninety percent of all cases recommended for probation, the judges have granted probation.

There is also available the so-called split-sentence provision (18 U.S.C. § 3651). Under this law, whenever the maximum punishment is more than six months' imprisonment, the court may sentence the offender to serve less than six months in jail, and place him on probation to be served subsequently, for as long as the statutory limit of imprisonment permits. This new method, again representative of the social defense approach, is being used increasingly, and judicial reactions to it have been good.

Next there is imprisonment (one year or more) or jailing (one year or less), to be served at a multitude of different types of institutions. It seems that imprisonment, or institutionalization, is still our principal reaction to the commission of crime, and will have to remain so for some time to come. But there is far too much reliance on imprisonment, despite the fact that the prisoner-population ratio has declined significantly over the years, as the figures on the number of prisoners per each 100,000 of the population indicate:

1939	-----	137.6
1953	-----	110.1
1960	-----	121.7
1963	-----	115.6
1964	-----	112.5
1967	-----	99.1

While the judge usually sets the maximum term of confinement, the law allows remission of up to one-third for good behavior, of all finally determined sentences (18 U.S.C. § 4161). There may be additional remission from such sentences for employment in prison industries or camps and for meritorious services (18 U.S.C. § 4162). Thus, ultimately a prisoner may actually serve only one-third of his entire sentence in prison, and the rest on parole (18 U.S.C. § 4164).

As distinguished from this parole availability for good conduct, there is also available parole on the basis of prognosis (18 U.S.C. §§ 4202 et seq.). This is parole of a more meaningful sort from the social defense point of view.

A particularly interesting provision is that which permits the court to send the prisoner for observation, for a period of up to three months, with a possible

three months' extension, so that the defendant's rehabilitative potential may be assessed before prison and parole terms are imposed (18 U.S.C. § 4208).

It may now be asked whether this somewhat complicated system is an effective one. Until recently we had only the barest of guesses. After Dr. Glaser's study (*The Effectiveness of a Prison and Parole System, 1964*) somewhat more meaningful data has become available. Measured by the sole criterion whether an ex-prisoner comes to the attention of the authorities again within a given span of time, e.g., five years, some correctional facilities seem to have more success than had been assumed. Perhaps as many as two-thirds of the prisoners may not come to the attention of the authorities again. But this is not a very meaningful criterion of rehabilitation and adjustment. Per contra, it may be indicative of greater criminalization of a given individual. Nor are data available for representative types of correctional facilities.

4. Reform efforts

The last several years have witnessed intense efforts at reforming the system of sentencing and corrections. Every year brings further improvements. In 1965 Congress passed a Prisoner Rehabilitation Act which creates some welcome additions to the correctional arsenal. Prisoners may now be granted periods of unescorted leave. This is particularly important for purposes of participating in community training programs. Moreover, prisoners may now also be released to Half-Way houses, for community adjustment and treatment outside prison walls, and for work release.

However, the American correctional system is far from ideal. Unhappily, it took hundreds of "prisoners' rights actions," dozens of riots and many casualties of prisoners and officers alike to shake us out of our complacency and to goad us in the direction of badly needed, long overdue reform. The next section of my paper is concerned with those shortcomings of the system which need reform most.

Part II: Ten Postulates for Prison Reform

INTRODUCTION

It is at once apparent that the American sentencing and correctional system places an incredibly strong reliance on imprisonment or institutionalization—a means of punishment for which there is little, if any, scientifically acceptable evidence of effectiveness as a crime preventative. Per contra, the available evidence at best indicates that the detrimental consequences of imprisonment—namely desocialization and societal estrangement—are not worse than might be expected. This reliance on imprisonment is even more astounding since it was inherited as an institution from the medieval bushwhackers and highway robbers, who used imprisonment as a means of coercing cities to pay ransom for captured merchants. No wonder then, that, the only significant alternative sanction with which our system has come up with simply consists of the withholding of the primary sanction, namely, suspension of imprisonment and placing the offender under probation or parole.

The above-mentioned recent innovations in American sanctions, simply are derivations of either imprisonment—the primary sanction—or of probation or parole—the secondary sanction. It may be said that these newer sanctions are "diversions" from the mainstream of the sanctioning process. Placement in a Half-Way house is a diversion from the mainstream of imprisonment, as is work-release. Of course, probation, itself, is nothing but a diversion from the mainstream—imprisonment; and imprisonment was nothing but a diversion from the mainstream—capital execution, which, at one time in English history, was the necessary and inevitable consequence of the conviction of felony.

The lack of imaginative experimentation with alternatives to imprisonment, however, is surprising. Perhaps it is due to the fact that, in the past, the better minds of the Bar—as the Supreme Court itself—shunned any preoccupation with sanctions, that reputable scientists found better employment in more productive enterprises than prison systems and that the community saw no use in the expenditure of funds for an inevitable apparatus meant to restrain hopeless cases.

Even to the extent that extramural alternatives to imprisonment were invented, like alcoholics' treatment projects, addition treatment facilities, court employment projects, etc., we have the uneasy feeling that the underlying motivation frequently was not the desire to rehabilitate and to help, but, rather, administrative frustration over the system's inability to handle growing caseloads within the

mainstream of the system. This is in no way intended to disparage the humanitarianism of those who have designed the newer correctional diversion methods. It is simply to say that this humanitarianism might not have succeeded but for the administrative frustration of those who are responsible for running the system. There is, however, no reason for the humanitarians not to exploit the administrative frustrations of administrators if it is done for humanitarian purposes.

1. Caging and its intramural reform

For all practical purposes, imprisonment means the caging of human beings either singly or in pairs or groups. Half a century ago, Hagenbeck, the Hamburg zoo specialist, realized that caging was detrimental to the health and well-being of animals accustomed to roaming, and he introduced his zoo design which provided for relatively wide spaces for his animals, resembling their natural habitat. Brookfield Zoo in Chicago became the first American zoo with habitat design. With respect to human beings, however, we have not yet quite reached the same stage of development. If there were the slightest scientific proof that the placement of human beings into boxes or cages for any length of time, even over night, had the slightest beneficial effect, perhaps such a system might be justifiable. There is no such proof; consequently, I should think that a massive attack on the constitutionality of the caging of human beings is in order. Who could doubt that a sentence of strapping an acrophobic human being on top of a 300 foot radio antenna would be cruel and unusual punishment? Who would doubt that the sentence of caging a claustrophobic human being in a seven by seven by seven foot gridded cage is cruel and unusual punishment? But by definition, all human beings are claustrophobic, since ranging and roaming are natural instincts of the human being, requiring satisfaction as much as the hunger drive and the sex urge.

Consequently, the first of my ten postulates of prison reform very simply amounts to this: attack the constitutionality of caging as a punishment. Caging is in violation of the Eighth Amendment to the Constitution. It should not be too difficult for designers, architects and corrections personnel to design alternatives to cages, e.g., landscaped grounds firmly protected if need be, which permit rehabilitative effort, including self-effort, without mentally or emotionally harming those institutionalized.

2. The right to correction

A search for alternatives to imprisonment must begin with a search for alternatives to caging. A beginning has been made with the institution of forestry camps and other forms of quasi-institutionalization. But that is only a beginning. Just as alternative methods of treatment are now statutorily prescribed—though not yet fully enforced—with respect to special offender groups (the mentally disordered, alcoholics, drug addicts, sexual offenders, juveniles), alternatives to caging must be found for those offenders who have not been dignified by the psychiatric profession with a separate title—namely, ordinary offenders. All offenders are entitled to a disposition envisaging treatment adequate for their social habilitation or rehabilitation. I was happy to note that the Draft Code for Puerto Rico, in Article 43, embodies this requirement. It is incumbent upon the Bar to incorporate the requirement of social habilitation or rehabilitation into penal codes, to enforce these requirements which are in the nature of rights of prisoners, and to police the administrators of the system in effectuating that right, but not duty. The right to treatment which is currently being expanded to all those who are being held under civil commitment must be expanded to all those held under judgment and sentence. I cannot go into detail as to what the right to treatment entails, but perhaps it might be well to point to the standards promulgated by Judge Bazelon in *Rouse v. Cameron* (373 F.2d. 451, 1966). A person detained under order envisaging treatment is entitled to release on habeas corpus unless a reasonable effort is made to provide such treatment to him.

Thus, the second of my ten postulates of prison reform very simply amounts to this: introduce into legislation and enforce through litigation, the right of every prisoner to be treated or to have reasonable efforts made toward his correction.

3. The presumption and burden of proof as to imprisonment

In the Anglo-American legal system, it is a fundamental premise that a petitioner at the Bar who wishes to obtain a judicial disposition has the burden

of proof with respect to the desired disposition. A petitioner who wants to obtain workmen's compensation must prove that he has sustained a job-connected injury, which resulted in a given degree of incapacity for which he wishes to obtain compensation. A petitioner who wants to have a relative institutionalized as non compos mentis must prove that fact and the need for institutionalization, i.e., that the person is not capable of caring for himself.

But when it comes to imprisonment we find the astounding situation that no one is required to prove the need for imprisonment. A sentence of imprisonment may follow automatically upon proof of a past event—the commission of a crime. But is everyone who has suffered a job-connected injury entitled to compensation? Is everyone who is non compos mentis to be institutionalized? Why is everyone convicted of a crime automatically to be imprisoned—particularly in view of the fact that we lack evidence of the remedial efficacy of imprisonment?

I would suggest that we had better get out of the rut of the virtual inevitability of imprisonment upon conviction of crime and that we require a meaningful sentencing hearing in which the prosecutor has the burden of proving that imprisonment is required for purposes of—of what? Before coming to that, let me formulate the third of my ten postulates of prison reform: whoever wants a convict to be imprisoned, should have the burden of proof that imprisonment is necessary for obtaining the legal purposes of the statute. I would couple this proposition with the presumption—based on the vast experience data of our society—that imprisonment as such entails such enormous negative consequences that it is not a desirable disposition upon conviction.

Fortunately, the Draft of the Federal Criminal Code has gone in the right direction by providing in § 3101(2) that: "The court shall not impose a sentence of imprisonment upon a person unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public."

The Code then lists a number of criteria for imposition of either imprisonment or probation, with the unhappy proviso that the Court is not required to refer to these factors at sentencing.

4. Sanctioning purposes

The perhaps principal reason for the current scheme under which imprisonment appears as the inevitable consequence of conviction rests on the lack of stated and enforceable means of the penal correctional system. What are the aims? Are they retributive? Vindictive? Deterrent? Preventive? Incapacitating? Rehabilitative? All, or some, or none of these? Alternatively or in combination? Or just any judge's personal philosophy? For the most part, the statutes are silent. And only the more recent enactments contain any reference to some of the purposes of the penal system. An example is § 102 of the Draft Federal Criminal Code which provides for a construction of all provisions of the Code—thus including the sentencing provisions—to achieve the following objectives:

(a) To insure the public safety through (i) the deterrent influence of the penalties hereinafter provided, (ii) through rehabilitation of those convicted of violations of this Code, and (iii) such confinement as may be necessary to prevent likely recurrence of serious criminal behavior;

(b) By definition and grading of offenses, to limit official discretion (in/and) punishment and to give fair warning of what is prohibited and of the consequences of violations;

(c) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders; * * *

While this provision is somewhat more retrogressive than comparable statements in some foreign codes, it is at least a beginning. But if it is to be more than a mere exhortation in a virtual preamble to a code, it must be incorporated into the practice of courts and enforced. Before getting to that point, I simply want to state my postulate number 4 for American prison reform: A penal code which does not contain criteria for the imposition of sentences, whether imprisonment or otherwise, is a vague and unconstitutional enactment. (See *Moore v. Illinois*, 92 S. Ct. 2562 (1972); *Furman v. Georgia*, *Jackson v. Georgia*, *Branch v. Texas*, 92 S. Ct. 2726 (1972).) Consequently, legislation is required, which will save our codes from unconstitutionality by insertion of enforceable provisions indicating the sanctioning purposes and the criteria for imposition of sentences. A modern

example of such a provision is § 13 of the new Penal Code of the German Federal Republic which provides:

§ 13—Principles of Sentencing

1. The culpability of the perpetrator is the basis for the composition of the sentence. The potential effects of the sanction upon the life of the perpetrator within society must be considered.

2. In sentencing, the court weighs the circumstances for and against the perpetrator, especially the following:

The motivations and goals of the perpetrator,

The attitude which speaks from the deed and efforts made toward perpetration of the deed,

The background of the perpetrator, his personal and economic conditions,

His behavior after the deed, especially his efforts to make up for the harm caused.

3. Circumstances which already are definitional elements of the offense may not be considered.

5. *The meaningful sentence hearing*

Our system of criminal proceedings has the advantage over some foreign systems of the bipartition into trial proper—ending in verdict or judgment of guilt—and sentencing hearing, which is meant to focus on disposition. Unhappily, a paradox has resulted. Trial proper which, in view of the many guilty pleas, has become a statistical rarity not to say anomaly, is procedurally highly developed, while the dispositional part of the process, which occurs in every case of a guilty verdict or judgment, is totally underdeveloped as to both procedure and substance. I will not concentrate here on the procedural aspects. Constitutional problems loom large. The Bar must do its share toward the process of regularizing and institutionalizing the procedure of the sentencing hearing. I want to concentrate here on the substance of sentencing.

If in accordance with my fourth postulate, we did have statutory standards embodying the purposes of sanctions and the criteria for imposition of sentences, then we could develop meaningful sentencing hearings. Attorneys for both sides could perhaps prepare themselves as well for sentencing as they generally are prepared for trial. Legal education might look towards training young lawyers as much for sentencing as for guilt determination. A sanctioning law might grow up which not only parallels but exceeds in significance the criminal law. Working in decent procedural settings with acceptable evidentiary standards, the Bench and Bar could concentrate upon working out a correctional program which is designed in terms of the impact of a sanction upon the life of the defendant within the community. If defense counsel and prosecutor were forced to do their homework on the question of changing human behavior, we might wind up with a criminal justice system that does correct. It will not do to say that judges and lawyers are not behavior specialists. They have assumed that function long ago. They are stuck with it. The criminal law game is a behavior stimulation game. Judges and lawyers are playing that game, albeit by rules developed through hunch and superstition. It is time, then, that the game be adjusted to the real rules. That judges and lawyers need help from other behavior specialists—no one can doubt.

My fifth postulate for prison reform is clear: The sentencing hearing must be developed to become a meaningful dispositional device in which evidence about behavior changes is received and in which rehabilitation programs for individual offenders are worked out by all participants, and embodied in a well-reasoned written opinion of the court.

6. *Appellate review of sentences*

The requirement of a written opinion detailing the sentence and the reasons for its imposition is standard practice in many foreign nations. The Draft for the Federal Criminal Code moves in that direction by at least providing that the court must state its reasons when imposing some of the more stringent measures, e.g., for persistent misdemeanors (§ 3003) or "increased sentences" (§ 3005).

It is clear, however, that if the imposition of the right sentence is a requirement of law, then there must be Appellate review whenever an error of law is alleged. In addition, Appellate review will contribute toward unifying the sentencing processes and contents. Naturally, such an Appellate review can be

had only if there is a written judgment and sentence; and if the contents of that judgment and sentence can be gauged against the legal sentencing requirements of the code, on the one hand, and on the evidence as to the defendant's personality and future potential on the other.

I doubt whether anybody would regard this point as controversial. The Report of the National Commission on Reform of Federal Criminal Laws recommends an amendment of 28 U.S.C. § 1291 by clearly giving courts of appeals the power to review sentences and to modify them, or to set them aside for further proceedings. This recommendation is in accordance with the recommendations of the ABA and IJA Minimum Standards of Criminal Justice Project.

My sixth postulate for prison reform is: immediate enactment of full sentence review powers over all criminal sentences, and Appellate power to modify or remand with directions in accordance with statutory sentencing requirements.

7. *Monitoring the execution of sentences*

Closely related to my sixth demand, is my seventh; which calls for the monitoring of the execution of all sentences of institutionalization. If a criminal sentence is an order of the court, it would seem to require judicial control over its execution. But due to the so-called hands-off doctrine, the judiciary in the past has been loath to interfere with the discretion of correctional and penitentiary officials. In my view, such an attitude was not only unwise, but illegal as well. Anybody who refuses to execute a court order, or who executes it in an illegal manner, is and should be subject to the contempt power of the court.

Consequently, if a prison sentence calling for rehabilitation is executed either by refusing to extend rehabilitative services or by denying human rights, contempt has been committed and a judicial remedy should be available.

Current prisoners' rights suits are gradually developing some badly needed remedies. More effective methods are needed. Ideally, sentencing judges should constantly monitor the execution of sentences they have imposed. If that cannot be done, special judges may have to be appointed and specially assigned to individual penal institutions, where they would be physically present to monitor the lawful execution of the court orders which sentences constitute.

European countries have precisely this kind of an institution in the person of the Surveillance Judge, (Article 144, *Italian Penal Code*: Articles 585, 634-654, *Italian Code of Criminal Procedure*; see Seewald, *The Italian Surveillance Judge*, 45 Neb. L. Rev. 96, 1966).

In some countries, this institution has been beneficial, in others not. The idea, however, is excellent. It just might have the consequence of preventing future Attias, by protection of the human rights of prisoners, including those which are postulated by the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Consequently, my demand number seven, calls for the creation of a judicial monitoring system, which will guarantee the proper and legal execution of sentences within the totality of the constitutional and statutory framework.

8. *Disabilities*

Just as loss of personal liberty through imprisonment has long been regarded as the automatic and inevitable consequence of criminal conviction, there is a collateral and equally automatic loss of all other adjuncts of individuality and personality, including the whole slate of human and constitutional rights. Why? There may be justification for automatically stripping a prisoner of his constitutional right to bear arms, but why strip him of his right to read, to have normal sexual relations, to communicate, to work, to earn, to walk, to contribute financially and economically to his family and his nation? If we are committed to a Government of laws, we are obligated to provide for a legal system of deprivation of rights only upon proof that loss of that right is necessary for a legitimate reason. Consequently, in my eighth demand for prison reform, I am calling for a reassessment of the system of automatic loss of rights upon imprisonment and its replacement by a system under which no right can be lost unless there is proof by the moving party that this loss of right is a necessity. No disability should attach upon conviction as such, and all rights must be restored when the need for the deprivation has ceased.

9. *Alternatives to Imprisonment*

While in the Nineteenth Century the U.S.A. was regarded as the innovator in corrections through the development of penitentiaries, probation systems, work-

houses and juvenile courts, we have long lost that reputation, particularly to the Scandinavian countries. It behooves us well, therefore, that we explore the range of alternative sanctioning methods available in foreign legal systems. Even the most obnoxious penal code may have innovative provisions, which can be applied to United States conditions, particularly if they are adjusted to our own due process model.

What permeates foreign sentencing systems is an insistence on the performance of useful labor, the habituation to regular work, participation in the economic life of the community or nation, economic incentives, including the provision of sustenance for one's self, one's family, and the financial restoration of harm caused. Merely by way of example, Switzerland provides for work rehabilitation institutions. France and Germany have regular wage scales for work performed in prison—though not yet reaching the free labor level—and seek to have work available for prisoners. Scandinavian countries do not build a prison unless they are sure that work is needed in the immediate vicinity. Colombia has work colonies in which prisoners may reside with their families. Several countries, e.g., Italy, combine labor performed in prison or under suspended sentence with an obligation to make restitution out of earnings. Restitution is mandatory in Argentina, Colombia, Norway and Sweden, and is thought to be a better rehabilitative device than the theory of vindication. These are, of course, quasi-institutional alternatives to imprisonment, and it is the aim of modern corrections to limit these sanctions to convicts who cannot be helped extramurally, or who constitute a demonstrable danger.

Many countries are experimenting with non-institutional care for prisoners. The new Polish penal code uses the method of restricted liberty, i.e., a monitored life in freedom, subject to fairly stringent impositions as to work assignment and leisure time. Several countries are using relocation of the offender (and his family) from one area to another (e.g., out of a slum). The Scandinavian countries combine all sentences in freedom with counseling and social work services, including therapeutic and psychiatric care where needed.

Countries in which every citizen has the opportunity to obtain gainful employment have experimented with the day-fine system which has gained great significance. Under that system, fines are graduated as to their severity in terms of days' earnings, e.g., two days' earnings for a minor offense, thirty days' earnings for a more severe offense. But since a day's earnings vary with the job or profession of the defendant, they are calculated to have an equalized impact on offenders of different economic status. This system, invented in the Scandinavian countries, has now been incorporated in the Latin American Model Penal Code. But even where the day-fine system does not exist, fines are always adjusted to the ability to pay and the modern codes never threaten imprisonment as a substitute when there is inability to pay, not due to the fault of the offender.

Some nations have become more careful with respect to loss of rights of offenders. Japan deprives civil rights only for the duration of imprisonment. Most importantly, some nations remind us that punishments need not be drastic to be effective—although a scaling down to less drastic levels may have to be done gradually. Human beings can be goaded into action, shamed into inaction, praised or reprimanded, helped and guided, ridiculed and held out to contempt, love may be extended and withheld, causes of crime may be removed by arbitration, counselling and settlement. Those were the sanctions used by our supposedly less civilized forebearers—including the American Indians.

Might it not be time to start de-escalating our drastic prison sentences in terms of the alternatives we once knew and still, or again, know in other systems and nations?

My ninth postulate is: de-escalate harsh prison sentences; replace them by less drastic, more psychologically oriented alternatives as they offer themselves in other legal systems, and emphasize the idea of reparation by the wrongdoer through gainful labor.

10. Reform: Infiltration-Litigation-Legislation-Education

There are many ways of reforming our present penal system. Infiltration of the system by reformers so as to change it legitimately from within usually is the first method. When it no longer works, litigation is ordinarily restored to, and the present wave of prisoners' rights cases attests to the fact that many

reform efforts through infiltration have reached the frustration point. But litigation is frequently negative, and must be followed by legislation, which is positive. We educators have learned that ultimately the surest, although slowest, way to reform leads through education of those who someday will have to manage the system, or those who are beginning to do so now. I congratulate the American judiciary, which is willing to undergo a process of education for penal correctional reform at the National College of State Trial Judges, at the Appellate Judges Seminars at New York University, at short courses and sentencing institutes all over the country; and I am happy to note that not a self-respecting law school in the country has failed to beef up its programs aimed at reform of correctional law, whether through courses or through clinical programs. The American Bar through the ABA's new Commission on Correctional Facilities and Services and the Rosecoe Pound—American Trial Lawyers Foundation have committed themselves to transformation of a medieval system of caging human beings into a progressive system of humane intervention in the lives of those human beings who are in need of help for their and their fellow human being's benefit.

My tenth postulate is very simple: Let the present concern for correctional reform not be a passing fancy. Let it be a sincere, permanent dynamic and humane commitment.

REPORT ON CORRECTIONS

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

This volume, *Report on Corrections*, is one of six reports of the National Advisory Commission on Criminal Justice Standards and Goals.

This Commission was appointed by Jerris Leonard, Administrator of the Law Enforcement Assistance Administration (LEAA), on October 20, 1971, to formulate for the first time national criminal justice standards and goals for crime reduction and prevention at the State and local levels.

The views and recommendations presented in this volume are those of a majority of the Commission and do not necessarily represent those of the Department of Justice. Although LEAA provided \$1.75 million in discretionary grants for the work of the Commission, it did not direct that work and had no voting participation in the Commission.

Membership in the Commission was drawn from the three branches of State and local government, from industry, and from citizen groups. Commissioners were chosen, in part, for their working experience in the criminal justice area. Police chiefs, judges, corrections leaders, and prosecutors were represented.

Other recent Commissions have studied the causes and debilitating effects of crime in our society. We have sought to expand their work and build upon it by developing a clear statement of priorities, goals, and standards to help set a national strategy to reduce crime through the timely and equitable administration of justice; the protection of life, liberty, and property; and the efficient mobilization of resources.

Some State or local governments already may have equaled or surpassed standards or recommendations proposed in this report: most in the Nation have not. But in any case, each State and local government is encouraged to evaluate its present status and to implement those standards and recommendations that are appropriate.

The process of setting the standards that appear in the *Report on Corrections* and the other Commission volumes was a dynamic one. Some of the standards proposed are based on programs and projects already in operation, and in these cases the standards are supported with empirical data and examples.

The Commission recommends specific guidelines for evaluating existing practices or for setting up new programs. In some areas, however, the Commission was unable to be as specific as it would have liked because of the lack of reliable information. The Commission urges research in these areas.

The Commission anticipates that as the standards are implemented, experience will dictate that some be upgraded, some modified, and perhaps some discarded. Practitioners in the criminal justice field will contribute to the dynamic process as they test the validity of the Commission's assumptions in the field.

One of the main priorities of this volume—and of the Commission itself—is to encourage and facilitate cooperation among all the elements of the criminal jus-

tice system and with the communities they serve. Consequently, some of the subjects discussed in this volume bear a close correlation to standards in the other volumes. The Commission has attempted to maintain a consistent approach to basic problems, but different facets of common concerns are discussed in the volume that seems most appropriate.

This Commission has completed its work and submitted its report. The Commission hopes that its standards and recommendations will influence the shape of the criminal justice system in this Nation for many years to come. And it believes that adoption of those standards and recommendations will contribute to a measurable reduction of the amount of crime in America.

The Commission thanks Jerris Leonard, Administrator of LEAA, and Richard W. Velde and Clarence M. Coster, Associate Administrators, for their efforts in authorizing and funding this Commission and for their support and encouragement during the life of the Commission.

The Commission expresses its sincerest gratitude to the chairman, Judge Joe Frazier Brown, and members of the Task Force on Corrections; and to the many practitioners, scholars, and advisers who contributed their expertise to this effort. We are also grateful to the Commission and Corrections Task Force staffs for their hard and dedicated work.

On behalf of the Commission, I extend special and warmest thanks and admiration to Thomas J. Madden, Executive Director, for guiding this project through to completion.

RUSSELL W. PETERSON,
Chairman.

WASHINGTON, D.C., January 23, 1973.

This report constitutes one of the few nationwide studies of corrections in the United States. Predecessors in this century number only three.

In 1931, the National Commission on Law Observance and Enforcement (the Wickersham Commission) issued 14 reports on crime and law enforcement, including the subject of corrections.

In 1968, the Joint Commission on Correctional Manpower and Training undertook a 3-year study to identify corrections' manpower and training needs and propose means for meeting those needs. It published 15 reports.

In 1967, the President's Commission on Law Enforcement and Administration of Justice published its report, *The Challenge of Crime in a Free Society*, and the reports of its several task forces, including the corrections task force.

All of these studies emphasized the fact that corrections is an integral part of the criminal justice system; that police, courts, and corrections must work in cooperation if the system is to function effectively. Recently, however, increased attention has been given to the systems aspect of criminal justice, recognizing that what happens in one part of the system affects all the other parts.

Police, for example, are coming to agree with correctional authorities that as many young people as possible, consistent with protection of the public, should be diverted to education, employment, counseling, or other services which will meet their needs and thus help them avoid the stigma of a criminal record. Police departments in several areas have set up their own diversion programs.

Courts have made an indelible imprint on corrections through recent decisions on violations of the civil rights of offenders. Whole State prison systems have been declared unconstitutional as violating the eighth amendment's ban on cruel and unusual punishment.

In the light of these developments, this report goes farther than any previous study in examining the interrelationships between corrections and the other elements of the criminal justice system. The report includes, for example, discussions of jails, which are traditionally a part of law enforcement rather than corrections; of the effects of sentencing on convicted offenders; of the need for judges to have continuing jurisdiction over offenders they have sentenced; and many other subjects that previously might not have been considered within the realm of corrections.

The task force which made the study and developed recommendations for submission to the Commission had among its members not only some of the leading correctional administrators of the country, but also representatives of the judiciary, the bar, law enforcement, and academic departments concerned with

corrections. A committee named by the American Correctional Association and the membership of the Association of State Correctional Administrators assisted the Commission by reviewing proposed standards and making suggestions for improvement.

To all these persons, who gave unstintingly of their time and effort, as well as to those who contributed sections of the report, I should like to express my appreciation. Thanks are also due to Lawrence A. Carpenter and the task force staff he headed, and to those members of the Commission staff who had special responsibility for this report.

JOE FRAZIER BROWN,
Chairman, Task Force on Corrections.

WASHINGTON, D.C., January 23, 1973.

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CHAPTER 11: MAJOR INSTITUTIONS

The term "major institutions" as used in this chapter does not refer to size but to State-operated penal and correctional institutions for juveniles, youths, and adults (as distinguished from detention centers, jails, work farms, and other types of facilities which in almost all States are operated by local governments). Names used for major institutions differ from State to State. Institutions for juveniles carry such names as youth development centers, training schools, industrial schools, and State homes. Institutions for adults variously are called prisons, penitentiaries, classification and reception centers, correctional institutions, reformatories, treatment centers, State farms, and others. Altogether there are about 200 major juvenile and 350 major adult correctional institutions in the United States.

This chapter also discusses maximum, medium, and minimum security institutions. It is difficult to make clear-cut distinctions, however, in view of the enormous diversity. Generally the terms refer to relative degrees in the use of security trappings and procedures. All three security classifications may be used, and usually are, in the same institution. Moreover, what may be considered maximum security in one State may be considered only medium security in another. Some so-called minimum security institutions might actually be considered medium security by some authorities. The terminology—maximum, medium, minimum—is as imprecise as the wide variety of names that may be used formally to designate individual institutions. The terms indicate the rough classifications traditionally used.

HISTORICAL PERSPECTIVE

Institutionalization as the primary means of enforcing the customs, mores, or laws of a people is a relatively modern practice. In earlier times, restitution, exile, and a variety of methods of corporal and capital punishment, many of them unspeakably barbarous, were used. Confinement was used for detention only.

The colonists who came to North America brought with them the harsh penal codes and practices of their homelands. It was in Pennsylvania, founded by William Penn, that initial attempts were made to find alternatives to the brutality of British penal practice. Penn knew well the nature of confinement because he had spent six months in Newgate Prison, London, for his religious convictions.

In the Great Law of Pennsylvania, enacted in 1682, Penn made provisions to eliminate to a large extent the stocks, pillories, branding iron, and gallows. The Great Law directed: "* * * that every county within the province of Pennsylvania and territories thereunto belonging shall . . . build or cause to be built in the most convenient place in each respective county a sufficient house for restraint, labor, and punishment of all such persons as shall be thereunto committed by laws."

In time William Penn's jails, like those in other parts of the New World up to and including the present, became places where the untried, the mentally ill, the promiscuous, the debtor, and myriad petty offenders were confined indiscriminately.

In 1787 when the Constitutional Convention was meeting in Philadelphia and men were thinking of institutions based on the concept of the dignity of man, the Philadelphia Society for Alleviating the Miseries of Public Prisons was organized. The society believed that the sole end of punishment is to prevent crime and that punishment should not destroy the offender. The society, many of whose members were influential citizens, worked hard to create a new penology in Pennsylvania, a penology which to a large degree eliminated capital and corporal punishment as the principal sanctions for major crimes. The penitentiary was invented as a substitute for these punishments.

In the first three decades of the 19th century, citizens of New York, Pennsylvania, New Jersey, Massachusetts, and Connecticut were busy planning and building monumental penitentiaries. These were not cheap installations built from the crumbs of the public treasury. In fact, the Eastern State Penitentiary in Philadelphia was the most expensive public building constructed in the New World to that time. States were extremely proud of these physical plants. Moreover, they saw in them an almost utopian ideal. They were to become stabilizers of society. They were to become laboratories committed to the improvement of all mankind.¹

When these new penitentiaries were being planned and constructed, practitioners and theorists held three factors to be the primary contributors to criminal behavior. The first was environment. Report after report on offenders pointed out the harmful effects of family, home, and other aspects of environment on the offender's behavior. The second factor usually cited was the offender's lack of aptitude and work skills. This quality led to indolence and a life of crime. The third cause was seen as the felon's ignorance of right and wrong because he had not been taught the Scriptures.

The social planners of the first quarter of the 19th century designed prison architecture and programs to create an experience for the offender in which (1) there would be no injurious influences, (2) the offender would learn the value of labor and work skills, and (3) he would have the opportunity to learn about the Scriptures and accept from them the principles of right and wrong that would then guide his life.

Various States pursued this triad of purposes in one of two basic methods. The Pennsylvania system was based on solitary confinement, accompanied by bench labor within one's cell. There the offender was denied all contact with the outside world except that provided by the Scriptures, religious tracts, and visits from specially selected, exemplary citizens. The prison was designed painstakingly to make this kind of solitary experience possible. The walls between cells were thick, and the cells themselves were large, each equipped with plumbing and running water. In the cell were a work bench and tools. In addition, each cell had its own small walled area for solitary exercises. The institution was designed magnificently for its three purposes: elimination of external influences; provision of work; and opportunity for penitence; introspection, and acquisition of religious knowledge.²

New York's Auburn system pursued the same three goals by a different method. Like the Pennsylvania system, it isolated the offender from the world outside and permitted him virtually no external contact. However, it provided small cells in which the convicts were confined only on the Sabbath and during nonworking hours. During working hours inmates labored in factory-like shops. The contaminating effect of the congregate work situation was eliminated by a rule of silence. Inmates were prohibited from communicating in any way with other inmates or the jailers.

The relative merits of these two systems were debated vigorously for half a century. The Auburn system ultimately prevailed in the United States, because it was less expensive and because it lent itself more easily to production methods of the industrial revolution.

But both systems were disappointments almost from the beginning. The awful solitude of the Pennsylvania system drove men to insanity. The rule of silence of the Auburn system became increasingly unenforceable despite regular use of the lash and a variety of other harsh and brutal punishments.

¹ For a history of these developments, see David Rothman, *The Discovery of the Institution: Social Order and Disorder in the New Republic* (Little, Brown, 1971), chs. 3 and 4.

² Harry Elmer Barnes, *The Story of Punishment* (Paterson-Smith, 1972), ch. 6.

Imprisonment as an instrument of reform was an early failure. This invention did, however, have some notable advantages. It rendered obsolete a myriad of sanguinary punishments, and its ability to separate and hold offenders gave the public a sense of security. It also was thought to deter people from crime by fear of imprisonment.

Imprisonment had many disadvantages, too. Principal among them was the phenomenon that so many of its "graduates" came back. The prison experience often further atrophied the offender's capacity to live successfully in the free world. The prison nevertheless has persisted, partly because a civilized nation could neither turn back to the barbarism of an earlier time nor find a satisfactory alternative. For nearly two centuries, American penologists have been seeking a way out of this dilemma.

TYPES OF INSTITUTIONS

Maximum security prisons

For the first century after invention of the penitentiary most prisons were built to be internally and externally secure. The early zealots who had dreamed of institutions that not only would reform the offender but also would cleanse society itself were replaced by a disillusioned and pragmatic leadership that saw confinement as a valid end in itself. Moreover, the new felons were seen as outsiders—Irishmen, Germans, Italians, and Negroes. They did not talk or act like "Americans." The prison became a dumping ground where foreigners and blacks who were not adjusting could be held outside the mainstream of society's concern. The new prisons, built in the most remote areas of the States, became asylums, not only for the hardened criminal but also for the inept and unskilled "un-American." Although the rhetoric of reformation persisted, the be-all and end-all of the prison was to hold.

From 1830 to 1900 most prisons built in the United States reflected that ultimate value—security. Their principal features were high walls, rigid internal security, cage-like cells, sweat shops, a bare minimum of recreation space, and practically nothing else. They kept the prisoners in and the public out, and that was all that was expected or attempted.

Many of these prisons were constructed well and have lasted long. Together they form the backbone of our present-day correctional system. As Table 11.1 shows, 56 of them, remodeled and expanded, still are in use. They currently house approximately 75,000 of the 110,000 felons in maximum security facilities. Today 56 percent of all State prisoners in America are in structures built to serve maximum security functions. (See Table 11.2.)

Any attempt to describe the "typical" maximum security prison is hazardous. One was constructed almost two centuries ago. Another was opened in 1972. The largest confines more than 4,000 inmates, another less than 60.³ Some contain massive undifferentiated cell blocks, each caging as many as 500 men or more. Others are built in small modules housing less than 16. The industries in some are archaic sweat shops, in others large modern factories. Many provide absolutely no inside recreation space and only a minimum outside, while others have superlative gymnasiums, recreation yards, and auditoriums. Some are dark, dingy, depressing dungeons, while others are well glazed and sunny. In one the early warning system consists of cow bells strung along chicken wire atop the masonry wall, while in others closed circuit television and sensitive electronic sensors monitor the corridors and fences.

TABLE 11.1.—Date of opening, State maximum security prisons still in operation

Date of opening:	Number of prisons
Prior to 1830.....	6
1831 to 1870.....	17
1871 to 1900.....	33
1901 to 1930.....	21
1931 to 1960.....	15
1961 to date.....	21
Total	113

Source: American Correctional Association, *1971 Directory of Correctional Institutions and Agencies of America, Canada and Great Britain* (College Park, Md.: ACA, 1971).

³ Data from American Correctional Association, *1971 Directory of Correctional Institutions and Agencies of the United States of America, Canada, and Great Britain* (College Park, Md.: ACA, 1971).

Maximum security institutions are geared to the fullest possible supervision, control, and surveillance of inmates. Design and program choices optimize security. Buildings and policies restrict the inmate's movement and minimize his control over his environment. Other considerations, such as the inmate's individual or social needs, are responded to only in conformity with security requirements. Trustworthiness on the inmate's part is not anticipated; the opposite is assumed.

Technology has brought much to the design and construction of these institutions, and development of custodial artifacts has far outpaced skill in reaching inmates and in using rapport with them to maintain security or control. A modern maximum security institution represents the victory of external control over internal reform.

The prison invariably is surrounded by a masonry wall or double fence with manned towers. Electronic sensing devices and lights impose an unremitting surveillance and control. Inside the institution, the need for security has dictated that men live in windowless cells, not rooms. Doors, which would afford privacy, are replaced by grilles of tool-resistant steel. Toilets are unscreened. Showers are taken under supervision.

Control, so diligently sought in these facilities, is not limited to structural considerations. All activity is weighed in terms of its relationship to custody. Dining is no exception. Men often sit on fixed hackless stools and eat without forks and knives at tables devoid of condiments.

Lest security be compromised by intrusions from outside, special devices are built to prevent physical contact with visitors. Relatives often communicate with inmates by telephone and see them through double layers of glass. Any contacts allowed are under the guard's watchful eyes. Body searches precede and follow such visits.

Internal movement is limited by strategic placement of bars and grilles defining precisely where an inmate may go. Areas of inmate concentration or possible illegal activity are monitored by correctional officers or by closed circuit television. "Blind spots"—those not capable of supervision—are avoided in the design of the secure institution. Places for privacy or small group activity are structurally, if not operationally, precluded.

Maximum security institutions, then, may be viewed as those facilities characterized by high perimeter security, high internal security, and operating regulations that curtail movement and maximize control.

In his masterful description of penitentiaries in the United States, Tocqueville wrote in 1833 that, aside from common interests, the several States "preserve their individual independence, and each of them is sovereign master to rule itself according to its own pleasure. * * * By the side of one State, the penitentiaries of which might serve as a model, we find another whose prisons present the example of everything which ought to be avoided."⁴

He was right in 1833. His words still ring true in 1972.

Medium security correctional centers

Since the early 20th century, means of housing the offender in other than maximum security prisons have been explored. Developments in the behavioral sciences, increasing importance of education, dominance of the work ethic, and changes in technology have led to modified treatment methods.

Simultaneously, field service—parole and probation—increased. Institutions were set up to handle special inmate populations, men and women, youths and adults. Classification was introduced by employing psychological and sociological knowledge and skill. Pretrial holding centers, or jails, were separated from those receiving convicted felons. Different levels of security were provided: maximum, medium, minimum, and open. Much of the major correctional construction in the last 50 years has been medium security. In fact, 51 of the existing 110 medium security correctional institutions were built after 1950. Today, over 57,000 offenders, 30 percent of all State inmates, are housed in such facilities. (See Table 11.2.)

⁴ Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France*, H. R. Lantz, ed. (Southern Illinois University Press, 1964), p. 48.

TABLE 11.2—POPULATION OF STATE CORRECTIONAL FACILITIES FOR ADULTS, BY SECURITY CLASSIFICATION OF INMATES

Classification	Inmates	Percent of total population
Maximum.....	109,920	56
Medium.....	57,505	30
Minimum.....	28,485	15
Total.....	195,910	100

Source: ACA, "1971 Directory" and poll taken by the American Foundation's Institute of Corrections, which contacted the head of every State department of corrections.

Today medium security Institutions probably embody most of the ideals and characteristics of the early attempts to reform offenders. It is in these facilities that the most intensive correctional or rehabilitation efforts are conducted. Here inmates are exposed to a variety of programs intended to help them become useful members of society. But the predominant consideration still is security.

These institutions are designed to confine individuals where they can be observed and controlled. All have perimeter security, either in the form of masonry walls or double cyclone fences. In some cases electronic detecting devices are installed. Towers located on the perimeter are manned by armed guards and equipped with spotlights.

Internal security usually is maintained by: locks, bars, and concrete walls; clear separation of activities; highly defined movement paths both indoors and outdoors; schedules and head counts; sightline supervision; and electronic devices.

Housing areas, medical and dental treatment rooms, schoolrooms, recreation and entertainment facilities, counseling offices, vocational training and industrial shops, administration offices, and maintenance facilities usually are clearly separated. Occasionally they are located in individual compounds complete with their own fences and sally ports. A complex series of barred gates and guard posts controls the flow of traffic from one area to another. Central control stations keep track of movement at all times. Circulation is restricted to specified corridors or outdoor walks, with certain spaces and movement paths out of bounds. Closed circuit television and alarm networks are used extensively. Locked steel doors predominate. Bars or concrete substitutes line corridors, surround control points, and cross all external windows and some internal ones.

Housing units in medium security institutions vary from crowded dormitories to private rooms with furniture. Dormitories may house as many as 80 persons or as few as 16. Some individual cells have grilled fronts and doors.

The variations found in maximum security institutions also are seen in medium security correctional facilities, but they are not so extreme, possibly because the latter were developed in a much shorter period.

Several heartening developments have occurred recently in the medium security field. Campus-type plants have been designed that largely eliminate the cramped oppressiveness of most confinement. Widely separated buildings are connected by meandering pathways, and modulated ground surfaces break monotony. Attractive residences house small groups of inmates in single rooms.

Schools, vocational educational buildings, gymnasiums, and athletic fields compare favorably with those of the best community colleges. Yet external security provided by double cyclone fences and internal security enforced by excellent staff and unobtrusive building design protect the public from the inmates and the inmates from each other.

If confinement to institutions is to remain the principal sanction of our codes of criminal justice, medium security plants and programs such as these, not the traditional "minimum security" prison farms, should be the cornerstone of the system.

Minimum security correctional centers

The facilities in this group are diverse but generally have one feature in common. They are relatively open, and consequently custody is a function of classification rather than of prison hardware. The principal exceptions are huge

prison plantations on which entire penal populations serve time. Minimum security institutions range from large drug rehabilitation centers to small farm, road, and forestry camps located throughout rural America.

Most, but not all, minimum security facilities have been created to serve the economic needs of society and only incidentally the correctional needs of the offenders. Cotton is picked, lumber is cut, livestock is raised, roads are built, forest fires are fought, and parks and State buildings are maintained. These are all legitimate tasks for prisoners, especially while our system still (1) receives large numbers of offenders who are a minimal threat to themselves and to the general public, and (2) holds men long after they are ready for freedom. Moreover, open facilities do serve therapeutic purposes by removing men from the stifling prison environment, separating the young and unsophisticated from the predators, and substituting controls based upon trust rather than bars. All these aspects are laudable.

However, these remote facilities have important deficiencies. They seldom provide educational or service resources other than work. Moreover, the predominantly rural labor bears no relationship to the work skills required for urban life. Separation of the prisoner from his real world is almost as complete as it would have been in the penitentiary.

One remarkable minimum security correctional center was opened in 1972 at Vienna, Ill., as a branch of the Illinois State Penitentiary. Although a large facility, it approaches the quality of the non-penal institution. Buildings resembling garden apartments are built around a "town square" complete with churches, schools, shops, and library. Paths lead off to "neighborhoods" where "homes" provide private rooms in small clusters. Extensive provision has been made for both indoor and outdoor recreation. Academic, commercial, and vocational education facilities equal or surpass those of many technical high schools.

This correctional center has been designed for 800 adult felons. Unfortunately, most of them will come from the State's major population centers many miles away. Today this open institution is enjoying the euphoria that often accompanies distinctive newness. One may speculate about the future, however, when community correctional programs siphon from the State's prison system many of its more stable and less dangerous offenders. Fortunately, this facility will not be rendered obsolete by such a development. The nonprisonlike design permits it to be adapted for a variety of educational, mental health, or other human service functions.

One generalization about the future of minimum security facilities seems warranted. As society finds still more noninstitutional and community-based solutions to its problems, the rural open institutions will become harder and harder to populate. Already they are operating farther below their rated capacities than any other type of correctional facility.

Institutions for women

The new role of women may influence profoundly the future requirements of corrections. For whatever reasons, the treatment given to women by the criminal justice system has been different from that given men. Perhaps fewer commit crimes. Certainly six men are arrested for every woman. The ratio is still higher for indictments and convictions, and 30 times more men than women are confined in State correctional institutions. Montana in 1971 incarcerated only eight women; West Virginia, 28; Nebraska, 44; Minnesota, 55. Even populous Pennsylvania incarcerated only 127 women.⁶

Tomorrow may be different. As women increasingly assume more roles previously seen as male, their involvement in crime may increase and their treatment at the hands of the agencies of justice change. A possible, if unfortunate, result could be an increase in the use of imprisonment for women.

Correctional institutions for women present a microcosm of American penal practice. In this miniature model, the absurdities and irrationalities of the entire system appear in all their ludicrousness. In one State, the few women offenders are seen to be so dangerous as to require confinement in a separate wing of the men's penitentiary. There they are shut up in cells and cell corridors without recreation, services, or meaningful activity.

In other places, new but separate facilities for women have been built that perpetuate the philosophy, the operational methods, the hardware, and the re-

⁶ ACA, 1971 Directory.

pression of the State penitentiary. These facilities are surrounded by concertina fences, and the women's movements are monitored by closed circuit television. Inmates sit endlessly playing cards, sewing, or just vegetating.

A woman superintendent has observed that these institutions should release exclusively to San Francisco or Las Vegas because the inmates have been prepared for homosexuality or card dealing. Everything about such places—their sally ports, control centers, narrow corridors, small cells, restrictive visiting rooms—spells PRISON in capital letters. Yet these institutions were not built in the 19th century. They are new.

Compared to women's institutions in other States, the prisons just described demonstrate the inconsistency of our thinking about criminals in general and women prisoners specifically. One center—the Women's Treatment Center at Purdy, Wash.—vividly demonstrates that offenders can be viewed as civilized human beings. Built around multilevel and beautifully landscaped courtyards, the attractive buildings provide security without fences. Small housing units with pleasant living rooms provide space for normal interaction between presumably normal women. The expectation that the women will behave like human beings pervades the place. Education, recreation, and training areas are uncramped and well glazed. Opportunity for interaction between staff and inmate is present everywhere.

About 200 yards away from the other buildings are attractive apartments, each containing a living room, dining space, kitchen, two bedrooms, and a bath. Women approaching release live in them while working or attending school in the city. These apartments normally are out of bounds to staff except on invitation.

The contrasts among women's institutions demonstrate our confusion about what criminals are like and what correctional responses are appropriate. In six States maximum security prisons are the correctional solution to the female offenders. At least 15 other States use open institutions exclusively.

This contrast raises questions about the nature of correctional planning. What is it really based upon? The propensities of the offender? The meanness or enlightenment of the general population? The niggardliness of the public? The broadness or narrowness of the administrator's vision? Whatever the reason, the architecture of these correctional institutions tells us either that women in State A are profoundly different from those in State B or that the correctional leadership holds vastly differing human values.

Youth correction centers

The reformatory movement started about a century ago. With the advent of the penitentiary, imprisonment had replaced corporal punishment. The reformatory concept was designed to replace punishment through incarceration with rehabilitation. This new movement was aimed at the young offender, aged 16 to 30. Its keystone was education and vocational training to make the offender more capable of living in the outside world. New concepts—parole and indeterminate sentences—were introduced. An inmate who progressed could reduce the length of his sentence. Hope was a new treatment dynamic.

The physical plant in the early reformatory era was highly secure. One explanation given is that the first one, at Elmira, N.Y., was designed as a maximum security prison and then converted into a reformatory. Other States that adopted the reformatory concept also copied the physical plant. Huge masonry walls, multi-tiered cell blocks, mass movements, "big house" mess halls, and dimly lit shops were all part of the model. Several of these places are still in operation. Later, in the 1920's, youth institutions adopted the telephone-pole construction design developed for adults: housing and service units crisscross an elongated inner corridor. More recently campus-type plants, fenced and unfenced, have been constructed. Some of these resemble the new colleges.

Most recently built reformatories, now called youth "correction" or "training" centers, are built to provide only medium or minimum security. (However, the newest—Western Correctional Center, Morganton, N.C.—is a very secure 17-story facility.) These centers usually emphasize academic and vocational education and recreation. Some supplement these with counseling and therapy, including operant conditioning and behavior modification. The buildings themselves are central to the program in providing incentives. At the Morganton center, for example, as a youth's behavior modifies he is moved from the 17th floor to the more desirable 16th, or from an open ward to a single room, etc.

Overall plant, security, and housing, as well as education, vocational training, and recreation space, are similar in youth centers to those provided in adult

centers of comparable custody classification. The only major difference is that some youth institutions provide more programs. The amount of space, therefore, often exceeds that of adult centers. Some youth centers have highly screened populations, and the center provides only one function—to increase educational levels and vocational skills. The effectiveness of such centers is highly dependent on inmate selection, placing a heavy responsibility on the classification process.

Facilities and programs in the youth correction centers vary widely from institution to institution and from State to State. While some provide a variety of positive programs, others emphasize the mere holding of the inmate. In the latter, few rehabilitative efforts are made; facilities are sparse and recreational space is inadequate. The general atmosphere is repressive, and the physical plant prohibits program improvement.

Youth institutions include at least two types of minimum security facilities, work camps and training centers, which present a series of dilemmas. In work camps, outdoor labors burn up youthful energies. But these camps are limited severely in their capacity to provide other important needs of youthful offenders. Moreover, they are located in rural America, which is usually white, while youthful offenders frequently are not. The other type of minimum security youth center has complete training facilities, fine buildings, attractively landscaped surroundings, and extensive programs. These, too, usually are remote from population centers. Though they probably represent our most enlightened form of imprisonment, quite possibly they soon will be obsolete.

Even today the various States are finding it difficult to select from their youthful inmate populations persons who are stable enough for such open facilities. Many are operating, therefore, far below normal capacity. Walkways present such serious problems that insidious internal controls, more irksome than the visible wire fence, have been developed.

These open centers serve three important functions:

1. They bring the individual every day face to face with his impulse to escape life's frustrations by running away.
2. They remove youths temporarily from community pressures that have overwhelmed them.
3. They provide sophisticated program opportunities usually not available otherwise.

In the near future, it is to be hoped, these three purposes will be assumed by small and infinitely less expensive community correctional programs.

Institutions for juveniles

Almost all human services in America have followed a similar course of development. When faced with a social problem we seek institutional solutions first. The problems presented by children have been no exception. Early in our national development we had to face the phenomenon of child dependency, and we built orphanages. Children would not stay put, and we established the "Home for Little Wanderers." When children stole we put them in jails, filthy places where the sight of them incensed pioneer prison reformers. They turned to a model already common in Europe where congregate facilities, often under the auspices of religious groups, cared for both dependent and delinquent children.

The first such facility in America was established in New York in 1825. Reflecting its purpose, it was called the "House of Refuge." Others followed, coinciding almost exactly with the first penitentiaries. The pioneering juvenile institutions were just about as oppressive and forbidding, emphasizing security and austerity. By today's standards they were basically punitive. In time they tended more toward benign custodial care along with providing the essentials of housing and food. They became characterized by large populations, with consequent regimentation, and by oversized buildings.

In the latter decades of the 19th century, attempts to minimize the massive institutional characteristics led to the adoption of the "cottage concept." Housing was provided in smaller buildings. "House parents" aimed at simulating home-like atmospheres. This model has remained and today continues as a common, perhaps the predominant, type of institution for juvenile delinquents.

Institutions for the delinquent child usually have vastly different characteristics than those holding adults. Often they are located on a campus spreading over many acres. The housing units provide quarters for smaller groups, invariably less than 60 and frequently less than 20. Often they also provide apartments for cottage staff. Dining frequently is a function of cottage life, eliminating the need for the large central dining rooms. Grilles seldom are found on

the cottage doors and windows, although sometimes they are covered by detention screens. Security is not the staff's major preoccupation.

Play fields dot the usually ample acreage. Other resources for athletics, such as gymnasiums and swimming pools, are common. Additional recreational activity often is undertaken in nearby towns, parks, streams, and resorts. Teams from youth institutions usually play in public school leagues and in community competition. The principal program emphasis at these children's centers quite naturally has been education, and many have fine, diversified school buildings, both academic and vocational.

Exterior security varies, but most juvenile centers have no artificial barriers separating them from the community at large. Space frequently provides such a barrier, however, as many juvenile centers are in rural settings. Fences do exist, especially where the institution borders a populated area. Usually they do not have towers. Walkaways are quite frequent and cause considerable annoyance to neighbors, who sometimes hold public subscriptions to raise money for fences.

At the risk of oversimplification this section describes two predominant but conflicting philosophies about the care of delinquent children. This is done because they suggest profoundly different directions and consequently different facility requirements for the future.

One has its roots in the earliest precepts of both the penitentiary and reformatory systems. It holds that the primary cause of delinquent behavior is the child's environment, and the secondary cause is his inability to cope with that environment. The response is to provide institutions in the most remote areas, where the child is protected from adverse environmental influences and exposed to a wholesome lifestyle predicated on traditional middle-class values. Compensatory education, often better than that available in the community, equips the child with tools necessary to face the world again, some day. This kind of correctional treatment requires expensive and extensive plants capable of providing for the total needs of children over prolonged periods.

The second philosophy similarly assumes that the child's problems are related to the environment, but it differs from the first model by holding that the youngster must learn to deal with those problems where they are—in the community. Institutions, if required at all, should be in or close to the city. They should not duplicate anything—school, recreation, entertainment, clinical services—that is available in the community. The child's entire experience should be one of testing himself in the very setting where he will one day live. The process demands that each child constantly examine the reality of his adjustment with his peers.

The first model clings to the traditional solution. Yet institutions that serve society's misfits have never experienced notable success. One by one, institutions have been abandoned by most of the other human services and replaced by community programs. The second model, still largely untested, moves corrections toward more adventurous and hopeful days.

Reception and classification centers

Reception and classification centers are relatively recent additions to the correctional scene. In earlier times there were no State systems, no central departments of corrections. Each prison was a separate entity, usually managed by its own board, which reported directly to the governor. If the State had more than one institution, either geography or the judge determined the appropriate one for the offender. As the number and variety of institutions increased, classification systems and agencies for central control evolved. Still later, the need for reception and classification centers seemed apparent.

Not all such centers operating today are distinct and separate facilities. Quite the contrary. In most States, the reception and classification function is performed in a section of one of its institutions—usually a maximum security facility. Most new prisoners, therefore, start their correctional experience in the most confining, most severe, and most depressing part of the State's system. After a period of observation, testing, and interviewing, an assignment is made, supposedly reflecting the best marriage between the inmate's needs and the system's resources.

Today 13 separate reception centers for adult felons (most of which are new) are in operation. Their designers have assigned priority to security on the premise that "a new fish is an unknown fish." Generally these institutions are the most depressing and regressive of all recently constructed correctional facilities in the United States, with the possible exception of county jails. Nowhere on the current correctional scene are there more bars, more barbed wire, more electronic surveillance devices, more clanging iron doors, and less activity and per-

sonal space. All this is justified on the grounds that the residents are still unknown and therefore untrustworthy. Moreover, their stay will be short.

A notable exception is worthy of brief description. Opened in 1967, the Reception and Medical Center at Lake Butler serves the State of Florida. The plant is campus style with several widely separated buildings occupying 52 acres enclosed with a double cyclone fence with towers. There is a great deal of movement as inmates circulate between the classification building, gymnasium, dining room, clinic, canteen, craft shops, visiting area, and dormitories.

Housing is of two varieties. Three-quarters of the men are assigned to medium security units scattered around the campus. One maximum security building accommodates the rest.

Men not specifically occupied by the demands of the classification process are encouraged to take part in a variety of recreational and self-betterment activities conducted all over the campus. An open-air visiting patio supplements the indoor visiting facility that ordinarily is used only in inclement weather. Relationship between staff and inmates appears casual. Movement is not regimented. Morale appears high, and escapes are rare.

The contrast between this reception center and one in an adjacent State is vivid. In the Medical and Diagnostic Center at Montgomery, Ala., the inmate spends the entire reception period in confinement except when he is being tested or interviewed. Closed circuit television replaces contact with correctional personnel—a contact especially needed during reception. In that center escapes and escape attempts are almost as common as suicide efforts. A visitor, observing the contrast between these two neighboring facilities, might speculate on the relative merits of the new correctional artifact vis-a-vis the responding human being and be heartened that man is not yet obsolete in this technological age.

As physical plants contrast, so does the sophistication of the reception and classification process. Diagnostic processes in reception centers range from a medical examination and a single inmate-caseworker interview without privacy to a full battery of tests, interviews, and psychiatric and medical examinations, supplemented by an orientation program. The process takes from 3 to 6 weeks, but one competent warden feels that 4 or 5 days should be sufficient. It seems unlikely, considering the limitations of contemporary behavioral science, that the process warrants more than a week.

THE FUTURE OF INSTITUTIONS

For adults

From the standpoint of rehabilitation and reintegration, the major adult institutions operated by the States represent the least promising component of corrections. This report takes the position that more offenders should be diverted from such adult institutions, that much of their present populations should be transferred to community-based programs, and that the construction of new major institutions should be postponed until such diversion and transfers have been achieved and the need for additional institutions is clearly established.

However, the need for some type of institution for adults cannot be denied. There will always be a hard core of intractable, possibly unsalvageable offenders who must be managed in secure facilities, of which there are already more than enough to meet the needs of the foreseeable future. These institutions have and will have a difficult task indeed. Nevertheless, the nature of imprisonment does not have to be as destructive in the future as it has been.

With growth of community-based corrections, emphasis on institutional programs should decline. However, the public has not yet fully supported the emerging community-oriented philosophy. An outdated philosophy continues to dominate the adult institution, thus perpetuating a number of contradictory assumptions and beliefs concerning institutional effectiveness.

One assumption is that the committed offender needs to change to become a functioning member of the larger law-abiding society. But it seems doubtful that such a change can really take place in the institution as it now exists.

Another assumption is that the correctional system wants to change. Even though research results have demonstrated the need for new approaches, traditional approaches have created inbred and self-perpetuating systems. Reintegration as an objective has become entangled with the desire for institutional order, security, and personal prestige. As long as the system exists chiefly to serve its own needs, any impending change represents a threat.

Correctional personnel who are assigned responsibility for the "treatment" of the committed offender traditionally have taken the attitude that they know what

is best for him and are best qualified to prescribe solutions to his problem. Descriptions of offender problems compiled by personnel also have been traditional—lack of vocational skills, educational deficiencies, bad attitudes, etc.

Aside from the contradictory assumptions prevailing in the correctional field, adult institutions are plagued by physical shortcomings described previously in this chapter. Adult facilities generally are architecturally antiquated, overcrowded, inflexible, too large for effective management, and geographically isolated from metropolitan areas where resources are most readily available.

A major problem in adult institutions is the long sentence, often related more directly to the type of crime committed than to the offender. How can vocational training and other skill-oriented programs be oriented to a job market 20 years hence? What should be done with a man who is capable of returning to society but must spend many more years in an institution?

Conversely, individuals sentenced to a minimum term often need a great deal of assistance. Little can be accomplished at the institutional level except to make the offender aware of his needs and to provide a link with community resources. For these offenders, the real assistance should be performed by community resource agencies.

Correctional administrators of the future will face a different institutional population from today's. As a result of diversion and community-based programs, the committed offender can be expected to be older, more experienced in criminal activity, and more difficult to work with. The staff will have to be more skilled, and smaller caseload ratios will have to be maintained. Personnel standards will change because of new needs.

If a new type of institution is to be substituted for the prison, the legitimate needs of society, the system, and the committed offender must be considered. The major issues are discussed in detail and applicable standards formulated in several other chapters, particularly Chapter 2, Rights of Offenders; Chapter 5, Sentencing; Chapter 6, Offender Classification; Chapter 7, Corrections and the Community; Chapter 12, Parole; Chapter 13, Organization and Administration; Chapter 14, Manpower; Chapter 15, Research and Development, Information and Statistics; and Chapter 16, Statutory Framework of Corrections.

For juveniles and youths

Use of State institutions for juveniles and youths should be discouraged. The emerging trend in treatment of young offenders is diversion from the criminal justice system. When diversion is not possible, the focus should be on community programs.

This emphasis reverses assumptions as to how youthful offenders should be treated. Previously there was a heavy emphasis on the use of institutional settings. Now it is believed that young offenders should be sent to an institution only when it can be demonstrated clearly that retaining them in the community would be a threat to the safety of others.

The nature of social institutions is such, however, that there is considerable delay between a change in philosophy and a change in practice. Despite major redirection of manpower and money toward both diversion and community programs, progress is slow. Use of major State institutions for juvenile delinquents is declining, but it seems likely that these facilities will continue to be used for some offenders for some time. Therefore, standards for their improvement and operation are required.

Arguments for diversion and alternatives to incarceration largely are negative, stemming from overwhelming disenchantment with the institution as a setting for reducing criminal behavior. Many arguments for community-based programs meet the test of common sense on their own merits, but are strengthened greatly by the failing record of "correctional" institutions. As long as institutional "treatment" is a dispositional alternative for the courts, there must be a continuing effort to minimize the inherently negative aspects and to support and maximize the positive features that distinguish community programs from institutionalization.

The failure of major juvenile and youth institutions to reduce crime is incontestable. Recidivism rates, imprecise as they may be, are notoriously high. The younger the person when entering an institution, the longer he is institutionalized, and the farther he progresses into the criminal justice system, the greater his chance of failure. It is important to distinguish some basic reasons why institutional programs continuously have failed to reduce the commission of crime by those released.

Lack of clarity as to goals and objectives has had marked influence on institutional programs. Programs in youth institutions have reflected a variety of objectives, many of which are conflicting. Both society and the other components of the criminal justice system have contributed to this confusion.

A judge may order a juvenile committed as an example to others or because there are no effective alternatives. The police officer, whose function is to provide community protection, may demand incarceration for the temporary protection it provides for the public. The public may be fearful and incensed at the seriousness of an offense and react by seeking retribution and punishment. To the offender, commitment means he has been banished from society.

Institutions do succeed in punishing, but they do not deter. They protect the community temporarily, but that protection does not last. They relieve the community of responsibility by removing the young offender, but they make successful reintegration unlikely. They change the committed offender, but the change is more likely to be negative than positive.

While it is true that society's charges to the correctional institution have not always been clear or consistent, corrections cannot continue to try to be all things to all publics. Nor can the institution continue to deny responsibility for articulation of goals or objectives. The historical tendency of corrections to view itself as the passive arm of other state agents has resulted in almost total preoccupation with maintaining order and avoiding scandal.

Youth institutions have implicitly accepted the objectives of isolation, control, and punishment, as evidenced by their operations, policies, and programs. They must seek ways to become more attuned to their role of reducing criminal behavior. That the goal of youth institutions is reduction of criminal behavior and reintegration into society must be made explicit. This pronouncement is not sufficient to eliminate their negative aspects, but it is a necessary first step.

Another contributing factor to the failure of major youth institutions has been their closed nature. The geographic location of most institutions is incompatible with a mission of services delivery. Their remote locations make family visitation difficult and preclude the opportunity to utilize the variety of community services available in metropolitan areas. They have been staffed largely with local residents, who, unlike the young offenders, are predominantly white, provincial, and institutionally oriented.

Most existing institutions were built before the concept of community programming gained acceptance. They were built to last; and most have outlasted the need for which they were established. For economic reasons, they were constructed to hold large numbers of people securely. Their structure has restricted the ability to change and strongly influenced the overall direction of institutional programming.

Many administrative policies and procedures in youth institutions also have contributed to their closed nature. The emphasis on security and control of so many people resulted in heavy restrictions on visiting, mail, phone calls, and participation with community residents in various activities and programs. For reasons that are now archaic, most institutions have been totally segregated by sex for both residents and staff.

All these factors have worked together to create an environment within the institution totally unlike that from which the population comes or to which it will return. The youths, often alienated already, who find themselves in such institutions, experience feelings of abandonment, hostility, and despair. Because many residents come from delinquent backgrounds, a delinquent subculture flourishes in the closed institution. This in turn, reinforces administrative preoccupation with security and control.

Large institutions are dehumanizing. They foster an increased degree of dependency that is contrary to behavior expected in the community. They force youths to participate in activities of little interest or use to them. They foster resident-staff relationships that are superficial, transient, and meaningless. They try to change the young offender without knowing how to effect that change or how to determine whether it occurs.

With the shift in emphasis to changing behavior and reintegration, the major institution's role in the total criminal justice system must be reexamined. Changing that role from one of merely housing society's failures to one of sharing responsibility for their reintegration requires an attitude change by the corrections profession. The historical inclination to accept total responsibility for offenders and the resulting isolation clearly are counterproductive.

The public must be involved in the correctional process. Public officials, community groups, universities, and planning bodies must be involved in program development and execution. Such sharing of responsibility will be a new opera-

tional role for institutions. This refocus implies substantive changes in policy, program direction, and organization.

The institution should be operated as a resource to meet specific needs without removing responsibility for the offender from the community. Direct involvement of family, school, work, and other social institutions and organizations can have a marked positive impact on decreasing the flow of delinquents into corrections and on the correctional process.

Community responsibility for offenders implies more than institutional tours or occasional parties. It implies participation in programs with institutional residents both inside the institution and in the community. Education, recreational, religious, civic, counseling, and vocational programs, regardless of where they are held, should have both institutional and community participants. Public acceptance of community-based programs is necessary, especially when they operate next door.

The institution always has existed in a changing world, but it has been slow to reflect change. Correctional administrators require the impetus of community development to respond and adopt to changing conditions and needs.

As diversionary and community programs expand, major institutions for juvenile and youthful offenders face an increasingly difficult task. These programs remove from the institution the most stable individuals who previously had a moderating influence on others' behavior.

The most hardened or habitual offender will represent an increasing proportion of those committed to institutions where adequate services can be provided by a professional staff, trained paraprofessionals and volunteers. All staff and participants must be prepared to serve a "helping" role.

More committed offenders than ever before have drug abuse problems. The ability to cope with this phenomenon in an environment isolated from the community has not been demonstrated. The aid of community residents must be enlisted in innovating, experimenting, and finding workable solutions.

Few treatment opportunities have been offered for the intractable offender. Common practice is to move such individuals from the general population and house them in segregation or adjustment centers. The concept of an ongoing treatment program for this group is recent but will become increasingly important as institutional populations change. The understanding and tolerance of the community will be crucial in working with these individuals.

It is no surprise that institutions have not been successful in reducing crime. The mystery is that they have not contributed even more to increasing crime. Meaningful changes can take place only by attention to the factors discussed here. Concentrated effort should be devoted to long-range planning, based on research and evaluation. Correctional history has demonstrated clearly that tinkering with the system by changing individual program areas without attention to the larger problems can achieve only incidental and haphazard improvement.

THE CORRECTIONAL DILEMMA

A major obstacle to the operation of an effective correctional program is that today's practitioners are forced to use the means of an older time. Dissatisfaction with correctional programs is related to the permanence of yesterday's institutions—both physical and ideological. We are saddled with the physical remains of last century's prisons and with an ideological legacy that equates criminal offenses with either moral or psychological illness. This legacy leads inexorably to two conclusions: (1) the sick person must be given "treatment" and (2) "treatment" should be in an institution removed from the community.

It is time to question this ideological inheritance. If New York has 31 times as many armed robberies as London, if Philadelphia has 44 times as many criminal homicides as Vienna, if Chicago has more burglaries than all of Japan, if Los Angeles has more drug addiction than all of Western Europe, then we must concentrate on the social and economic ills of New York, Philadelphia, Chicago, Los Angeles, and America.

This has not been our approach. We concentrate on "correcting" and "treating" the offender. This is a poor version of the "medical" model. What is needed is a good version of the "public health" model, an attempt to treat causes rather than symptoms.

If the war against crime is to be won, it will be won ultimately by correcting the conditions in our society that produce such an inordinate amount of criminal activity. These conditions include high unemployment, irrelevant education, racism, poor housing, family disintegration, and government corruption.

These, among others, form the freshets that make the streams that form the rivers that flood our criminal justice system and ultimately its correctional institutions.

Public policy during the coming decades should shift emphasis from the offender and concentrate on providing maximum protection to the public. A more just society, offering opportunity to all segments, would provide that protection. The prison, call it by any other name, will not. It is obsolete, cannot be reformed, should not be perpetuated through the false hope of forced "treatment," and should be repudiated as useless for any purpose other than locking away persons who are too dangerous to be allowed at large in free society.

For the later purpose we already have more prison space than we need or will need in the foreseeable future. Except where unusual justification can be proved, there is no need to build additional major institutions—reform schools, reformatories, prisons, or whatever euphemisms may be used to designate them—for at least 10 years. Further, the use of major State institutions for confinement of juveniles should be totally discontinued in favor of local community-based programs and facilities.

In view of the dearth of valid data to substantiate the rehabilitative effectiveness of institutional programs, we have no basis for designing more effective physical facilities. Under these circumstances, new construction would represent merely a crystallization and perpetuation of the past with all its futility.

Under prevailing practices, institutional construction costs are excessive. They now run as high as \$30,000 to \$45,000 per inmate in some jurisdictions. Costs of operation vary widely, from \$1,000 per year per inmate to more than \$12,000.* Construction of new major institutions should be deferred until effective correctional programs to govern planning and design can be identified, and until the growth of a more selected inmate population dictates. The potentially tremendous savings should be expended more productively in improving probation, parole, and community-based programs and facilities.

PLANNING NEW INSTITUTIONS

It cannot be overemphasized that unusually convincing justification of need should be required as a logical precedent to planning a new institution. Yet there are many impediments to recognizing this rationality in planning. One of them is fragmentation of the criminal justice system.

The traditional division of the entire system into several parts—police, courts, institutions, and field services—and more fundamentally, the concept that the criminal justice system exists apart from society and unto itself, have created an administrative and organizational climate that allows the construction of new institutions with little or no real consideration of other possible solutions.

The most fundamental question to be addressed in the planning of institutions is the reason for their existence. They obviously represent the harshest, most drastic end of the spectrum of possible correctional response.

Different States have different philosophies. Some rely heavily on incarceration, others do not. (See Table 11.3.) Some concentrate on size and security; others build more varied facilities.

This absence of correctional consistency poses a serious handicap to the administration of an equitable criminal justice system.

If protection of society is seen as the purpose of the criminal justice system, and if it is felt that this protection requires sequestration of some offenders, then institutions must exist to carry out this purpose. Immediately the planner is confronted with the question, "What kind of institutions?"

TABLE 11.3.—Comparative use of State correctional institutions

Ratio of prisoners in State institutions to State population:	Number of States with ratio
1 to 2,501 and over.....	1
1 to 2,001-2,500.....	4
1 to 1,501-2,000.....	8
1 to 1,001-1,500.....	21
1 to 501-1,000.....	16

Sources: Data from 1970 Census and ACA 1971 Directory.

*Data derived from a 2-year study of more than 100 institutions by the American Foundation Institute of Corrections.

Of fundamental importance to any planning are the values and assumptions dictating the policies. Programs and structural responses are fixed by those policies. Their underlying values affect all subsequent planning and implementation. For nearly two centuries this Nation has used the correctional institution as its primary response to illegal behavior. It is long past time for legislators, administrators, and planners to collect and examine the results of this vast institutional experience. Scholarly evaluation currently available suggests that our prisons have been deficient in at least three crucial areas—conception, design, and operation. These areas and two others—location and size—should be given serious consideration in all correctional planning.

Conception

The correctional institution has been poorly conceived, in that it is intended to hide rather than heal. It is the punitive, repressive arm whose function is to do the system's "dirty work."

Design

The designers of most correctional institutions generally have been preoccupied with security. The result is that they create demoralizing and dehumanizing environments. The facility design precludes any experience that could foster social growth or behavioral improvement. Indeed, institutions more often breed hostility and resentment and strip inmates of dignity, choice, and a sense of self-worth.

Operation

The punitive function and design of correctional institutions is reflected in their operation. Containment and control command a lion's share of resources. Activities aimed at modifying behavior and attitudes or at developing skills often are limited or absent altogether. The daily routine is dominated by frustration, idleness, and resentment, punctuated by the aggressive behavior such conditions breed.

Correctional institutions often are designed and constructed with little consideration of their place in the overall corrections system. Some system needs are duplicated, while others go unmet. Many administrators of maximum and medium security centers state that only 20 to 25 percent of their inmates need that level of security. Yet centers offering community programs are extremely scarce or nonexistent.

Improper design may prevent an institution from fulfilling its assigned function. Use of dormitories in maximum security prisons, for example, permits physical violence and exploitation to become a way of life. Conversely, inmates who are considered a threat to others may be housed in single inside cells, with fixed furniture, security-type plumbing, and grilled fronts and doors.

Institutions intended as "correction centers" may have no more than two or three classrooms and a small number of poorly equipped shops to serve as many as a thousand inmates. This is token rehabilitation. Programs and facilities provided by "centers" that hold persons 24 hours a day from one year to many years may be totally inadequate for occupying the inmate's time. Here idleness is a way of life.

Lack of funds, haphazard planning, faulty construction, and inadequate programing and staffing all may account for failure to design and build institutions to serve their assigned functions adequately. Fund allocations may be insufficient because costs are unknown. Space may be programed without knowledge of the actual needs for a particular activity. Planners and programers may develop schemes without consulting architects and engineers. Architects may be engaged without being given adequate guidelines.

The architect often is inexperienced in design and construction of correctional facilities. To overcome this lack he may visit an institution serving an entirely different purpose. Errors are repeated and compounded because few institutions are worthy of emulation. New mistakes and inconsistencies, therefore, are built on top of existing ones.

Location

Location has a strong influence on an institution's total operation. Most locations are chosen for reasons bearing no relationship to rationality or planning. Results of poor site selection include inaccessibility, staffing difficulty, and lack of community orientation.

In the early days of America's prison history, penitentiaries were built where the people were—Philadelphia, Pittsburgh, Columbus, Trenton, Baltimore, and Richmond. The urban location had nothing to do with the prevailing theory of penology. The idea was to isolate the prisoner—and he was isolated, even though his prison walls pressed tightly against the city streets.

During the last century, rural settings usually were chosen for new correctional institutions. This remoteness may have been relatively unimportant when America was predominantly a farm country. Lifestyles—rural and urban—had not yet hardened in their contrasting molds. At a time when the prison was viewed almost exclusively as a place of quarantine, where better than the remote reaches of a State?

These no longer are valid reasons, nor have they been for a quarter of a century. America has become increasingly urban. Lifestyles and values, born not only of population diversity but of ethnic differences, create gaps of understanding wider than the miles separating city dwellers from farmers.

The rhetoric, if not the purpose, of corrections also has changed. The ultimate objective now being expressed no longer is quarantine but reintegration—the adjustment of the offender in and to the real world.

But in 1972 correctional institutions still are being built in some of the most isolated parts of the States. Powerful political leaders may know little about "reintegration," but they know a pork barrel when they see one. Urbanites resist the location of prisons in the cities. They may agree on the need for "reintegration" of the ex-offender, but this objective is forgotten when city dwellers see a prison in their midst as increasing street crime and diminishing property values.

The serious disadvantages of continuing to construct correctional institutions in sparsely populated areas include:

1. The impossibility of using urban academic and social services or medical and psychiatric resources of the city.
2. The difficulty of recruiting staff members—teachers, psychologists, sociologists, social workers, researchers, nurses, dentists, and physicians—to work in rural areas.
3. The prolonged interruption of offenders' contacts with friends and relatives, which are important to the reintegration process.
4. The absence of meaningful work- and study-release programs.
5. Most importantly, the consignment of corrections to the status of a divided house dominated by rural white guards and administrators unable to understand or communicate with Black, Chicano, Puerto Rican, and other urban minority inmates.

Other human services long since have moved away from dependence upon the congregate rural institution. Almshouses of old have been replaced with family assistance; workhouses, with employment insurance; orphanages, with foster homes and aid to dependent children; colonies for imbeciles, with day care and sheltered workshops. Drugs have made obsolete the disinal epileptic facilities and the tuberculosis sanitariums of yesteryear. Asylums are rapidly yielding to community mental health approaches.

All of these human services changed because isolated institutions proved to be unsuccessful, expensive, and even counterproductive as responses to specific human problems. They also changed because better treatment methods were developed, making the isolated institutions largely obsolete and treatment in the natural community setting feasible and advisable.

And so it should be with corrections.

Size

Traditionally, institutions have been very large, often accommodating up to two and three thousand inmates. The inevitable consequence has been development of an organizational and operational monstrosity. Separation of large numbers of people from society and mass confinement have produced a management problem of staggering dimensions. The tensions and frustrations inherent in imprisonment are magnified by the herding together of troubled people. Merely "keeping the lid on" has become the real operational goal. The idea of reform or rehabilitation has succumbed to that of sheer containment, a goal of illimited benefit to society.

The usual response to bigness has been regimentation and uniformity. Individuals become subjugated to the needs generated by the institution. Uniformity is translated into depersonalization. A human being ceases to be identified by

the usual points of reference, such as his name, his job, or family role. He becomes a number, identified by the cellblock where he sleeps. Such practices reflect maladaptation resulting from size.

Almost every warden and superintendent states that his institution is too big. This hugeness has been the product of many factors, including economics, land availability, population of the jurisdiction, the influence of Parkinson's Law, and an American fetish that equates bigness with quality. (A half century ago, one State built the "world's biggest wall" only to bow to another jurisdiction that gleefully surpassed it two years later.)

Any attempt to establish an optimum size is a meaningless exercise unless size is related directly to the institution's operation. The institution should be small enough to enable the superintendent to know every inmate's name and to relate personally to each person in his charge. Unless the inmate has contact with the person who has policy responsibility and who can assist him with his personal difficulties and requests, he will feel that the facility's prime purpose is to serve the system and not him. The reverse also is true: if the superintendent does not have contact with the inmates, his decisions will be determined by demands of the system and not by inmate needs.

The size of the inmate housing unit is of critical importance because it must satisfy several conditions: security, counseling, inmate social and informal activities, and formal program requirements. Although security conditions traditionally have been met with hardware and electronic equipment, these means contradict the purposes of corrections and should be deemphasized. Security is maintained better by providing small housing units where personal supervision and inmate-staff contact are possible and disturbances can be contained easily.

Informal counseling is easier in the small housing unit because the inmate-counselor ratio is not as threatening as in the massive cellblock and negative group pressure on the inmate is minimized.

Many institutions are poorly cooled, heated, and ventilated. Lighting levels may be below acceptable limits. Bathroom facilities often are unsanitary, too few, and too public. Privacy and personal space hardly ever are provided because of overriding preoccupation with security. Without privacy and personal space, inmates become tense and many begin to react with hostility. As tension and hostility grow, security requirements increase; and a negative cycle is put into play.

A REVIEW OF CORRECTIONAL STANDARDS

Correctional practice in the United States seems to defy standardization. Each State is virtually independent in its choice of correctional options. The U.S. Bureau of Prisons operates Federal prisons and has no mandate to regulate State institutions. The National Bureau of Standards has made studies for corrections but has no means of influencing change. The Law Enforcement Assistance Administration, under the provisions of the Safe Streets Act, has provided the impetus for State and local governments to determine their own approaches to corrections and other criminal justice problems. Consequently, the efforts of LEAA in large part have been directed to monitoring the fiscal and not the programmatic aspects of its grants.

In 1970 Congress created a new section of the Omnibus Crime Control and Safe Streets Act. This section (Part E) authorized LEAA to make grants to States that incorporated "advanced techniques" and "advanced practices" in a comprehensive State corrections plan. The standards in this report can serve as possible guideposts for the advanced techniques and practices. This promise of corrections reform will be met, and Part E funds can be used by States to implement the standards postulated in this chapter and this report.

The Constitution of the United States reserves to the States the power to promote the health, safety, morals, and general welfare of its citizens—the so-called police power—and in large part because of this power and the implications of Federalism, the legislative and executive branches of the national government never have been authoritative in establishing or enforcing correctional standards. The judiciary is becoming so. The Federal Judiciary, however, is drawing upon the "due process" and "cruel and unusual punishment" amendments to the Constitution to define new standards for corrections and, more importantly, is enforcing them. Judges see the Constitution as the ultimate source of certain correctional standards articulated in various court decisions. Thus in *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), aff'd., 443 F. 2d. 304 (8th Cir. 1971), the District Court, with the ultimate concurrence of the Federal Court of Appeals,

held that imprisonment in the Arkansas State Prison System constituted "cruel and unusual punishment" and gave the State two years to correct the situation or release all prisoners then incarcerated in the State facilities.

Some statutes also are a source of standards. Every jurisdiction has its own laws spelling out certain requirements for the correctional establishment. A few examples show they usually are explicit.

"All prisoners who are suffering from any disease, shall be segregated from the prisoners who are in good physical condition.

"All prisoners who are found or considered to be habitual criminals, evil-inclined, shall be segregated, and not allowed to be among or mingle with those of opposite inclination.

"Every warden shall provide that such person shall have, at least two hours daily, physical exercise in the open.

"No prisoner shall be confined in a cell occupied by more than one individual."⁷

These and other standard-setting statutes are honored most frequently in the breach. In April, 1972, for example, the Court of Common Pleas in Philadelphia found in that city's prison system 161 violations of State statutes. Together, said the court, these transgressions added up to the violation of those provisions of both State and Federal Constitutions dealing with cruel and unusual punishment.⁸

The United Nations also has developed policy statements that attempt to set standards for correctional practices. Usually they are broad, idealistic, and ignored.

Private groups have contributed richly to the articulation of correctional standards. The objectives of these groups vary. An association of correctional professionals will have a different orientation than a group of civil libertarians or a manufacturer of security equipment. Each promotes those standards most in accord with its own objectives. The presence of so many interested groups, coupled with the lack of specific enforcement legislation at the State level, has resulted in an unorganized profusion of standards that sometimes are helpful but often are confusing. None provides the comfort of unquestioned authority or substantiated research.

Currently existing standards seem to be more oriented to administration than to goals or to offenders. This is quite natural because neither inmates nor philosophers usually serve on principal standard-writing committees. Individuals who do serve have careers and professional fortunes tied up in the operation of institutions. Results are colored by the limits of vision individuals bring to the task. Fundamental, essential changes at the goal level likely will come from a body not restricted by an operational orientation. Change, for a variety of reasons, seldom comes from within and hardly ever without resistance.

In view of the foregoing chapter it appears inappropriate to set forth formal standards applying to the creation of new major institutions. Despite such arguments, construction of additional institutions probably will continue to be considered by some jurisdictions. A standard applying to such planning, therefore, is suggested herein, but it can be no more than a statement of principles.

More appropriate is the standard for modification of existing institutions to provide a more humane environment for persons who must be confined. If proof cannot be offered that these institutions are serving a rehabilitative purpose, they must at least be operated to minimize the damage they do to those confined. If the institutions can even be neutralized in this respect, it will be an accomplishment far exceeding any that has occurred so far in American penology. It also will be an essential landmark in the quest for a solution of the correctional riddle.⁹

STANDARD 11.1: PLANNING NEW CORRECTIONAL INSTITUTIONS

Each correctional agency administering State institutions for juvenile or adult offenders should adopt immediately a policy of not building new major

⁷ Prndon's Penn. Stat. Ann., Title 61, ch. 1, secs. 2, 4, and 101.

⁸ Court of Common Pleas for the County of Philadelphia, Pa., February Term 1971 # 71-2437, Complaint in Equity (Class Action), filed Apr. 7, 1972.

⁹ Many of the standards that follow reflect the work of an intensive on-site study of over 100 of the newest correctional institutions made in 1971 by the American Foundation Institute of Corrections, Philadelphia. An extensive study with a multidisciplinary orientation, this project examined the relationship of correctional architecture and program. The experience and opinions of architects, psychologists, correctional administrators, officers, counselors, and inmates were used in the formulation of standards. A book based on the study is William G. Nagel, *The New Red Barn: A Critical Look at the Modern American Prison* (Walker, 1973).

institutions for juveniles under any circumstances, and not building new institutions for adults unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible. In the latter instance, the analysis should conform generally to the "total system planning" discussed in Chapter 9. If this effort proves conclusively that a new institution for adults is essential, these factors should characterize the planning design process:

1. A collaborative planning effort should identify the purpose of the physical plant.

2. The size of the inmate population of the projected institution should be small enough to allow security without excessive regimentation, surveillance equipment, or repressive hardware.

3. The location of the institution should be selected on the basis of its proximity to:

a. The communities from which the inmates come.

b. Areas capable of providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population, and capable of supporting staff lifestyles and community service requirements.

c. Areas that have community services and activities to support the correctional goal, including social services, schools, hospitals, universities, and employment opportunities.

d. The courts and auxiliary correctional agencies.

e. Public transportation.

4. The physical environment of a new institution should be designed with consideration to:

a. Provision of privacy and personal space.

b. Minimization of noise.

c. Reduction of sensory deprivation.

d. Encouragement of constructive inmate-staff relationships.

e. Provision of adequate utility services.

5. Provision also should be made for:

a. Dignified facilities for inmate visiting.

b. Individual and group counseling.

c. Education, vocational training, and workshops designed to accommodate small numbers of inmates and to facilitate supervision.

d. Recreation yards for each housing unit as well as larger recreational facilities accessible to the entire inmate population.

e. Medical and hospital facilities.

Commentary

The facts set forth earlier in this chapter lead logically to the conclusion that no new institutions for adults should be built and existing institutions for juveniles should be closed. The primary purpose to be served in dealing with juveniles is their rehabilitation and reintegration, a purpose which cannot be served satisfactorily by State institutions. In fact, commitment to a major institution is more likely to confirm juveniles in delinquent and criminal patterns of behavior.

Similar considerations apply to adults, but it is recognized that for the safety of the public some offenders must be locked away. The Commission considers that sufficient security-type institutions already exist for this purpose. However, it is conceded that in rare instances a State may not have any institution that can be modified under Standard 11.2 for satisfactory service, and further, may have its existing facilities condemned by court order.

The decision to build a new major institution for adults should be the result of a planning process that reviews the purposes of corrections, assesses the physical plants and operations of existing institutions and programs in light of these purposes, examines all possible alternatives, and identifies a clear and indispensable role for a new institution. The process should consider corrections as part of a broader human service network and as an integral system, rather than an aggregate of isolated entities.

The population of existing institutions and their operation should be examined to evaluate the appropriateness and effectiveness of programs with reference to inmate needs, particularly the need for custody. All inmates currently held in institutions who do not require confinement should be removed to community programs. This procedure may make it possible to close work camps and prison

farms and to release substantial numbers of people from these facilities and medium security institutions. Inmates housed in maximum security prisons but not requiring high security should be transferred to medium security institutions or released to community facilities and programs if they do not constitute a threat to others.

If this process establishes a clearly identifiable need for a new physical plant, its planning and design should include the simultaneous participation of administrators, architects, planners, inmates, community representatives, and those involved in developing and operating inmate programs and activities.

This collaborative process should set forth the purpose of the new physical plant—in terms of its correctional role, type of inmate population, geographic area to be served, and its relationship to community-based transitional programs and to other elements of the correctional system. The design of the new institution should fit this purpose.

The projected institution should be small enough to enable the superintendent to develop a personal relationship with each inmate. It should facilitate the effective operation of its programs and the efficient use of its professional staff. It should also fit in with its environment with respect to the size of the buildings and the level of activity they generate. The number of inmates housed in a single spatially discrete unit should not exceed 26, and for special program requirements, the maximum should be lower.

In States where it is feasible, a location for the institution not more than an hour's travel time from the homes of a majority of its inmates should be selected. The surrounding area should be able to support the community program emphasis of the institution and offer services and a lifestyle attractive to staff. The institution should not be located in small, closed communities with limited services and poor schools and recreational and cultural activities. It should be near enough to courts and auxiliary correctional agencies to facilitate the transfer of inmates to and from jails and courts and supporting programs. It should also be located on public transportation routes to facilitate visits to inmates by families and friends.

The design of the institution should provide for privacy and personal space by the use of single rooms with a floor area of at least 80 square feet per man, and a clear floor-to-ceiling height of 8 feet. Dormitories should not be used. All rooms should have solid fronts and solid doors with glazed observation panels. Toilets and showers should have modesty screens. The furnishings provided should enable the inmate to personalize his room.

Noise should be minimized by eliminating sources, placing sound barriers between activity spaces, decreasing size of spaces, and using noise-absorbing materials. Noise levels should be low enough not to interfere with normal human activities—sleeping, dining, thinking, conversing, and reading.

Sensory deprivation may be reduced by providing variety in terms of space, surface textures and colors, and both artificial and natural lighting. The institution should be spatially organized to offer a variety of movement options, both enclosed and outdoor. Lighting in individual rooms should be occupant-controlled as well as centrally controlled. All rooms should have outside windows with areas of 10 square feet or more. The setting should be "normal" and human, with spaces and materials as similar as possible to their non-institution counterparts.

Constructive inmate-staff relationships may be encouraged by designing activity spaces to accommodate only the number of inmates that can be appropriately supervised. (For example, dining halls holding more than 100 should be avoided.) Physical separation of staff and inmates should be minimized.

Utility services should furnish adequate heating, air conditioning, and ventilation for all areas including inmate housing. Temperatures should not exceed 80° at any time or 70° during normal sleeping hours. Adequate toilet facilities should be provided in all areas. Lighting levels should be 50-75 footcandles.

Program spaces should be designed to facilitate their special purposes. Visiting areas should be large enough to avoid undue restrictions on visiting hours and to provide dignified, private surroundings without undue emphasis on security. Separate areas should be provided for individual and group counseling. Education, vocational training, and work areas should be designed for small groups of inmates and furnished with modern equipment laid out to facilitate supervision. Outdoor recreation spaces should be provided for each housing unit, with larger spaces that will accommodate the entire inmate population. Medical and hospital facilities should meet American hospital accreditation standards,

even though they may not be large enough for formal accreditation (usually requiring more than 25 beds).

References

1. Moyer, Frederick, and Flynn, Edith, eds. *Correctional Environments*. Urbana: University of Illinois Department of Architecture, 1971.

Related standards

The following standards may be applicable in implementing Standard 11.1.

- 2.5 Healthful Surroundings.
- 2.6 Medical Care.
- 6.2 Classification for Inmate Management.
- 7.4 Inmate Involvement in Community Programs.
- 9.1 Total System Planning.
- 9.8 Local Correctional Facility Programming.
- 9.10 Local Facility Evaluation and Planning.
- 13.2 Planning and Organization.

STANDARD 11.2: MODIFICATION OF EXISTING INSTITUTIONS

Each correctional agency administering State institutions for juvenile or adult offenders should undertake immediately a 5-year program of reexamining existing institutions to minimize their use, and, for those who must be incarcerated, modifying the institutions to minimize the deleterious effects of excessive regimentation and harmful physical environments imposed by physical plants.

1. A collaborative planning effort should be made to determine the legitimate role of each institution in the correctional system.
2. If the average population of an institution is too large to facilitate the purposes stated in paragraph 2 of Standard 11.1, it should be reduced.
3. Consideration should be given to the abandonment of adult institutions that do not fit the location criteria of paragraph 3 of Standard 11.1.
4. All major institutions for juveniles should be phased out over the 5-year period.
5. The physical environments of the adult institutions to be retained should be modified to achieve the objectives stated in paragraph 4 of Standard 11.1 as to:
 - a. Provision of privacy and personal space.
 - b. Minimization of noise.
 - e. Reduction of sensory deprivation.
 - d. Reduction in size of inmate activity spaces to facilitate constructive inmate-staff relationships.
 - e. Provision of adequate utility services.
6. Plant modification of retained institutions should also be undertaken to provide larger, more dignified, and more informal visiting facilities; spaces for formal and informal individual and group counseling, education and vocational training, workshops, recreational facilities, and medical and hospital facilities; and such additional program spaces as may fit the identified purposes of the institution.
7. A reexamination of the purposes and physical facilities of each existing institution should be undertaken at least every 5 years, in connection with continuing long-range planning for the entire corrections system.

Commentary

Most existing major institutions were built with undue emphasis on custodial security and the control of large numbers of inmates. Experience has demonstrated that confinement under these circumstances is more destructive than rehabilitative and that substantial numbers of offenders can be handled more effectively in the community without endangering public safety.

The use of such facilities should be reexamined with a view toward reducing commitment rates and increasing parole release rates. The use of State institutions should be limited to adult offenders who must be incarcerated for immediate or long-range protection of the public. The use of State institutions for juveniles should be phased out, and the responsibility for these offenders transferred to local communities.

The adult institutions should be studied periodically to determine the specific purposes they should serve in the correctional system, and institutions that are badly located or cannot be modified to fit the criteria of Standard 11.1.

The entire process of reexamination should be accomplished through the collaborative planning effort specified in paragraph 1 of Standard 11.1.

References

1. Moyer, Frederick, and Flynn, Edith, eds. *Correctional Environment*. Urbana: University of Illinois Department of Architecture, 1971.

Related standards

The following standards may be applicable in implementing Standard 11.2.

2.5 Healthful Surroundings.

2.6 Medical Care.

6.2 Classification for Inmate Management.

7.4 Inmate Involvement in Community Programs.

9.1 Total System Planning.

9.8 Local Correctional Facility Programming.

9.10 Local Facility Evaluation and Planning.

13.2 Planning and Organization.

Shift of correctional emphasis from institutions to community programs

The prison, the reformatory, and the jail have achieved only a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it. Their very nature insures failure. Mass living and bureaucratic management of large numbers of human beings are counter-productive to the goals of positive behavior change and reintegration. These isolated and closed societies are incompatible with the world outside. Normally desirable characteristics such as self-confidence, initiative, sociability, and leadership are counteracted by the experience of incarceration. Individuality is lost and the spirit of man broken through the performance of deadening routine and endless hours of idleness.

The blame for this insufferable system cannot be placed on the shoulders of corrections alone. Correctional personnel have decelerated, at great length and in vain, public apathy and decades of financial neglect. The state of corrections today reflects in no small part society's past expectations as well as its evasion of its responsibilities.

In view of the bankruptcy of penal institutions, it would be a grave mistake to continue to provide new settings for the traditional approach in corrections. The penitentiary idea must succumb to a new concept: community corrections. Therefore, the Commission recommends a 10-year moratorium on construction of institutions except under circumstances set forth under Standard 11. The moratorium period should be used for planning to utilize noninstitutional means. This planning must place maximum emphasis on expansion of community correctional programs and development of alternatives to incarceration.

At the same time, every effort must be made to phase out existing mega-institutions at the earliest possible time. To do so will require a large and immediate increase in use of alternatives to incarceration, to the greatest extent that is consistent with public safety.

It is especially important to impose a moratorium on construction of institutions for youthful offenders. Current efforts in Massachusetts and Minnesota to halt imprisonment of juveniles are blazing a trail that hopefully will set the pattern for the rest of the Nation.

It is of utmost importance to recognize that the concept of community-based corrections does not imply new institutions and facilities. This point is especially important in light of the flurry of construction plans and projects that have accompanied recent developments in community corrections. While it is recognized that existing facilities may be inadequate for the purposes outlined in this report, replacements should be made only after the planning stipulated in the following section is completed. In its truest sense, community corrections is the widest possible use of noninstitutional correctional programs designed to reeducate and redirect the attitudes and behavior of offenders in order to fully integrate or reintegrate them into the community as law-abiding members of society.

Programs must be given preference over facilities. The blueprint for corrections must read: more alternatives, more programs, more professionals to conduct these programs, and more public involvement in the processes of corrections.

In the absence of a moratorium on traditional construction, corrections in the 1970's could repeat a two-century-old error and fail to benefit from the lessons of history. For it was a similar reform movement in 1787 in which our fledgling country, seeking to establish institutions predicated on the concept of the dignity of man, embarked on a prison construction program without precedent. The physical and ideological legacy of this movement stands recognized today as one

of the major obstacles to correctional reform and a prime example of man's inhumanity to man. So we must guard against embarking on a financially ruinous construction program that merely would replace prisons, reformatories, jails, and detention homes with facilities bearing more palatable names and wearing more attractive facades but fundamentally unchanged.

The trend toward community-based corrections is one of the most promising developments in corrections today. It is based on the recognition that delinquency and crime are symptoms of failure of the community, as well as of the offender, and that a successful reduction of crime requires changes in both. The compelling reasons for embracing the concept of community corrections and for embarking on a national strategy to move from our current institution-oriented correctional system to one that is community-based are emphasized throughout this report.

One of the most important factors in the transition from traditional to community-based corrections is sentencing, which may determine whether a defendant is incarcerated or returned to the community under a range of nonresidential and residential community-based programs. Sentencing may also set upper or lower limits for duration of correctional responsibility.

Sentencing practices in this country reflect an appalling state of affairs. In too many jurisdictions, the decision to sentence a man to years behind bars is made by judges who know nothing but a man's name and the crime with which he is charged. Sentencing is inconsistent, and in many jurisdictions there is a predilection for imprisonment as opposed to less severe sanctions. The entire problem is compounded by unreasonably long sentences, often with mandatory minimums, which are rarely matched by other Western nations in their severity and harshness.

In light of these facts, the Commission recommends specific statutory changes and enabling legislation to improve sentencing effectiveness. The report recommends expanding sentencing options for a wide range of community-based correctional programs, shorter sentences for less serious offenders, and more selective use of imprisonment. Institutionalization should be reserved for those offenders whose repetitive, destructive behavior patterns seriously threaten the safety of the community.

The confidence and cooperation of the law enforcement and judicial branches of the criminal justice system are critical to the transition to community-based corrections. Furthermore, public involvement and public trust are indispensable to achievement of such a major change. While total system planning will reduce corrections' traditional isolation and lead to establishment of functional relationships with other parts of the system, gaining public confidence will be far more difficult.

The time has come for fundamental changes in corrections. Improbable as it may sound because of the high cost of prison construction, it would be easier for this Nation to replace its obsolete correctional system with another generation of institutions than to embrace the concept of community corrections. The reasons are as distressing as they are simple. Hiding our social problems behind a progressive-looking facade requires only sufficient funding. Community corrections requires radically changed attitudes toward the offender and a new social commitment.

PRISONS PLAN TO SKIRT REHABILITATION

(By Lawrence Meyer, Washington Post Staff Writer)

The federal Bureau of Prisons is making a major shift in its correctional policies away from rehabilitation for all prisoners, according to Norman A. Carlson, federal director of prisons.

More emphasis will be placed on viewing imprisonment as a means of retribution or punishment and deterrence, Carlson said.

The prison bureau has not yet formulated a new policy, a spokesman said, but it already has begun backing away from rehabilitation by changing the terms it uses and by dropping a requirement that all prisoners choose some educational or vocational program while in prison.

"What we want to do, and we still haven't done it yet, is to make programs voluntary," the spokesman said. One option that will be introduced to prisoners, in addition to taking educational and vocational programs, "is not to take any of the programs," the spokesman said.

Although Carlson denies that the new policy results from political pressure, asserting that it reflects his own thinking and that of experts who have begun

speaking out on correctional theories, the new policy appears to be in line with criticisms voiced by former Attorney General William B. Saxbe.

At least one warden, Dr. Martin G. Groder, a psychiatrist who was to direct the Federal Center for Correctional Research in Butner, N.C., when it is completed, has resigned. Groder charged that the Bureau of Prisons is returning to a hard-line, "warehousing" approach for prisoners.

"I will say that, yes, we are re-evaluating a number of activities and programs," Carlson said in an interview. "For the last few years in particular, most people in this field, particularly those of us in the bureau, have assumed that rehabilitation is the only rationale for incarceration, that people are sentenced essentially for that purpose.

"Historically, there've been three reasons or three rationales for incarceration . . . rehabilitation, retribution and deterrence," Carlson said. "I think we've placed a great deal of emphasis just on the rehabilitation side of it, essentially adopting what I would classify and call the 'medical model,' which in a sense implies that criminals or offenders are sick, that they can be sent to an institution where they're diagnosed, and later treated. When they're treated, they're cured."

Federal and state prison officials who have made these assumptions, Carlson said, now are beginning to ask themselves some "basic questions" about the purpose of prisons and their role in society.

"Rehabilitation as such," Carlson said, "has never really conclusively demonstrated that it's the panacea . . . We should not lose sight of the fact that there are three basic rationales for incarceration (rehabilitation, retribution and deterrence) which traditionally have been the three I mentioned. Perhaps, give equal weight or more equal weight to the three rather than saying rehabilitation is essentially the sole rationale."

At the same time, however, Carlson emphasized, "I'm not saying that we're going back to an era of punishment. This is not at all what I'm talking about. As a matter of fact, I think we ought to make our institutions even more humane. Obviously, they're not very humane today, but we ought to strive to make them as humane as we possibly can."

Groder, who had spent more than two years preparing to be the first director of the federal correctional research center, said he had been told he was going to be transferred to the medical center for federal prisoners at Springfield, Mo.

Carlson said that because of delays in construction at Butner, coupled with a "critical need" for a psychiatrist in Springfield, he asked Groder to leave Butner to become mental health coordinator there.

The Springfield facility, which is supposed to have five psychiatrists, has had none for two months, according to Carlson. He said that Groder was the only psychiatrist available within the federal corrections system. Attempts to hire psychiatrists outside the system have been unsuccessful, Carlson said, because the federal government pays a maximum of only \$36,000 to psychiatrists.

Groder, who has developed a voluntary rehabilitation program still in use in federal correction facilities and for which he claims a much higher than normal rate of success, issued a statement April 3 saying that "plans for research on effective correctional programs for volunteer prisoners" at Butner "have recently been abandoned" by the prison bureau.

Carlson denied that his request to Groder to transfer to Springfield reflected any basic change for the Butner facility. Carlson did say, however, that the program at Butner "may be changed from some of Dr. Groder's plans now that he's leaving . . . We're not going to throw out everything that Dr. Groder proposed." Carlson added that the Butner facility will not necessarily take "any or all or a large part of what [Groder] developed."

Attorney General Edward H. Levi, who was asked at his first press conference whether federal prisons were moving toward a hard-line position, said that "as a general matter, the criminal administration area, people . . . have much less hope for rehabilitation today than they used to have. And so my guess is that while it's going to be important to have special places which concentrate on rehabilitation, much less emphasis in general is going to be given to that, because we don't know how to do it."

At his last press conference as Attorney General last Dec. 13, Saxbe said, "There's only two ways that you can handle crime." The hard way, Saxbe said, is "to be tough on criminals, to lock them up, to use punishment and this is a deterrent. The easy way is to try to cover it over with bunkum and the easy way puts them back on the street . . ."

"We have had all kinds of people come in and say that we could cure crime in this country by rehabilitation, by diversion, by probation, and we just haven't made it work and I'm not sure whether we can make it work."

Carlson said that the new emphasis in the 47 federal institutions, which hold 23,000 prisoners, reflected a change in thinking in both the academic and prison communities regarding the proper role of prisons.

"You can't coerce people to change," Carlson said. "You can facilitate change by number one, providing a humane atmosphere and, number two, programs—if the inmate's motivated, assist him in changing. But again, it's up to the individual inmate to want to change."

THE NATIONAL PRISON PROJECT

A Response to the Interview with Norman Carlson, Director of the Federal Bureau of Prisons, reported in *The Washington Post* on April 13, 1975 by Herman Schwartz, Professor of Law, State University of New York at Buffalo Law School; Chairman, Steering Committee, The National Prison Project of the American Civil Liberties Union Foundation; Chairman, Subcommittee on Corrections of New York State Governor's Task Force on Law Enforcement.

Prisoners' rights lawyers don't often agree with prison administrators but this is one of those times. The Federal Bureau of Prisons operates the largest prison system in the country with over 24,000 prisoners, and its Director, Norman Carlson, is absolutely right in seeking to abandon the rehabilitative ideal. It hasn't worked and it probably can't work. Rehabilitation in prison is at best a myth and at worst a fraud.

Injustices and cruelties in the name of rehabilitation are myriad. One of the most recent outrages was the Bureau of Prisons' highly publicized behavior modification program at its Springfield, Missouri Federal Medical Center called Special Treatment and Rehabilitative Training (START). In a paper presented to the April 1974 meeting of the Easter Psychological Association, Professor James G. Holland described START as an attempt:

"... to make passive, nonassertive, depersonalized inmates of the total institution, to shape the institutional neurosis described in Goffman's *Asylums*. From this point of view, it was a special treatment program for the few who had managed to maintain their individuality, leadership, self-interest, and independence often felt to be important behaviors outside of institutions but somehow intolerable within their walls. At best, the aim of the program was adjustment—adjustment to the peculiar world of prisons; at worst, the program was exploitative. The passive prisoner who responds immediately to requests or even suggestions, who never talks back, and of course, never organizes other prisoners, is the kind of prisoner who would make the work-a-day life of the guard simpler, safer, and more comfortable."

Mr. Carlson's expressed concern for humane institutions and programs must be examined in the light of the START program, closed by the Bureau in the spring of 1974 while it was being challenged in federal court by lawyers with the National Prison Project of the American Civil Liberties Union Foundation. After an initial visit to Springfield in February 1973, one of the Prison Project's lawyers wrote to the Warden:

"In my recent visit to the Medical Center I was shocked to learn that two of the fifteen involuntary participants in the START program—Gerard Wilson, #19481-175 and Alvin Gagne, #29257-138 were shackled by their arms and legs by means of leather and metal straps and chains to their steel beds. Additionally, I learned that on several occasions in the five days they had been shackled (as of February 21st), they had been forced to eat with both hands still shackled to the bed and had experienced great difficulty in receiving staff assistance in removing the chains in order to perform necessary bodily functions."

In July 1974, even though the START program had been closed, the United States District Court in Missouri ruled that the involuntary transfer of federal prisoners into the program violated the Constitution. The court brushed aside the Bureau's labeling of START as a "treatment program" for the prisoners' benefit and said that because of the severe deprivations suffered by the prisoners, it was in fact punishment. The decision noted that the purpose of the program was "not to develop behavior of an individual so that he would be able to conform his behavior to standards of society at large," but rather to make him a better and more manageable prisoner.

Although perhaps the most novel and recent kind of rehabilitation-oriented abuse, behavior modification is not the only kind. This country sends more people to prison per capita than any other country in the western world and we send them for longer periods of time. We give most of our state and federal prisoners a long indeterminate sentence, premised on the myth that they can be rehabilitated in prison and on the absurdity that someone, a parole board, will know when rehabilitation has taken place. State legislatures and Congress contribute to the problem by enacting all kinds of enhanced sentencing statutes for special categories of offenders, such as young people and addicts all in the name of improving them and us. The result of these sentencing practices is that people spend longer periods in prison with less chance of successfully returning to society.

In the name of rehabilitation, we have sent young minor offenders to prison for many long years, where they have bitterly learned advanced techniques in criminality and cruelty. We have sent adolescents to prison for truancy, inability to get along with their families, running away from home. Only three years ago the Supreme Court, in *Gesicki v. Oswald*, affirmed a lower court decision which declared unconstitutional the New York "wayward minor" statute under which a 16 year old was sent to a "reformatory" for three years because her mother and she did not get along. We have sentenced sex offenders to day-to-life sentences, on which the evidence is now clear—no positive effect. Just a few months ago in a case called *Sero v. Preiser*, the United States Court of Appeals affirmed a decision declaring the New York State reformatory sentencing scheme unconstitutional. Youngsters were being sentenced indeterminately for up to four years for "treatment" for committing misdemeanors, for which, if they were adults they would rarely, if ever, receive more than six months. The court found that the young people were not being "treated" any differently from the older people with shorter sentences and in many cases were being warehoused in the same prisons.

Not only could the examples of cruelty and abuse be multiplied many times to no good result, but study after study has shown with dismal unanimity that rehabilitative programs in prison don't work. A massive survey and study of prison programs by the eminent sociologist, Professor Robert Martinson, which will shortly be published as a book, concludes that there is no evidence that any correctional treatment attempted since 1945 has had a decisive effect on recidivism.

As one of America's leading criminologists, Donald Cressy, put it in his presentation at the 1972 American Assembly.

"For about 200 years the powerful have been inflicting pain on quite powerless lower-class criminals by intentionally depriving them of even the restricted liberty they possess as half-educated, half-employed, half-housed, half-clothed, and half-fed citizens in the land of the free. And all this punishing of the less powerful by the more powerful has been made easier by the idea that imprisonment is good for them, that it reforms them, rehabilitates them, resocializes them, educates them, trains them for work, and generally makes them into 'decent men' and 'upright citizens' who consequently can 'take their rightful place in society.'

"When we say these things, we lie. Prison programs rarely rehabilitate anyone, and we know it. I think we keep reciting our faith in the rehabilitative ideal because believing in this ideal eases our consciences as we inflict pain and powerlessness on men already enduring much pain and holding little power. Perhaps if we called a spade a spade we would be better off, and criminals would be better off. Thus it might be wise to send persons to prison only for retribution, deterrence, and incapacitation. Rehabilitation programs would be located outside prison. Such a policy would smash to bits the rehabilitative ideal that now, like rose-colored glass, dims our view of the fact that we send men to prison for pain. Perhaps with our protective glass destroyed we would send fewer men to prison."

It is time to admit that we do not really know how to improve behavior, especially in a coercive prison setting. Involving thousands upon thousands of prisoners and staff. Even if we did, we have neither the qualified staff or other resources to try. We do not even make a serious effort at accomplishing the basic and vital things that we could do: improving literacy and job skills. The Bureau of Prisons budget for its Leavenworth Penitentiary in fiscal 1973 was seven million dollars of which only four hundred thousands, or 6%, was for programs. The salaries at Leavenworth for correctional services—guards—was over three

million dollars compared with less than two hundred thousand dollars for professional case workers.

Instead we put men and women to work in prison at useless skills for demeaning wages. Most federal prisoners who work, work for Federal Prison Industries, a government owned corporation which operates little industries at most federal prisons. A 1974 General Accounting Office report found that most of the Prison Industries were wasteful, used antiquated machinery and did not help prisoners learn any meaningful skills. At the Federal Reformatory in Petersburg, Virginia, young men put wires into holes in little boxes. They are told that their little boxes are then shipped someplace else where the little boxes are put into bigger boxes but nobody knows what the boxes are used for.

An article in the Fall, 1974 Civil Rights Digest, published by the U.S. Commission on Civil Rights, compared the Bureau of Prisons' current Federal Prison Industries at its Alderson, West Virginia Women's Reformatory with the now abolished 19th century practice of farming out prisoners as contract labor. The article finds that:

"The irony of it all, of course, is that the only lesson to be learned by a prisoner is that work doesn't pay. And the only real difference between contract labor and Prison Industries is that convicts are no longer farmed out: the work is farmed in. In either case the prisoner receives a fraction of the pay available on the outside for the same work. . . . The women at Alderson are acutely aware of the exploitation of their labor and it is just one more factor likely to increase their bitterness toward society in general. They know that none of the jobs available offer much hope of a good salary outside."

And, as the article also concluded, "While theoretically it is not required that an inmate work. . . . If you did not wind up in solitary for failing to work, you would certainly be denied parole. Therefore you worked."

Furthermore, we make it almost impossible for them to get jobs when they get out of prison by imposing a huge string of job disabilities and disqualifications on ex-offenders.

For these reasons, Mr. Carlson's public movement away from rehabilitation is welcome, if only as an exercise in honesty. The grim truth is that no prison system, including the federal system, has really taken its rehabilitational rhetoric seriously. Indeed, "rehabilitation" has been used essentially as a control mechanism. Prison administrators have always known that the business of prisons is retribution and warehousing. More than 90% of the billions of dollars spent on corrections in this country each year goes for control and security and less than 10% for programs. The American Correctional Association Manual makes it clear to prison administrators that their first concern is security. This is the way it always has been and probably always will be, so long as human beings are imprisoned.

Mr. Carlson is also right when he says that a focus on deterrence and retribution and away from rehabilitation need not produce a hardline approach. Disenchantment with the rehabilitational ideal has been growing among prison reformers for many years. On the other hand, the rehabilitational ideal is quite consistent with the hardest of lines, for few limits are recognized when we try to change people's souls and psyches, and practices which would be condemned if labeled punishment, are condoned under the aegis of rehabilitation.

If rehabilitation is no longer a goal or justification for long sentences, we now must see exactly what kinds of sentencing and sanctions are necessary for community safety and just retribution. There is ample evidence that long sentences make it more difficult for a person to successfully reenter society. We must make a hard dollar and cents reckoning of whether the deterrent effect of a year in prison is worth the money and misery that it entails for all concerned; whether a 75 year sentence for armed robbery or a life sentence for a sale of narcotics can be justified by any rational and moral sense of retributive justice; whether the gains for deterrence that result from the incarceration of a young person offset the likely increase in the youth's exposure to experienced criminals.

The consequences of the abandonment of the rehabilitative ideal go much further than Mr. Carlson's quoted remarks indicate. Our whole sentencing structure is based on the myth of rehabilitation. Judges sentence offenders to longer and often indeterminate periods of incarceration on the assumption that the prisoner will gradually become rehabilitated in prison, thus leaving the decision as to the actual sentence largely to the unfettered and arbitrary discre-

tion of parole boards. Their decisions are supposedly based on judgments about the prisoner's degree of rehabilitation, but here too, rehabilitation is irrelevant: studies of the federal parole board show that its decisions are governed largely by the prisoner's offense and prior record, neither of which relate to his or her rehabilitation.

Mr. Carlson is equally correct in urging the provision of *voluntary* educational and vocational services. Experience in prison, and elsewhere, shows that good skills programs are needed, oversubscribed and that coerced participation is unnecessary.

There are, however, dangers. A focus on deterrence and retribution can turn into nothing more than a simplistic "lock em up" philosophy. The community's frustration at its inability to cope with rising crime rates has often produced irrationally savage punishments in the name of deterrence and retribution. A concern for rehabilitation of the offender has often had a somewhat softening effect, but as the recent increase in longer sentences indicates, not very much of one.

The concern is magnified by consideration of the Bureau of Prisons' present plans, which contemplate and can only lead to a massive warehousing enterprise. The Bureau has embarked on a ten year plan of constructing or acquiring between 25 and 30 new prisons, many of them labeled "correctional centers", at a cost of hundreds of millions of dollars. In 1973, when the State of Wisconsin announced that they had no need for a recently constructed prison at Oxford because they were moving to decarceration and community programs, the Bureau promptly acquired the prison for itself under a lease-acquisition agreement. The same year it took over the former narcotics hospital at Lexington, Kentucky as a new prison. Last year and this, the Bureau completed construction and opened five new institutions to warehouse federal prisoners.

The Bureau's construction policy is in direct conflict with a growing trend in the rest of the country. Many states and a number of prominent national organizations have adopted a policy of banning the construction of new prisons or have called for a moratorium on new construction until all possible alternatives to incarceration have been fully explored. The National Council on Crime and Delinquency, The National Advisory Commission on Criminal Justice Standards and Goals, and the American Assembly are among the prominent groups which have urged a halt to the construction of new prisons. States as diverse as California, Massachusetts, Minnesota, Wisconsin and South Carolina have developed plans to decarcerate large numbers of offenders and are moving to extensive use of a wide range of alternatives including community programs. The Group for the Advancement of Corrections, consisting of 13 prominent state corrections administrators and 6 criminologists and sociologists, published a declaration of principles last August. They advocated the discontinuance of indeterminate sentences in favor of fixed maximum terms, not to exceed two years for adults or six months for juveniles. Furthermore, they urged that incarceration should be a last resort, and should be restricted to those situations where the state can prove that the protection of society cannot be afforded in any other way or where surveillance in the community has been without effect. Finally, they urge that the heavily prescriptive approach be abandoned and that the offender be given a wide and free choice of educational, vocational and other services. These are the beginnings of a sane and just strategy for the offender and for our society.

In contrast to this movement for real change the Bureau's plans are wrong-headed and misguided. They entail the expenditure of hundreds of millions of dollars on the same type of sentencing and criminal sanctioning policy that has been so ineffective for the last 150 years. They raise serious concern about whether Mr. Carlson's abandonment of the rehabilitative ideal is simply another expression of a hard-line policy, simply another wrong turn in one of the most dismal experiments ever undertaken by a free society.

PUTTING "TREATMENT" ON TRIAL

Efficiency, Equity, and the Clinical Approach to Offenders

(By Leslie T. Wilkins)

Since recorded history and doubtless before, various persons in authority have been punishing other members of their societies for varieties of acts. There has not, however, been much consistency with regard to the definition of the acts

conceived to be punishable—or of the punishments considered appropriate. From time to time there has been some consideration of utility in the kinds of punishments awarded—slavery, galleys, work camps, and the like. At times there was consideration of symmetry between offense and punishment—an eye for an eye, bludgeoning of an architect if the building he constructed collapses (Ham-murabi's Code), and so on. Punishment was frequently a matter of public display, which doubtless contained an element of deterrence to others but also provided a form of entertainment for the masses or an elite. (Crime retains a large entertainment value today although we do not provide many public spectacles. News reports of actual crimes, of police work to detect criminals, of court proceedings, only add to fictional representations in the mass media to make up a large portion of our entertainment fare.) In any case, until recently there was relatively little regard paid to the probable effect of the punishment on the future life styles of the offenders. The idea of using punishment as a way of reducing the probability of further crimes on the part of the individual punished has gained its present prominence only in recent times. One expression of this idea is the widespread use of the term "treatment" for what happens to prisoners, carrying the suggestion that behavior control techniques, usually conceived within a medical or semi-medical framework, offer the proper approach to dealing with criminal offenders.

Let us begin, therefore, with a consideration of "treatment," the meaning of the term in the context of criminal justice and the evidence for its effectiveness. Within that context, we will examine closely the claims made for one of the most far-reaching examples of the clinical approach to treatment of offenders—the Patuxent Institution for "defective delinquents" in Jessup, Maryland. We will go on to examine some of the moral implications of using a "medical model" for the disposition of offenders, especially in the light of our current rudimentary ability to identify potentially violent individuals. Finally, we will consider some alternative ways of thinking about and coping with violence in our society.

I. EFFECTIVENESS OF TREATMENT OF OFFENDERS

Within the last decade or so new questions have come to be asked with regard to the ways in which offenders are disposed of by the courts. Among these new kinds of questions two distinctly different classes of questions may be noted. One set of questions relates to the idea of "efficiency" (e.g. cost-effectiveness), while the other set is concerned with moral issues (e.g. equity and prisoners' rights).

There is, of course, no question of the effectiveness of one kind of punishment (and it cannot be called "treatment"), namely, the punishment of death. Certainly, no recidivism rate can be quoted, and the cost, or at least the money cost, of putting the punishment into effect is not large. But it is self-evident that this assessment of efficiency leaves much to be desired in terms of the contemporary concerns of society. Even the question of "efficiency" quickly begins to break down into a series of other questions, in which elements of moral values are intermingled. For example, since the death penalty is completely effective in preventing recidivism, the emphasis turns, in this case, to the issue of general deterrence. We ask whether the fact of the death penalty reduces the probability that others will commit a capital crime in the first instance. That is a question of efficiency, but one involving the assumption that deciding the fate of one man on the basis of predicted behavior by *others* is morally justified.

At least for purposes of analysis, then, we can discriminate three classes of issues—the effectiveness/efficiency questions in direct terms; the simple, direct moral/value issues; and issues which concern both morality and efficiency. In the main our discussion will be concerned with the last-mentioned category because in all practical operations of the criminal justice machinery it is not possible to separate considerations of efficiency from considerations of moral constraints. Despite this real life interaction, it is sometimes important to think about these categories as though they were separate. For example, it is important to question whether a treatment which can be described as "efficient" or "effective" is, by that token alone, also morally acceptable. If the answer is no, then it is necessary to examine the nature of the constraints imposed on moral grounds. Can any of the aspects of this conflict be resolved by a redefinition of "efficiency," or is it necessary to see the moral considerations as orthogonal to those of efficiency? If the latter is the case, perhaps the resolution of some questions may be approached by stating them in the form of "trade-off" problems.

Questions with regard to the "effectiveness" of the "treatment" of offenders are not only difficult questions, they are non-specific questions and as such cannot be answered in specific terms. Not only are "treatment" and efficacy multi-dimensional concepts, but the moral referent can differ with regard to the dimensions which may be selected for discussion, e.g., a "treatment" of doubtful "efficacy" may be morally acceptable if it is assessed to be pleasant or unintrusive. We will turn to some of the more direct issues first and examine some practical cases.

IMPLICATIONS OF THE IDEA OF TREATMENT

The term "treatment of offenders" is often taken to be no more than a euphemism for the "punishment of offenders." The term "treatment" can mean no more than "what is done" to the person—he may be "treated" badly or well; he may be treated kindly or unkindly; indeed we even use the term in the phrase "treated to a drink"! The use of the word "treatment" in the field of criminal justice is often as varied as are its many uses among laymen. Nonetheless, underlying the loose use of this term is some strong suggestion of a clinical medical analogy. Offenders are seen as having much in common with sick persons; hence, if they can be made well, they will be "rehabilitated" and will fit in with society. The use of a clinical medical analogy in relation to the "treatment" of offenders has many ramifications. We may note particularly that the relationship between considerations of efficiency and morals as criteria for action vary, and they vary according to the nature of the model we use for our description and analysis. There may also be variations within any model which utilizes probability assessments.

WHAT IS "TREATMENT"?

In most prisons, and especially in the institutions for "defective delinquents" (such as Patuxent), the language of the medical analogy goes so far that, at least in the terminology, it is hardly possible to distinguish the institution from a hospital. The appearance of the buildings is usually very different from that of hospitals, but the "warden" is called a "medical superintendent" and often addressed, by staff and inmates ("patients"), as "doctor." If, then, in considering what these institutions do, we use a quite strict analogy with medical practice, this could hardly be thought unfair. It is not our analogy; it is theirs.

How then is it possible to distinguish punishment from "treatment"?

A person from another environment than ours, observing for the first time many procedures which are clearly accepted as normal "treatment" of patients in a conventional hospital, might be confused. Needles are being stuck into people. When a substance is given by mouth, there is often a response which he would associate with unpleasantness. In another part of the establishment, people are being cut up in various ways. There is plenty of blood shed. Previously he might have observed (in some obviously remote part of our world) similar things being done, which he correctly interpreted as torture to extract information from captured soldiers. He might ask how he should distinguish "treatment" from torture, since to his eyes many of the actions and reactions are similar in both cases. He might be told that he should not consider the superficial acts as he sees them but rather consider the consequences for the patient. He must refer to both theoretical knowledge and to past experience with the procedures being used. More specifically he may be given an explanation in terms of the intent of the action, if he wished to know whether what he observed was "treatment" or "punishment," he should ask those doing it what are their intentions. If he was told that what was done was for the benefit of the patient, then he should conclude that it was "treatment," or so it might be argued.

But is the intent of the actor an adequate basis for determining the classification of the act and hence for the kind of model we select? I do not think so. It seems necessary to add some element of prognosis before we may call any set of operations a "treatment." Until it can be established that the operations concerned have the probable consequence of reducing the probability of death or increasing the well-being of the patient, it would seem inappropriate to call them "treatments." Moreover, there should be more than a *belief* on the part of the actors that the actions will decrease the probability of death or increase well-being; there should be some form of evidence. If the treatment is now. It should be huilt upon theoretical constructs and trials with animals. The *probability* of pay-off (decreased risk of death or increased welfare); the *probability*

of failure (regret value) and other considerations are relevant to the moral issues.

If we wish to use the medical analogue in relation to the treatment of offenders, it would seem only reasonable that we should use the same definition of treatment as would suffice in the medical field. We would, then, require that there be *some evidence* that the outcome of whatever was done to the offender was a change in the probabilities of his future behavior, a change which is seen as beneficial to the individual and society. Rising from this definition of treatment is the suggestion that an essential element involves the *assessment of probability*. Treatment is forward-looking, punishment looks backwards; treatment is not concerned with what the individual did, but rather with what he may be expected to do; for the treatment perspective, the past is to be used only as a guide to estimation of the future.

A VISIT TO PATUXENT—"PARTICIPATION IS VOLUNTARY . . ."

(By Joel S. Meister)

How do you judge this prison which is not a prison? From whose viewpoint? Society's? The therapists'? The guards'? The inmates'?

Enter Patuxent: a prison by any visual criteria, with double chain link fences, thirty feet high; checkpoints; television monitors; barred windows; guardhouses; and guns. A prison with a vengeance; every sentence a potential life sentence, completely indeterminate as to length, one day to forever. A life sentence, unless . . . Unless and until one is cured; cured, to quote Maryland's Defective Delinquency Statute establishing Patuxent, of one's "propensity toward criminal activity."

We enter—two psychiatrists, a historian, and a sociologist—in *media res*: the Board of Review is holding its monthly meeting. The room looks much like a seminar classroom at a state university. The board members sit in coat and tie, surrounded by piles of file folders and paper coffee cups. It all has the tense air of a Ph.D. orals, but the stakes are much higher. Here parole, and ultimately release, are granted or withheld. Each inmate has one shot a year at parole.

Inmates (called "patients") are brought in by a guard. They sit at one end of the long table, dressed in Big Mac type work clothes of grey or khaki. Along the wall, with us, are several therapists and social workers; they will be asked to comment and to explain statements they have written in the prisoners' status reports. We are given a set of these reports. They include a full personal, criminal, judicial, and psychiatric history; a record of progress made or not made in the past year; and a recommendation to the Board for or against parole.

The first prisoner smiles a lot; he appears to be a pal of some of the board members. Everyone tells him how much better he's looking. He chooses his words carefully, emphasizing how much he knows now—about himself—that he didn't know previously. He is very articulate and uses words like "awareness" and "insight." One of the psychiatrists asks him if he is on Thorazine. He is. After he leaves, his therapist says he's as "clear as a hell in therapy." But then quickly adds, "Schizophrenics do that." There is no further discussion of the case. Clearly the decision was reached elsewhere, already. The question about Thorazine, I assume, is intended to justify that decision, to warn the visitors not to be misled by the prisoner's apparent calm and clear behavior.

The rapid appearance and departure of other prisoners bespeaks a well-practiced and rigid ritual. A few are granted one or another form of parole, most are refused. All are treated with concerned and friendly fatherliness during this one, brief, annual chance for freedom. Most remarkable is the self-possession of the inmates, such controlled performances under great pressure.

Just once the pattern is broken. It is the case of an escapee who has returned to seek a legitimate parole, having proved, at least to himself and his therapist, that after thirteen months on the outside, with a good job, promotions, and a fiancée, he is certifiably safe for society. The escaped prisoner, we are told *solito voce*, turned himself in after his therapist assured him that parole would be granted. The man is calm, but his therapist is sweating noticeably. The head of security, that is, the chief guard, is flushed and repeats loudly at least five times the obvious lesson to the inmates should this man be paroled. Finally, there is a formal vote—a tie. Patuxent's director, who has been looking our way every minute or so during the argument, breaks the tie in favor of parole. He reminds all of us that the institution has a therapeutic purpose.

Word of the decision gets around quickly. In twenty minutes, two of us go to the guard's dining room for lunch. The guards' food cannot be much better than the prisoners': thin, grey hamburgers and thin, yellow soup. The guards are surprised to see us. They tell us that of all the visitors to their model institution we are the first to visit them. Everyone is talking about the Board's incredible act: paroling escapees instead of sending them to the "hole"! The guards see the morning's decision as part of a calculated effort to weaken the authority of Custody at Patuxent. They complain, too, that one major deterrent to inmate violence—segregation, or the "hole"—is completely ineffective because disciplinary segregation is limited to a maximum of fifteen days. (In the "hole," we note, the sentences are determinate.) The guards have proposed a maximum of up to six months, perhaps longer, for prisoners who threaten their safety. In the name of therapy, the guards claim, the administration coddles the inmates; the inmates con the therapists; and both are in league against the guards, who consider the ideology and practice of therapy at Patuxent a dangerous "con game" with rules and language which effectively exclude them.

The practice of therapy: we observe a group session of about seven inmates and a social worker. We are neither really introduced nor ignored—the session continues as if nothing had happened to disturb the therapeutic milieu. There seem to be three topics of equal urgency: first, anger, and the necessity for working it through; second, fear, and the problem of balancing fear of release with confidence of success on the outside; and, third, the therapist's obligation to help get his patients out of prison. As to this last, one of the inmates, a handsome black man in his early thirties, intermittently reminds the therapist of his upcoming parole review. Wouldn't the therapist feel bad if "his man" (the inmate) didn't get out this time around? To which the therapist replies each time that he would do everything he could, but did the inmate really feel he was ready to "make it" on the outside? Thence the discussion returns to themes of *anger*—generally the anger of the young child rejected, acted out finally in crime—and *fear*—did the inmate really have sufficient confidence in himself, in his insight and ability to be self-controlled, or was his fear of failure still crippling? The problem for the inmates is to elicit from their therapist the correct formula for mixing fear and confidence; it is understood that a performance before the staff of complete confidence would be interpreted to mean its opposite.

It is also apparently understood that one must demonstrate therapeutic success by never appearing to be angry. Thus we listen to a long, dispassionate, analytical discussion of anger, reminiscent to be sure of a graduate seminar in psychology. There is, again, one exception, when an inmate becomes increasingly angry at the therapist for refusing to acknowledge the validity of the inmate's complaints about work assignments. Very quickly, he is "cooled out" by the other inmates, who tell him he really ought to complain elsewhere about work assignments. After all, this is a therapy group.

It is difficult to get permission to meet informally with inmates and impossible to see those we most want to see, on levels one and two. (These are behavioral rather than physical levels of the prison; the four levels constituting Patuxent's graded tier system are all that is meant there by "behavior modification." The psychotherapy is universally of the psychodynamic, insight variety.) We are warned that it would be dangerous to be alone with any of the patients at this time. Only the week before, the prison had been shaken by a rebellion. A group of patients had barricaded themselves into one of the classrooms with three guards hostages. It had been necessary to bring in a tank from the National Guard to quell the disturbance. It is hard to believe, just a few days later, that everyone and everything could appear so routine to a visitor.

It is the head of security who finally convinces the therapeutic staff that our visiting with prisoners on the more advanced levels would be "safe"—a word which apparently means several things. The same person expertly guides us to a group of attractive, young, white inmates on level four, all of whom expect an early release.

We introduce ourselves by name only: yet within five minutes one of the inmates has correctly identified the two psychiatrists, and from that point on neither the historian nor the sociologist seem to be of equal interest to the inmates. Psychiatric elitists, no doubt, and certainly familiar with their own therapists. There is no one who is less than a "three year" therapist, they tell us, so no one gets out of Patuxent in less than three years. There are also five and seven year therapists. They agree that Dr. So-and-So is the "most Freudian" of the therapists: a nice guy and very straight but a rigorous therapist who would require a good five years, if not longer.

Therapy is important to these men. It provides boredom of prison (most of them have known the insides of other prisons). It brings them into sustained contact with persons other than inmates and guards, persons who treat them systematically with a degree of respect unheard of elsewhere, inside or outside prison. They are taken seriously, they think, and they like that. We ask them if they, themselves, took the therapy seriously. One of them allows as how you could, if you wanted, learn something about yourself. The consensus is that this did not really happen too often; the point was to learn what each therapist wanted to hear, what the therapist's "trip" was, and to be able to tell about those things, and to do it with the right jargon.

The prisoners express little fear of the guards. They could always "report" a menacing guard to a therapist, and the guard might well be rebuked for interfering with the "patient's" therapy. The potential of violence by inmates against other inmates is always present, but the men feel that the indeterminate sentence might sometimes act as a deterrent.

Our observations, summed up, are not so different from those of the inmates we met; as prisons go, Patuxent isn't such a bad example. Prisoners act like analysts; wardens act like doctors; everyone talks a therapeutic game; and people try to act civil.

But the real "cure" is not therapy, it is the indeterminate sentence. And this is the real danger. What is it that one will not do in the face of this threat? A threat, moreover, made with the best intentions: to protect society while it motivates patient-prisoners to get better. Or is it the worst of intentions; preventive detention disguised as psychotherapy?

Of course, many men can learn the therapy game and play it well enough to be released before their original, criminal sentences would have been up. Some others get out, despite the indeterminate sentence, by petitioning the court; by being re-evaluated as no longer a defective delinquent, having sunk back to the status of mere criminal; or by refusing any initial diagnosis and holding out in the "hole" for six months. Only a few are willing to do this; most will take the cure. As one inmate told us, quoting from the *Patuxent Patient Handbook* and laughing: "Participation is voluntary. . . . You hold the key to your own future by participation in the institutional program."

In the treatment of offenders this may sound attractive, but there is a price to be paid; the price is equity. What the individual did—the seriousness of his crime—is not significant for treatment determinations such as the length of time in custody; the person is to be held until he is "cured." The events in the past record of the offender are not seen as "events" but rather as symptoms of a "state"; and in some cases as representing a "state of dangerousness."

Events and States

Clearly it is not possible to provide *treatment* for events, particularly when these have passed. If an offender is to be "treated" he must be seen as having a *present condition* (i.e. "state") which exists during the period of his treatment. When the condition has passed, there is no need for further "treatment." When does a person who has stolen cease to be in the "state" of being a "thief"? If we assume a state (being a thief), we must make some determination as to when the "state" has ceased to exist. We may, of course, assume that it lasts for life. If we make the latter assumption, there would seem to be no point in attempting treatment (the "state" remains no matter what we do), nor any criterion whereby we could assess whether any action might be termed "treatment." If we cannot determine when the "state" has changed, and even make some measurements of that change—whether towards recovery or relapse—then again there is no rational basis for the use of any medical analogy.

There is a further difficulty. The phenomenon of spontaneous remission is well-known in the medical field, and before we can accept a treatment as being effective, it is necessary to show that it has benefits which exceed the spontaneous remission rate. Thieves and other offenders may cease offending—there may be a spontaneous remission rate—but we will never know about it because as soon as a person is found guilty of a crime something is done about it. The results of any penal treatment may be of less value than the spontaneous remission rate for similar offenders who might go "untreated." Some treatments or the essential concomitants of the treatments may encourage crime or recidivism. Perhaps the best we can do is the least that social pressures will let us get away with doing to the offender. As we will note later, this does not mean

condoning crime, and it does not assert that *punishment* is irrelevant. As for treatment, however, there is no way of knowing whether any penal measures could ever qualify as "treatment" in terms of the strict medical analogy. At some future date it may be possible to carry out experiments to determine whether no action is better or worse than some action with regard to certain kinds of crime and certain kinds of offenders. In the interval we can refer only to the results of studies which have attempted to correct for (i.e. "partial out") factors which obscure the associations between variables so as to assess the differential impact of different kinds of dispositions of offenders.

Very few such studies have made claims to identify any differences in outcome related either to the duration or type of treatment/punishment given. Those carried out by persons not involved with the treatment programs have normally shown no association between outcomes and kinds of treatments, although there has been a tendency to note somewhat better results for those treatments which are, from the perspective of the offender, the least intrusive. In other words:

1. The less that has been done to reform the offender, the better the outcome has tended to be!

2. Where studies have been carried out by persons involved in a specific treatment program, there have been more claims to effectiveness and better outcomes than for other kinds of treatments. However, one study obtained blind rating of the rigor of the experiments or research designs and then correlated these with claims to success; not unexpectedly, the result was a strong negative correlation between rigor and claims of positive results.

It seems safe to conclude that it is extremely doubtful whether any variants of present methods of treatment/punishment of offenders make any difference to the reconviction rate. In other words, there is no demonstration that a "treatment" exists among all the techniques currently known and applied by correctional or probation agencies. It seems clear that the clinical medical model is inadequate and inaccurate as a basis for any theory or practice of the treatment of offenders on two different counts. First, it is not possible to treat either a "probability" or a past event; hence a postulated present state (which can be treated) must be described before the idea of treatment or diagnosis can hold. Such descriptions are not generally forthcoming in respect of cases where we use the criminal justice procedures. Indeed it would seem that when such a state can be adequately described, the individual is not appropriately considered within the ambit of the criminal justice process. Secondly, there has been no demonstration that any activity which has been termed "treatment" possesses the necessary characteristics to justify the use of that term. Treatment, to be "treatment" in clinical practice must be shown to be advantageous to the treated person by means of its impact upon the dysfunction which is "treated." Among the many different forms of "treatment" (institutional and community-based) there is no evidence of any differential reduction in the probability of the commission of further crime in respect of persons of the same initial risk category. Indeed, there is no evidence as to whether the initial probability is decreased or increased by what is done, although there are strident claims in either direction.

II. THE CASE OF PATUXENT

At this point, however, we should backtrack just a bit. One reaction to evidence that "treatment" has not yet been proven to have its intended effect, is to maintain that genuine "treatment" has not been tried; what is needed, in other words, is more, not less. Indeed this is the implicit claim of one effort which has not been included in the studies cited so far. Patuxent Institution in Jessup, Maryland, a penal institution operating since 1955, is a thorough-going application of the medical-model treatment approach. It combines the functions of a mental hospital and a prison. Its inmates, called "patients," are "committed" for an indeterminate period—that is, until they get "well." Its director is a psychiatrist. Its staff includes numerous psychiatrists, psychologists, and psychiatric social workers. It is organized on a graded-tier system meant to reward socially acceptable behavior and penalize the unacceptable; extensive efforts at diagnosis and group therapy are carried out. Release is by stages and, except when courts so order against staff recommendations, it depends on the vote of the Institution's Board of Review.

Patuxent Institution seems to recognize "efficiency" as at least a minimal criterion of its performance: necessary if not sufficient. Everyone agrees that the Institution is expensive to run. Everyone also agrees that inmates are often detained longer than would be the case if they had gone to prison and had served

the full length of their sentence. Since Patuxent's procedures and expense are justified in terms of the protection of society and the reform of the offender, there should be some evidence that these ends are, in fact, attained.

Society is provided with some "protection" if the offender is "reformed," such that when he is released, he represents a much reduced or zero risk. Clearly, if society is separated from an offender, a claim to "protection" is justified only if the offender represents some real risk. But the *labelling* of the isolated person as a "dangerous offender" does not, of itself, justify the claim to be providing society with protection.

Patuxent claims to provide protection in two ways: (a) the offender is detained while he is dangerous, and (b) when released he is no longer dangerous. As we will discuss in more detail, there are severe problems in estimating the probability of an offender committing another crime, whether trivial or "dangerous." At present, simply recall that while a person remains in Patuxent, he cannot commit crimes against free civilians other than those who work in proximity to him. We may believe that while he is in such safe custody he remains dangerous, but unless there is some opportunity for at least some incarcerated offenders to commit some crimes, we shall not know whether it was the lack of opportunity or the lack of tendency which was responsible for the "success."

Measuring Success

It is necessary, therefore, to seek estimates of the probabilities of further crimes and to assess the success or failure of the treatment by examining information relating to those persons who have, for whatever reason, left the close custody of the Institution. There may, of course, be cases where it is believed that the offender could never be released. As the Patuxent's 1973 *Progress Report* states (quoting Maryland Defective Statute, under which Patuxent was established), "The treatment may, and in many cases would, involve incarceration for life . . . not because of guilt, but to protect the defective from himself and society." Indeed another quotation makes this more specific. "The primary purpose" the *Report* quotes, adding the emphasis, "of such legislation is to protect society from this segment of the criminal population who probably will again commit crimes if released on the expiration of a fixed sentence. . . ."

Ordinary prisons, it seems to be argued in these and like statements, are in a less privileged position than institutions like Patuxent since they have less discretion and must release at a time determined by others and not when those concerned with the treatment of the offenders believe him to be "cured." We may take "cured" to mean that the probability of a further offense being committed by the person after release, is minimal. It is, of course, not clear what actual probability (in numerical terms) would meet the criterion of "minimal," but it is important that the test is recognized to be one of *relative* (rather than absolute) probabilities.

It might be expected that the probability of further convictions (i.e. recidivism) in respect of persons released from institutions such as Patuxent should be somewhat lower than that of other institutions such as prisons. The former class of institution can detain those cases which they regard as representing "a risk" without reference to the length of time served or the sentence of the court or the nature of the committal offense. If, in fact, the institutions like Patuxent are successful in their mission, they should show extremely low recidivism rates. The "failure" in such situations is not the "failure" (reconviction) of the offender, but the failure of the institution to identify the kinds of cases in which they claim expertise. Indeed, the rationale for the establishment of such institutions as Patuxent is that the staff will be able to recognize potentially dangerous offenders and to hold them until they are safe to be released. If no such special skill is demonstrated by the staff, then the institutions are, by that single, simple fact, shown to be ineffective.

Patuxent holds a privileged position, in that it may determine which of its cases would represent a risk if released, and may detain them until it judges the risk minimized. The justification for that special status of Patuxent (and other institutions like it) is that it can perform a special function—yield a lower recidivism rate, a less delinquent population. For Patuxent merely to show results neither worse nor better than other institutions—for instance, than ordinary prisons without those special discretionary powers—would be to destroy its philosophical foundations. It would also raise a moral difficulty; for it is by right of those special skills and functions that discretionary powers are granted which touch on inmates' equity.

According to its *Report*, Patuxent is far more successful with those cases it releases than are other institutions, but the direct comparison is not valid. It is necessary to attempt to sort out from the figures given in the Patuxent *Report* a category of cases compared to which a similar group of offenders can be identified who were dealt with in a different manner. Further, as we shall see, categories of time for confinement and for limited release (parole, outpatient treatment, and so on) are not similar. By such criteria of comparison, Patuxent's recidivism rate does not differ substantially from that of other kinds of detention facilities.

The Patuxent "recidivism rate"

The report notes that "the most frequently quoted [recidivism rate] for adult offenders" is 65 percent.¹ The reader is invited to compare this rate with that of Patuxent, namely, 7 percent.

Before we may assess the significance of the quoted 7 percent recidivism rate or the later breakdown of this rate into figures for the 1955-1959 cohort of offenders (13 percent) and for the 1960-1964 cohort (3 percent), we must note especially that this group is described as being "released at the recommendation of staff and Institutional Board of Review, with in-house and continued treatment for three years on parole," and that they were then not reconvicted within three years. (This applies only to the cohort data—the other figures seem to relate to varying and unspecified periods of follow-up.) The total number of cases in this category was 145 (both cohorts), of whom ten were shown in the "committed new offenses" category. The exact definition of this "failure" category is not clear, but it seems to relate to the commission of another offense followed by a "conviction." While the conviction rate may be a reasonable measure for most kinds of cases, it leaves in doubt a number of possible categories of disposition of persons who had previously been detained in an institution for defectives. However, it is not necessary to press this point since, despite first impressions to the contrary, it will be seen that the "failure" rate of one in fourteen quoted (ten out of 145) for the cohort data is approximately that which may be expected of a similar group where the base "failure" rate was 65 percent—If we accept the claim that this is a fair comparison. Some proofs of this will be attempted in a moment.

Recidivism rates

Meanwhile, we ought to examine certain general qualities of "recidivism rates." First, it has been a universal finding in all countries of the Western world as well as within the United States, that violent offenders as a total class reveal a lower recidivism rate than do other offenders. On this ground alone, it might be expected that Patuxent, specializing in violent offenders, would show a somewhat lower recidivism rate, and that the base comparison should be less than the 65 percent suggested. Perhaps a more reasonable comparison is that given in Tables IV and V of Patuxent's *Report*, where it is stated that 47 percent and 42 percent recidivism was experienced for the 1955-1959 and the 1960-1964 cohorts respectively where the offenders "were released at rehearing against staff advice, in-house treatment only."

Second, a striking general characteristic of recidivism rates is their tendency to peak abruptly and then to decline rapidly after the release of the offender. (See Chart 1.) The most probable time for an offender to be reconvicted is about three months after his release from an institution. The rate of reconviction (recidivism) has not, with any degree of consistency, been shown to be influenced by supervision while on parole after release. Follow-up studies and experimental designs have, in general, concluded that there was no significant difference between "spontaneous recovery" and "treatment" effects due to after-care of supervision. These negative results are supported also by data of a very different kind. Mathematical curves fitted to the trend in reconviction rates do not show any "kink" at the point when the offenders are released from supervision but rather a smooth function with time from release.² Rates of reconviction can be compared only when the base is known and where the time of exposure to risk

¹ This is not an unreasonable claim; without precise definition it is not possible to dispute it.

² Recidivism rates are often quoted on a fixed base (i.e., the number released or treated). It must, however, be remembered that as offenders who make up the initial released cohort begin to "fall," the sample of those remaining at risk is diminished accordingly. Thus, in the form often quoted, say 1,000 are released and 500 fall in the first year (50 percent failure rate) and 250 fall in the next year (25 percent of sample) and 125 fall in the third year (12.5 percent of sample) the rate of conviction is apparently diminishing. It is, of course, constant at 50 percent throughout the period, 500 out of 1000=50 percent; 250 out of 500=50 percent; and 125 out of 250=50 percent.

is comparable, both in respect of duration and in terms of time from release; that is to say, *high risk periods may not be included in one set of figures and excluded from the other.*

The criterion, therefore, to which we must refer for purposes of comparison with the Patuxent recidivism rate is that which applies at three years after release, where the treatment given has been that of a prison or similar establishment lacking the special privileged position of Patuxent. It would be necessary to show that the generally expected rate of recidivism at three years (and for a similar period of follow-up to that given to the Patuxent cases) was greater than that of Patuxent in order to justify any belief that there was any superiority in the latter's method of treatment.³

It is difficult to find any adequate test of the "success rate" for Patuxent because the time of "exposure to risk" which is used as the basis for the recidivism rate of the fully "treated" case is not available from data from other institutions. However, we might obtain some indication of the possible comparative success rates for treatment forms which vary from that of Patuxent if we could either (a) find a very similar treatment, but one for which the indeterminacy which characterizes this case did not apply and data were available in a similar form, or (b) identify a general "law" relating to the regularity with which reconvictions take place with time, that is, after discharge from institutions and after it becomes possible for ex-limates to offend again in the community, whether or not they are under supervision. It is possible to carry out some analyses along the lines of both of these procedures. Let us consider the latter, the general case, first.

Patterns of Reconviction

As already mentioned, all studies which have followed up offenders after release, no matter from what kind of institution and irrespective of the form of supervision or surveillance in the community, consistently report one general result. The probability of the ex-inmate to be reconvicted for another crime quickly reaches a peak, and then falls rapidly. By the end of the third year during which the offender/patient has had any opportunity to commit another crime, often about 80 percent of those who will ever do so will already have been reconvicted. Gottfredson reports an eight year follow-up of 1,810 California parolees. Of 729 failures, only 119 were noted in the second half of the period of follow-up. In England, Hammond studied a very different sample of offenders, namely those committed to "preventive detention" (i.e. very serious cases where an additional penalty was imposed beyond that which the instant offense might attract—somewhat similar in this regard to Patuxent committals). A general failure rate over a period of three years of between 60–70 percent was noted, but with these groups the percentages of all failures which occurred in the third year varied from 8.6 percent as the highest to 6.5 percent as the lowest observed ratio. In each case the rate in the third year was considerably less than half of the rate for the preceding year, which in turn was about half of that for the year before. The *log-linear* time base was noted also for the California data by Gottfredson. General belief (and much data) hold that younger offenders are worse risks. It is interesting then to note some results with offenders in the age range 17–21 (males). Data are available in respect of youths given borstal training in England and Wales. Of a total of 632 "failures" in a follow-up of three and one-half years, only 47 cases occurred *after the end* of the second year. Again a *log-linear* time base fitting was noted. Thus, it is clear that the success rate for those Patuxent offenders who were "released at recommendation of staff and Institutional Board of Review, in-house and continued treatment for *three years on parole*" (emphasis added), cannot be compared with those other offenders who became at risk to further crime and classification as "failures" immediately upon release. The "recommended" group had had three years "trial" under supervision and presumably could be recalled if they did not seem to be likely to avoid further convictions. The relevant rate with which to compare the Patuxent "success" rate would be Hammond's fourth, fifth, and sixth year from release: thus a figure in the range of 8–11 percent might be expected. This is remarkably close to the figure given in the Patuxent case. This is not an unexpected result; it fits the general nature of follow-up study results to date in all countries of the Western world. However, it is not a strong piece of evidence since it relies upon different kinds of offenders in a different country.

³ It is unfortunate that there are very small numbers of cases in the category for which Patuxent provides cohort data, and that the proportion of "failures" is quite different in the two periods: 12 percent and 3 percent respectively ($n=8$ and $n=2$), giving the mean of about 7 percent.

The most that can be done with the data provided by Patuxent Institution in terms of general mathematical curve fitting is to show that the claims to success are exaggerated; indeed, it is possible and even probable that the Patuxent success rate does not exceed those for comparable groups who have served time in ordinary prisons or jails under determinate sentences or who were subject to normal parole procedures.

A similar treatment

Reference has already been made to borstal training in England and Wales. This treatment is one which approximates to many of the elements of the treatment at Patuxent—and thus provides a basis for our other line of analysis—but it is also one which has some interesting differences. A young offender (17–21 years) may be sentenced to borstal training for three years. Training consists of from six to twenty-four months (minimum and maximum) in an institution; the remaining period, up to three years, is spent on “after-care.” At the end of three years, the ex-inmate is discharged. (Violent offenders are, however, seldom or never sentenced to borstal training.) The conviction record of borstal inmates tends to be heavy (4.3 average convictions) and is somewhat similar to that of the inmates at Patuxent. The borstal data provide some indication of the order of magnitude of the expected Patuxent recidivism rates, but little more. The published data do not provide a similar period of time at risk; however it may be noted that the failure rate was 12 percent where borstal training had been continued in the community for two years (the corresponding period at Patuxent is three years). However, among the differences (in addition to the fact that the data refer to a different country), are some which would lead us to expect a higher figure, and others a lower figure. Tending to make the borstal rate high for comparative purposes we may note: (a) the inmates were younger males; (b) they were not violent or sex offenders; (c) the rates relate to two years treatment after discharge from the institution and not three. On the other hand, tending to make the borstal rate low for comparative purposes, (d) the period of follow-up was shorter. All things considered, it seems fair to suggest that the borstal training “treatment” has similarities to that of Patuxent and that the 12 percent borstal rate provides some estimate of the order of magnitude of the expected recidivism rate for Patuxent Institution.

It is also possible to reanalyze Gottfredson's data on California parolees in terms of “survival rates” and again to compare the results with a similar time of “exposure to risk.” It seems that a three-year exposure to risk after three years on parole, for California parolees, gives a “failure” rate of almost 20 percent, but this includes “technical violations.” The reconviction rate (that is, excluding technical violations) might be as high as 17 percent in the same period. But it should be noted that by the end of the sixth year only about a third of the original sample had a “clear” record. By the end of the follow-up of eight years, only 29.7 percent were without a record of violation of some kind. This is a failure rate of 70 percent: a figure considerably higher than the 47 or 42 percent which represent the “released at rehearing” for the Patuxent cohort, and higher also than the 65 percent suggested as comparable in the Patuxent report.

Patuxent “Success”—Conclusion

No manipulation of figures can provide a sound basis for assessing the success of the treatment of Patuxent Institution. The figures given in the Institution's report are not comparable. Comparisons are possible only where the offenders/patients have been “exposed to” comparable risks for comparable times. Sundry data have been examined and it can be firmly stated that Patuxent Institution is not as successful as it claims, nor are other penal institutions by comparison as bad as the Institution's report suggests. In the absence of any data to the contrary, and with many indications in favor of the hypothesis, we may assume that there is no difference in the outcome of cases “treated” by the Patuxent method from those of any other currently available treatment in the penologists' repertoire. (See Table 1 for summary of data.)

Thus, with the possible exception of a very small percentage of those presently processed through the criminal justice system, the term “treatment” should be dropped as a dishonest description of what is done to offenders. We should use words which honestly describe the several activities occurring. For example, the public is *protected* when offenders are isolated; we should acknowledge that and assess its value. Offenders are *punished* for their crimes; we should use this word with care and note the use of this concept in the disposition of offenders by the courts and throughout the criminal justice processes.

III. MODELS AND MORAL CONSIDERATIONS

I once asked a judge whether he had ever made any errors in his disposition of offenders. His reply was interesting. No, he said, every decision he had made was quite correct at the time he made it! Most people would admit, however, that they do make errors in their decisions and that what happens afterwards indicates this. They might claim that at the time they did their best, but they would not claim that this was sufficient as a criterion of correctness.

It is in regard to consideration of possible errors that moral issues become most clearly evident. It is extremely important to note that the clinical medical model for the disposition and treatment of offenders raises quite different questions in relation to possible errors from those raised by the "equity" model, because the nature of the errors in the decisions are of a different order. If we are concerned with *past events* and neither make any projections as to the future nor infer *present states*, then what is known is fairly surely known; the moral decisions relate in this case only to considerations of the *past*. The past cannot, by definition, be changed, although it may be perceived differently at different times. Present moral standards are brought face to face with the perception of the past *event(s)* and a decision is made accordingly. At a future time a different decision might be reached on moral grounds because the event(s) were seen as implying different moral significance, but in each case the questions are, as it were, two-dimensional—the moral standards and the event(s) as ascertained. There is neither consideration of probability nor other matters of inference in this kind of determination.

The clinical medical analogue (treatment of offenders) presents a very different structure for the moral determinations. In the "treatment" model the *past event(s)* are not directly considered since they cannot be "treated," rather the past is used to make inferences about either a present state or probable future outcomes which might be *changed* by our actions; that is, to say, might be "treated." The nature of the "treatment" is determined with regard to the inferences about a state or about a probability (prognosis) and not solely in terms of the past. The intervention of the procedures of inference with regard to the future make a considerable difference in the ways in which we must consider the moral questions. Involved are issues of technology (efficacy of treatment) and logical sophistication (inference) as well as ethics. Of course, incorrect decisions may be made with either the clinical model or the equity (past events) model; but, the nature of the incorrectness, it must be stressed, is not the same. If we consider only past events, then clearly our action has to be justified in terms of those events. This is not a very technical matter and depends far less upon our state of knowledge than upon our beliefs about what is a suitable punishment or our other reactions to the past.

The past events model may not be a simple one involving wholly, or mainly, issues of equity. It is possible to add some considerations of general deterrence ("example," or learning model). The offender may be dealt with (not "treated") fairly in relation to what he did (not with regard to what he might do), but the justification is then made in terms of the impact of the action upon others. Society learns what is just by observing what is done to those who depart from the moral or social requirements of their society. Essentially the general deterrence model is similar to the equity model in that the offender's past provides the informational base for the moral decision.

General deterrence must be distinguished from special deterrence—the term by which is expressed the belief that what is done to the offender will modify *his* behavior in the future. This model invokes not so much a clinical medical analogy as a teaching analogy. There is, of course, little difference between this model and the "treatment" model; indeed conditioning is often one of the techniques of choice for those who advocate a medical model for treatment of offenders. The one is a more sophisticated form of the other, and the nature of the justification must be similar, since both refer to the *future*.

Under conditions of a "treatment" model, there are two ways in which any decision may be incorrect. Our prognosis may be that the offender will "succeed" (or "learn"), and he does not do so, or alternatively we may predict failure in cases where the individual will succeed. These errors are known, reasonably enough, as "errors of the first and second kind." We may reject a hypothesis when it is true, and we may accept it when it is false; these two kinds of error may have quite different consequences. Indeed in matters of industrial quality control one is the "producer risk" and the other the "consumer risk." It may be remarked in passing that there are producers and consumers of the products of criminal justice machinery!

There is no treatment for offenders which has a *certainty* of success: not even the claims of Patuxent Institution go that far. There is no *certain* way in which potentially dangerous offenders or potential recidivists can be identified. Since we cannot claim certainty in respect of either case there will be errors in the dispositions we may make. There is, then, the question of how large these errors may be expected to be. If the errors of either kind are small and the consequences of an incorrect decision for the persons involved are also small, we may assess the "trade-off" in these terms—where by "trade-off" is meant the balance of the two kinds of errors affecting the risk to society and the risk of dealing inappropriately with the suspected persons.

A recent study provides some measure of the power of presently available techniques for identification of "potentially violent persons." Wenk and Emrich carried out exhaustive research utilizing many psychological tests and case data and subjecting their data to very complex analysis. They showed that when 50 percent of the potentially violent persons were successfully identified by their tests, they also identified nine persons incorrectly for every one correctly classified. The 9:1 ratio is known as the "false positive" rate, since these persons (i.e. false positives) reveal the same profiles as those who are subsequently found guilty of violent offenses. If more than 50 percent of the potential violent population is to be isolated, then the false positive rate will increase sharply, and conversely, if we reduce the false positive rate, the proportion of the population correctly identified drops sharply.

The moral question now can be stated in terms of the "trade-off" thus: Is it reasonable to classify falsely as "potentially violent offenders" nine persons in order correctly to treat one, where such a procedure would still involve in treatment only half of those "needing" such treatment? If we cannot accept a 9:1 ratio at the 50 percent cutoff point, then what ratio might we find morally acceptable? If not 9:1, then what of 5:1. Even if the latter ratio is acceptable, it is unlikely to be possible to achieve this degree of power without very costly research and after some few years of work. Clearly the false positive ratio is not the only moral consideration. Much may depend upon how expensive or intrusive is the treatment proposed, and we would do well to assess and consider the efficiency of such treatment. In this regard there is one further difficulty. If we have to subject to treatment nine false positives for every one "true" positive since these cannot be distinguished from each other (by definition), then this fact will need to be considered in our evaluation of the treatments. If we select from a given population those persons who are "violence prone" according to the best predictive information, then 90 percent will *not* recidivate to violent crime—these are the "false positives" again! On the assumption that treatment did no harm in terms of increasing the probability of violent crime,⁴ any treatment with a 90 percent success rate seems an attractive proposition; and of course, better success rates might be obtained with an even higher proportion of false positives! And again, persons incarcerated for violent crimes may be reconvicted, but not necessarily for another violent crime; indeed the repetition of violent crimes is a rare event.

TABLE 1.—SUMMARY OF ESTIMATES OF RECIDIVISM RATES

	General recidivism rate (for 3 yr dating from release from the institution)	Recidivism rate estimated to apply to the sample noted in col. 1 but where the rate is that which applies after 3 yr on parole
Patuxent "approved" releases (given full treatment).	Not estimated or revealed in "Report."	12 percent for 1 cohort, 3 percent for a 2d cohort, 7 percent average.
Patuxent releases without (complete?) treatment.	42 to 47 percent.....	None given.
Borstal training group.....	55 percent.....	About 17 percent.
Group studied by Hammond and Chayen.....	60 to 70 percent.....	Do.
California group studied by Gottfredson.....	70 percent.....	Less than 20 percent.

Note: This tabulation is meant to facilitate an appreciation of the various calculations and estimates. No strictly comparable rates are available, however.

IV. A MODIFIED IDENTIFICATION AND PREVENTIVE MODEL

Whether we concern ourselves with the concept of treatment or of reform, of preventive detention for the protection of society, or indeed with any concept

⁴ It must be stressed, the prediction tables which give the 50 percent cutoff point at a cost of 9:1 false positives included the fact that some among the sample of offenders had already committed a violent crime—indeed this was the most predictive item of evidence relating to further such crime.

of a procedure which deals with the projection of future behaviors, we are involved in questions of moral trade-off assessments. We can assure ourselves of absolute protection from future criminal or socially dysfunctional acts only by incarcerating *all* persons, since there is some small risk that *any* person may engage in such behavior: there is nobody for whom the probability of committing a crime (or another crime) is absolutely zero. As soon as we invoke the idea of future acts, or as soon as we make inferences about a "state of mind" (whatever we may mean by "mind"), dispositions, or physical conditions, we must attend to the problems of decision errors of two kinds and with the consequent false positives which will result from any action.⁵ The balance between errors of the first and second kind is recognized in legal philosophy with respect to the finding of guilt, where it is acknowledged that some guilty persons may go free because of the safeguards against conviction of the innocent. The balance of error is not seen as equal, and indeed in this particular case, moral issues are debated in probabilistic terms. But we are not now concerned with the finding of guilt but with dispositions of the convicted. In the disposition of offenders we are faced with two alternative structures: (a) we may deal with the person in terms of what he has done—the past events which we have designated criminal and the restricted factors surrounding those behaviors, or (b) we must reckon with the moral trade-offs implicit in making any predictions with regard to future behaviors. The past is known more certainly and in a different form and quality from the future. Furthermore, the techniques for reducing our uncertainties about the past are substantially different from those we use to test our inferences about the future. Nonetheless, it seems that we desire to make decisions with respect to probable futures by taking preventive action. There is some rational attraction about this approach despite its difficulties.

What level of protection against incorrect inference should the average citizen expect as his right in a moral society? Clearly it cannot be absolute and all-embracing (or nobody could be incarcerated). Perhaps we might argue the moral basis for a model which suggested that a person who had once (in the past) committed a violent act (or perhaps some other crime which we regard as significant) *by that very token* forfeited some part of his right to be protected from false positive classifications. He might not claim the same level of trade-off as a person who had not been found guilty in the past. We might even argue for a progressive rate of decline in the false positive probabilities as the number or seriousness (or both) of prior acts increased. Such a loss of "rights" would be in addition to the fact that the predictive power of any methods of inference regarding future probability of violent crimes is itself increased by knowledge of the criminal record. Thus we might object to a false positive ratio of 9:1 for persons who had no previous record of violent crime, while for persons who had already committed three such crimes we could accept this risk of incorrect decision; indeed there would be few persons in the 9:1 category who had a prior record of such proportions. This model seems capable of investigation in terms of the necessary statistics, and it seems possible that it could provide the necessary focus for the assessment of moral trade-offs through the medium of some sound data. Assessments would be facilitated mainly because the model would require a number of separate moral assessments which could be combined into the model—a clearer if not simpler task than attempting to deal with the whole gestalt at the same time. It would be necessary to rank "preferences" in something like the form of Table 2; the left-hand list of "increasing criminality" corresponds with the right-hand "loss of rights."

TABLE 2

Category of past acts:	<i>Required level for trade-off probabilities:</i>
No proved offenses-----	Minimal level of false positive risk.
One prior, nonviolent crime-----	Some slight increase in risk.
One prior violent crime-----	Greater risk than above.
Two prior nonviolent crimes----	(?).

⁵ A critical problem is that of inference with regard to states or conditions—concepts central to the treatment approach. We can presume to treat a condition or state but it is not possible to treat a probability! The soundness of any inference which may be made with respect to any kind of state (e.g. state of dangerousness, state of mind, physical condition) must depend upon factors other than that of the crime (event) itself, since no crime is specified to a particular state or condition. It is, of course, questionable whether the legal process is suited for making inferences with regard to "states," but this cannot be pursued here.

Some of the difficulties which at the same time are possibly useful elaborations of the issues become immediately obvious. Do we treat two non-violent crimes as more serious (and hence to be penalized more heavily in terms of assurances against false positive decisions) than one violent crime? Clearly this depends upon the nature of the crime as assessed in terms of its "seriousness." But if we can agree that we can match the "seriousness" scale to a function of "loss of rights" in terms of the risk of incorrect treatment/insulation from society, we have developed an important transformation of the problem. Decisions with regard to the seriousness of crimes are continuously being made in many sectors of the political and justice system. If we can accept the principle that as the seriousness of the criminal career increased (past events) the right to protection (in terms of probabilities) from classification as a false positive decreased, it would be possible to fill out the model to "map" a much higher degree of complexity. The courts might have some difficulties in interpreting probability estimates calculated in the necessary form, but they already deal with concepts of "probable cause" and "sufficient cause."

If this model has any attraction, it is perhaps mainly in that it reveals in some detail the complexity of the issues. It will be obvious that expressing the two dimensions (seriousness and probability of recidivism) as some function of each other does not provide a model covering all that we can now specify of the problem. This model accommodates neither the variations in the proposed treatment—its intrusiveness, painfulness or other qualities—nor does it accommodate variations in the impact upon the persons who would be concerned. Development of further scales would, however, be possible. It should, for example, be possible to scale the "seriousness" of any *penalty* of detention or supervision or enforced treatment. Offenders may be assumed to have preferences and these preferences could provide some basis for our consideration of moral constraints.

A Substitute Model

The more we explore the individual treatment model where the criteria for treatment are personal characteristics and past actions of the offender, the greater become the moral difficulties in any philosophy of enforced treatment. One alternative approach is to invoke the concept of voluntarism with respect to treatment and to separate the idea of community protection and punishment from the treatment methods which would be voluntarily submitted to. The concept of voluntarism is, however, another thorny area of moral constraints. No one is completely free; we are all constrained by economic, situational, and personal factors. Within any system which deals with anti-social behavior, the problems of freedom of choice are exacerbated. How many alternatives must be available before we can discuss the idea of choice? It may be possible to relate the constraints normally present in the "free" world to those available to individuals involved with the criminal justice processes. Clearly there is considerable variation between persons both in their available information and in their ability to utilize it in making a "free" choice. There may be some value in exploring issues along these lines once we have reasonable support for our beliefs that any systems of treatment can be effective. Where there is more evidence of the effectiveness of behavior modification techniques, the methods seem to be more intrusive and more damaging to our moral belief in the autonomy of the individual. It may be suggested that to be a volunteer a person must be informed both of the impact of the treatment (pain, risks, uncertainty of side-effect; etc.) and also provide with some assessment of the probability of the treatment being successful with respect to his "sickness" or "problem." If a person is not informed, he cannot make rational choices, and hence it is difficult to regard him as a volunteer. Here, again, we face the issue of the probability of the outcome of treatment, and until this is solved there seems little point in wrestling with the concepts of the relative freedoms of volunteers for behavior modification.⁶

A different approach which may be examined briefly is that of providing training in violence deescalation techniques and in methods for reducing the probability of violent reaction to events by seeking to modify the qualities of the trigger events. If violent behavior can be learned, and if it is role-related as it seems, at least in part, to be, then it may be that role-related non-violent behavior can also be learned.

⁶ There may be little logical point in such discussion. But since behavior modification is being used in prisons (where the situation, apart from anything else, casts doubt on the meaning of the term "voluntary") it may be necessary to assert moral claims based on intuitive humanitarian principles.

Many would like to believe that :

- (a) Criminal violence is not related to violence in society.
- (b) The offender is either sick or wicked and must, therefore, be isolated as dangerous.
- (c) To be able to control violence we must identify personal violence-potential profiles for individuals.

If we take this viewpoint, there are certain observations which are expected to follow. If "personality" is the clue, then considerable levels of association are to be expected between frequencies of observed violent behavior and test measures which are known to discriminate personality differences and traits. In fact, correlations of this kind are found to be extremely small, explaining little more than a few percentage points of the variance between persons who have and who have not committed violent crimes.⁷ It is particularly interesting to note that while it is possible to predict "crime potential" (in terms of the probability of recidivism) for property offenders with reasonably high correlations (values between $r=0.3$ and 0.4 are common), it has proved impossible *by the use of exactly similar methods*, or even of alternative methods, to predict violent crime with better than a quarter of that power. That is to say, the violent offender is more like everybody else (in terms of personality tests and case history) than is the nonviolent property offender. Yet contrary to this empirical evidence, it is usually the property offenders who are considered to be more "normal," while the violent offender is the more likely to be considered abnormal—and sent to an institution like Patuxent!

These findings are consistent with the suggestion that the important factor in the likelihood of violent behavior is that of role. It would seem desirable to take these kinds of evidence into account in our decisions about violence control. Possibly we could gain more control of violent behavior if we were to work upon situations and role skills, developing *de-escalating techniques* for those who perform high risk tasks, or who are expected, in other ways, to become involved in violent situations.

It may prove possible to classify "trigger" events or "gamblts" in various role behaviors which have a high probability of escalating into violence. If "cues" can be identified and classified, then we may be able to find ways in which situations could be modified by *procedural revisions* or by training persons involved in such situations in violence de-escalation measures. Many difficult ethical questions can be avoided if we concentrate upon roles and procedures or situations in our attempts to deal with violence, rather than by seeking remedial action in regard to individual persons⁸ in addition to the special risk situations and role-required behavior, there may be general principles of violence de-escalation which can be discovered, and these principles could then form the basis for training in schools. In any case, we must not reduce the problem of violence to the problem of the *violent individual*. Moreover, as we break away from the concept of violence as an individual problem, we can offer some new means for dealing with the social and personal elements of violent events.

Hans Toch observed that the models we have used in the past to think about human violence are unsatisfactory. He noted that we have assumed that "all men are reservoirs of bloody destructiveness" and "maintained that civilization equips most persons with the means of discharging their hatreds judiciously and selectively—although there are instances in which this effort fails. Some persons are presumed to remain unchecked in their aggressiveness, so that they become promiscuously violent upon slight provocation." In *A Clockwork Orange*, Anthony Burgess imagines an individual who is conditioned against violence and who, for this reason, finds life impossible. The conditioning is unselective—affecting the whole person—rather than specific to narrowly defined categories of events. It is, however, reasonably certain that, as Burgess suggests, a person who was totally non-violent could not survive in contemporary society. Certainly, many problems of social organization are brought to light by violent acts, and these problems are not solved merely by allocating blame to an "offender." Every offender is, by his act, commenting not only upon himself, but to a greater or lesser extent upon society.

⁷ Certainly there are some violent criminals who are "odd," disturbed, or whatever, but there are also odd, disturbed, and most peculiar people who are not violent.

⁸ That is not to say that there are no serious or difficult moral questions with regard to situation modification, but such questions seem more manageable than those involving personality modification—at least they are different, and therein lies some hope.

Conclusion

In the light of recent research, it is impossible to retain any belief in the notion that the problem of violence is "all in the mind." Nor can we affirm that all violent offenders are sick. Research results are consistent with the belief that violent behavior is learned role behavior for some part, and possibly failure to learn for another. It may be "normal" to be violent—the abnormality resides mainly in the time and place, or perhaps in terms of the nature and medium of the manifestation of that violence. A sense of time and place which is supposed to be specific to the use of force against others (violent behavior) is presumably neither to be discovered by personality analysis nor modified effectively by the treatment of the individual personality. Something different must be tried if we are to seek to control behaviors involving the use of force by man upon other men. Control must be *role-restricted* (the "Clockwork Orange" problem) and *situation-modified*; otherwise our present socio-political system will not continue to function. A completely violence-free society does not seem to be a feasible ideal at this time. It does not follow, however, as some have suggested, that violent crime is the price we must pay for the kind of social structure we now have. There are some actions which can be taken now on the basis of information we already have, and many more which could be discovered to reduce the problem of violence to more manageable proportions.

What we now do to those we define as offenders is the product of much history, and many of the historical features have residues that influence the social consciousness in highly complex ways. The relationship between law and religion, between religion and political power, and the influence of symbolic behavior in each of these areas, cannot be ignored when we seek explanations of current practice and examine alternatives for the disposition of offenders which seem more reasonable than those of the past or present. Nonetheless, a strategy might be sought for both research and action derived from very different constructs than those now fashionable. The need to study violent behavior in all its manifestations and to seek ways to control human destructiveness is greater now than ever. The need to modify the violence potential of situations, role behaviors, and political systems applies whether the destructiveness is individual or collective.

WHAT WORKS?—QUESTIONS AND ANSWERS ABOUT PRISON REFORM

(By Robert Martinson)

In the past several years, American prisons have gone through one of their recurrent periods of strikes, riots, and other disturbances. Simultaneously, and in consequence, the articulate public has entered another one of its sporadic fits of attentiveness to the condition of our prisons and to the perennial questions they pose about the nature of crime and the uses of punishment. The result has been a widespread call for "prison reform," i.e., for "reformed" prisons which will produce "reformed" convicts. Such calls are a familiar feature of American prison history. American prisons, perhaps more than those of any other country, have stood or fallen in public esteem according to their ability to fulfill their promise of rehabilitation.

One of the problems in the constant debate over "prison reform" is that we have been able to draw very little on any systematic empirical knowledge about the success or failure that we have met when we have tried to rehabilitate offenders, with various treatments and in various institutional and non-institutional settings. The field of penology has produced a voluminous research literature on this subject, but until recently there has been no comprehensive review of this literature and no attempt to bring its findings to bear, in a useful way, on the general question of "What works?". My purpose in this essay is to sketch an answer to that question.

THE TRAVAILS OF A STUDY

In 1966, the New York State Governor's Special Committee on Criminal Offenders recognized their need for such an answer. The Committee was organized on the premise that prisons could rehabilitate, that the prisons of New York were not in fact making a serious effort at rehabilitation, and that New York's prisons should be converted from their existing custodial basis to a new re-

habilitative one. The problem for the Committee was that there was no available guidance on the question of what had been shown to be the most effective means of rehabilitation. My colleagues and I were hired by the committee to remedy this defect in our knowledge; our job was to undertake a comprehensive survey of what was known about rehabilitation.

In 1968, in order to qualify for federal funds under the Omnibus Crime Control and Safe Streets Act, the state established a planning organization, which acquired from the Governor's Committee the responsibility for our report. But by 1970, when the project was formally completed, the state had changed its mind about the worth and proper use of the information we had gathered. The Governor's Committee had begun by thinking that such information was a necessary basis for any reforms that might be undertaken; the state planning agency ended by viewing the study as a document whose disturbing conclusions posed a serious threat to the programs which, in the meantime, they had determined to carry forward. By the spring of 1972—fully a year after I had re-edited the study for final publication—the state had not only failed to publish it, but had also refused to give me permission to publish it on my own. The document itself would still not be available to me or to the public today had not Joseph Alan Kaplow, an attorney, subpoenaed it from the state for use as evidence in a case before the Bronx Supreme Court.¹

During the time of my efforts to get the study released, reports of it began to be widely circulated, and it acquired something of an underground reputation. But this article is the first published account, albeit a brief one, of the findings contained in that 1,400-page manuscript.

What we set out to do in this study was fairly simple, though it turned into a massive task. First we undertook a six-month search of the literature for any available reports published in the English language on attempts at rehabilitation that had been made in our corrections systems and those of other countries from 1945 through 1967. We then picked from that literature all those studies whose findings were interpretable—that is, whose design and execution met the conventional standards of social science research. Our criteria were rigorous but hardly esoteric: A study had to be an evaluation of a treatment method. It had to employ an independent measure of the improvement secured by that method, and it had to use some control group, some untreated individuals with whom the treated ones could be compared. We excluded studies only for methodological reasons: They presented insufficient data, they were only preliminary, they presented only a summary of findings and did not allow a reader to evaluate those findings, their results were confounded by extraneous factors, they used unreliable measures, one could not understand their descriptions of the treatment. In question, they drew spurious conclusions from their data, their samples were undescribed or too small or provided no true comparability between treated and untreated groups, or they had used inappropriate statistical tests and did not provide enough information for the reader to recompute the data. Using these standards, we drew from the total number of studies, 231 acceptable ones, which we not only analyzed ourselves but summarized in detail so that a reader of our analysis would be able to compare it with his independent conclusions.

These treatment studies use various measures of offender improvement: recidivism rates (that is, the rates at which offenders return to crime), adjustment to prison life, vocational success, educational achievement, personality and attitude change, and general adjustment to the outside community. We included all of these in our study; but in these pages I will deal only with the effects of rehabilitative treatment on recidivism, the phenomenon which reflects most directly how well our present treatment programs are performing the task of rehabilitation. The use of even this one measure brings with it enough methodological complications to make a clear reporting of the findings most difficult. The groups that are studied, for instance, are exceedingly disparate, so that it is hard to tell whether what "works" for one kind of offender also works for others. In addition, there has been little attempt to replicate studies; therefore one cannot be certain how stable and reliable the various findings are. Just as important, when the various studies use the term "recidivism rate," they may in fact be talking about somewhat different measures of offender behavior—i.e., "failure" measures such as arrest rates or parole violation rates, or "success" measures such as favorable discharge from parole or probation. And not all of

¹ Following this case, the state finally did give its permission to have the work published; it will appear in its complete form in a forthcoming book by Praeger.

these measures correlate very highly with one another. These difficulties will become apparent again and again in the course of this discussion.

With these caveats, it is possible to give a rather bald summary of our findings: *With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.* Studies that have been done since our survey was completed do not present any major grounds for altering that original conclusion. What follows is an attempt to answer the questions and challenges that might be posed to such an unqualified statement.

EDUCATION AND VOCATIONAL TRAINING

1. Isn't it true that a correctional facility running a truly rehabilitative program—one that prepares inmates for life on the outside through education and vocational training—will turn out more successful individuals than will a prison which merely leaves its inmates to rot?

If this is true, the fact remains that there is very little empirical evidence to support it. Skill development and education programs are in fact quite common in correctional facilities, and one might begin by examining their effects on young males, those who might be thought most amenable to such efforts. A study by New York State (1964)² found that for young males as a whole, the degree of success achieved in the regular prison academic education program, as measured by changes in grade achievement levels, made no significant difference in recidivism rates. The only exception was the relative improvement, compared with the sample as a whole, that greater progress made in the top seven per cent of the participating population—those who had high I.Q.'s, had made good records in previous schooling, and who also made good records of academic progress in the institution. And a study by Glaser (1964) found that while it was true that, when one controlled for sentence length, more attendance in regular prison academic programs slightly decreased the subsequent chances of parole violation, this improvement was not large enough to outweigh the associated disadvantage for the "long-attenders": Those who attended prison school the longest also turned out to be those who were in prison the longest. Presumably, those getting the most education were also the worst parole risks in the first place.³

Studies of special education programs aimed at vocational or social skill development, as opposed to conventional academic education programs, report similarly discouraging results and reveal additional problems in the field of correctional research. Jacobson (1965) studied a program of "skill re-education" for institutionalized young males, consisting of 10 weeks of daily discussions aimed at developing problem-solving skills. The discussions were led by an adult who was thought capable of serving as a role model for the boys, and they were encouraged to follow the example that he set. Jacobson found that over all, the program produced no improvement in recidivism rates. There was only one special subgroup which provided an exception to this pessimistic finding: If boys in the experimental program decided afterwards to go on to take three or more regular prison courses, they did better upon release than "control" boys who had done the same. (Of course, it also seems likely that experimental boys who did not take these extra courses did *worse* than their controls.)

Zivan (1966) also reported negative results from a much more ambitious vocational training program at the Children's Village in Dobbs Ferry, New York. Boys in his special program were prepared for their return to the community in a wide variety of ways. First of all, they were given, in sequence, three types of vocational guidance: "assessment counseling," "development counseling," and "preplacement counseling." In addition, they participated in an "occupational orientation," consisting of role-playing, presentations via audio-visual aids, field trips, and talks by practitioners in various fields of work. Furthermore, the boys were prepared for work by participating in the Auxiliary Maintenance Corps, which performed various chores in the institution; a boy might be promoted from the Corps to the Work Activity Program, which "hired" him, for a small fee, to perform various artisans' tasks. And finally, after release from Children's Village, a boy in the special program received supportive after-care and job placement aid.

² All studies cited in the text are referenced in the bibliography which appears at the conclusion of this article.

³ The net result was that those who received *less* prison education—because their sentences were shorter or because they were probably better risks—ended up having better parole chances than those who received more prison education.

None of this made any difference in recidivism rates. Nevertheless, one must add that it is impossible to tell whether this failure lay in the program itself or in the conditions under which it was administered. For one thing, the education department of the institution itself was hostile to the program, they believed instead in the efficacy of academic education. This staff therefore tended to place in the pool from which experimental subjects were randomly selected mainly "multi-problem" boys. This by itself would not have invalidated the experiment as a test of vocational training for this particular type of youth, but staff hostility did not end there; it exerted subtle pressures of disapproval throughout the life of the program. Moreover, the program's "after-care" phase also ran into difficulties; boys who were sent back to school before getting a job often received advice that conflicted with the program's counseling, and boys actually looking for jobs met with the frustrating fact that the program's personnel, despite concerted efforts, simply could not get businesses to hire the boys.

We do not know whether these constraints, so often found in penal institutions, were responsible for the program's failure; it might have failed anyway. All one can say is that this research failed to show the effectiveness of special vocational training for young males.

The only clearly positive report in this area comes from a study by Sullivan (1967) of a program that combined academic education with special training in the use of IBM equipment. Recidivism rates after one year were only 48 per cent for experimentals, as compared with 66 per cent for controls. But when one examines the data, it appears that this difference emerged only between the controls and those who had successfully completed the training. When one compares the control group with all those who had been enrolled in the program, the difference disappears. Moreover, during this study the random assignment procedure between experimental and control groups seems to have broken down, so that towards the end, better risks had a greater chance of being assigned to the special program.

In sum, many of these studies of young males are extremely hard to interpret because of flaws in research design. But it can safely be said that they provide us with no clear evidence that education or skill development programs have been successful.

TRAINING ADULT INMATES

When one turns to adult male inmates, as opposed to young ones, the results are even more discouraging. There have been six studies of this type; three of them report that their programs, which ranged from academic to prison work experience, produced no significant differences in recidivism rates, and one—by Glaser (1964)—is almost impossible to interpret because of the risk differentials of the prisoners participating in the various programs.

Two studies—by Selmer (1948) and by Saden (1962)—do report a positive difference from skill development programs. In one of them, the Saden study, it is questionable whether the experimental and control groups were truly comparable. But what is more interesting is that both these "positive" studies dealt with inmates incarcerated prior to or during World War II. Perhaps the rise in our educational standards as a whole since then has lessened the differences that prison education or training can make. The only other interesting possibility emerges from a study by Gearhart (1967). His study was one of those that reported vocational education to be non-significant in affecting recidivism rates. He did note, however, that when a trainee succeeded in finding a job related to his area of training, he had a slightly higher chance of becoming a successful parolee. It is possible, then, that skill development programs fail because what they teach bears so little relationship to an offender's subsequent life outside the prison.

One other study of adults, this one with fairly clear implications, has been performed with women rather than men. An experimental group of institutionalized women in Milwaukee was given an extremely comprehensive special education program, accompanied by group counseling. Their training was both academic and practical; it included reading, writing, spelling, business filing, child care, and grooming. Kettering (1965) found that the program made no difference in the women's rate of recidivism.

Two things should be noted about these studies. One is the difficulty of interpreting them as a whole. The disparity in the programs that were tried, in the populations that were affected, and in the institutional settings that surrounded these projects make it hard to be sure that one is observing the same category of

treatment in each case. But the second point is that despite this difficulty, one can be reasonably sure that, so far, educational and vocational programs have not worked. We don't know why they have failed. We don't know whether the programs themselves are flawed, or whether they are incapable of overcoming the effects of prison life in general. The difficulty may be that they lack applicability to the world the inmate will face outside of prison. Or perhaps the type of educational and skill improvement they produce simply doesn't have very much to do with an individual's propensity to commit a crime. What we do know is that, to date, education and skill development have not reduced recidivism by rehabilitating criminals.

THE EFFECTS OF INDIVIDUAL COUNSELING

2. But when we speak of rehabilitative prison, aren't we referring to more than education and skill development alone? Isn't what's needed some way of counseling inmates, or helping them with the deeper problems that have caused their maladjustment?

This, too, is a reasonable hypothesis; but when one examines the programs of this type that have been tried, it's hard to find any more grounds for enthusiasm than we found with skill development and education. One method that's been tried—though so far, there have been acceptable reports only of its application to young offenders—has been individual psychotherapy. For young males, we found seven such reported studies. One study, by Guttman (1963) at the Nelles School, found such treatment to be ineffective in reducing recidivism rates; another, by Rudoff (1960), found it unrelated to institutional violation rates, which were themselves related to parole success. It must be pointed out that Rudoff used only this indirect measure of association, and the study therefore cannot rule out the possibility of a treatment effect. A third, also by Guttman (1963) but at another institution, found that such treatment was actually related to a slightly higher parole violation rate; and a study by Adams (1959b and 1961b) also found a lack of improvement in parole revocation and first suspension rates.

There were two studies at variance with this pattern. One by Persons (1967) said that if a boy was judged to be "successfully" treated—as opposed to simply being subjected to the treatment experience—he did tend to do better. And there was one finding both hopeful and cautionary: At the Deuel School (Adams, 1961a), the experimental boys were first divided into two groups, those rated as "amenable" to treatment and those rated "non-amenable." Amenable boys who got the treatment did better than non-treated boys. On the other hand, "non-amenable" boys who were treated actually did worse than they would have done if they had received no treatment at all. It must be pointed out that Guttman (1963), dealing with younger boys in his Nelles School study, did not find such an "amenability" effect, either to the detriment of the non-amenable who were treated or to the benefit of the amenable who were treated. But the Deuel School study (Adams, 1961a) suggests both that there is something to be hoped for in treating properly selected amenable subjects and that if these subjects are not properly selected, one may not only wind up doing no good but may actually produce harm.

There have been two studies of the effects of individual psychotherapy on young incarcerated *female* offenders, and both of them (Adams 1959a, Adams 1961b) report no significant effects from the therapy. But one of the Adams studies (1959a) does contain a suggestive, although not clearly interpretable, finding: If this individual therapy was administered by a psychiatrist or a psychologist, the resulting parole suspension rate was almost two-and-a-half times *higher* than if it was administered by a social worker without this specialized training.

There has also been a much smaller number of studies of two other types of individual therapy: counseling, which is directed towards a prisoner's gaining new insight into his own problems, and casework, which aims at helping a prisoner cope with his more pragmatic immediate needs. These types of therapy both rely heavily on the empathetic relationship that is to be developed between the professional and the client. It was noted above that the Adams study (1961b) of therapy administered to girls, referred to in the discussion of individual psychotherapy, found that social workers seemed better at the job than psychologists or psychiatrists. This difference seems to suggest a favorable outlook for these alternative forms of individual therapy. But other studies of such therapy

have produced ambiguous results. Bernsten (1961) reported a Danish experiment that showed that socio-psychological counseling combined with comprehensive welfare measures—job and residence placement, clothing, union and health insurance membership, and financial aid—produced an improvement among some short-term male offenders, though not those in either the highest-risk or the lowest-risk categories. On the other hand, Hood, in Britain (1966), reported generally non-significant results with a program of counseling for young males. (Interestingly enough, this experiment *did* point to a mechanism capable of changing recidivism rates. When boys were released from institutional care and entered the army directly, "poor risk" boys among both experimental and controls did better than expected. "Good risks" did worse.)

So these foreign data are sparse and not in agreement; the American data are just as sparse. The only American study which provides a direct measure of the effects of individual counseling—a study of California's Intensive Treatment Program (California, 1958a), which was "psychodynamically" oriented—found no improvement in recidivism rates.

It was this finding of the failure of the Intensive Treatment Program which contributed to the decision in California to de-emphasize individual counseling in its penal system in favor of group methods. And indeed one might suspect that the preceding reports reveal not the inadequacy of counseling as a whole but only the failure of one *type* of counseling, the individual type. *Group* counseling methods, in which offenders are permitted to aid and compare experiences with one another, might be thought to have a better chance of success. So it is important to ask what results these alternative methods have actually produced.

GROUP COUNSELING

Group counseling has indeed been tried in correctional institutions, both with and without a specifically psychotherapeutic orientation. There has been one study of "pragmatic," problem-oriented counseling on young institutionalized males, by Seckel (1965). This type of counseling had no significant effect. For adult males, there have been three such studies of the "pragmatic" and "insight" methods. Two (Kassebaum, 1971; Harrison, 1964) report no long-lasting significant effects. (One of these two did report a real but short-term effect that wore off as the program became institutionalized and as offenders were at liberty longer.) The third study of adults, by Shelley (1961), dealt with a "pragmatic" casework program, directed towards the educational and vocational needs of institutionalized young adult males in a Michigan prison camp. The treatment lasted for six months and at the end of that time Shelley found an improvement in attitudes; the possession of "good" attitudes was independently found by Shelley to correlate with parole success. Unfortunately, though, Shelley was not able to measure the *direct* impact of the counseling on recidivism rates. His own separate correlations are suggestive, but they fall short of being able to tell us that it really is the counseling that has a direct effect on recidivism.

With regard to more professional group *psychotherapy*, the reports are also conflicting. We have two studies of group psychotherapy on young males. One, by Persons (1966), says that this treatment did in fact reduce recidivism. The improved recidivism rate stems from the improved performance only of those who were clinically judged to have been "successfully" treated; still, the overall result of the treatment was to improve recidivism rates for the experimental group as a whole. On the other hand, a study by Craft (1964) of young males designated "psychopaths," comparing "self-government" group psychotherapy with "authoritarian" individual counseling, found that the "group therapy" boys afterwards committed *twice* as many new offenses as the individually treated ones. Perhaps some forms of group psychotherapy work for some types of offenders but not others; a reader must draw his own conclusions, on the basis of sparse evidence.

With regard to young females, the results are just as equivocal. Adams, in his study of females (1959a), found that there was no improvement to be gained from treating girls by group rather than individual methods. A study by Taylor of borstal (reformatory) girls in New Zealand (1937) found a similar lack of any great improvement for group therapy as opposed to individual therapy or even to no therapy at all. But the Taylor study does offer one real, positive finding: When the "group therapy" girls *did* commit new offenses, these offenses were less serious than the ones for which they had originally been incarcerated.

There is a third study that does report an overall positive finding as opposed to a partial one. Truax (1966) found that girls subjected to group psychotherapy

and then released were likely to spend less time reincarcerated in the future. But what is most interesting about this improvement is the very special and important circumstance under which it occurred. The therapists chosen for this program did not merely have to have the proper analytic training; they were specially chosen for their "empathy" and "non-possessive warmth." In other words, it may well have been the therapists' special personal gifts rather than the fact of treatment itself which produced the favorable result. This possibility will emerge again when we examine the effects of other types of rehabilitative treatment later in this article.

As with the question of skill development, it is hard to summarize these results. The programs administered were various; the groups to which they were administered varied not only by sex but by age as well; there were also variations in the length of time for which the programs were carried on, the frequency of contact during that time, and the period for which the subjects were followed up. Still, one must say that the burden of the evidence is not encouraging. These programs seem to work best when they are new, when their subjects are amenable to treatment in the first place, and when the counselors are not only trained people but "good" people as well. Such findings, which would not be much of a surprise to a student of organization or personality, are hardly encouraging for a policy planner, who must adopt measures that are generally applicable, that are capable of being successfully institutionalized, and that must rely for personnel on something other than the exceptional individual.

TRANSFORMING THE INSTITUTIONAL ENVIRONMENT

3. But maybe the reason these counseling programs don't seem to work is not that they are ineffective per se, but that the institutional environment outside the program is unwholesome enough to undo any good work that the counseling does. Isn't a truly successful rehabilitative institution the one where the inmate's whole environment is directed towards true correction rather than towards custody or punishment?

This argument has not only been made, it has been embodied in several institutional programs that go by the name of "milieu therapy." They are designed to make every element of the inmate's environment a part of his treatment, to reduce the distinctions between the custodial staff and the treatment staff, to create a supportive, non-authoritarian, and non-regimented atmosphere, and to enlist peer influence in the formation of constructive values. These programs are especially hard to summarize because of their variety; they differ, for example, in how "supportive" or "permissive" they are designed to be, in the extent to which they are combined with other treatment methods such as individual therapy, group counseling, or skill development, and in how completely the program is able to control all the relevant aspects of the institutional environment.

One might well begin with two studies that have been done of institutionalized adults, in regular prisons, who have been subjected to such treatment; this is the category whose results are the most clearly discouraging. One study of such a program, by Robison (1967), found that the therapy did seem to reduce recidivism after one year. After two years, however, this effect disappeared, and the treated convicts did no better than the untreated. Another study by Kassebaum, Ward, and Wilner (1971), dealt with a program which had been able to effect an exceptionally extensive and experimentally rigorous transformation of the institutional environment. This sophisticated study had a follow-up period of 36 months, and it found that the program had no significant effect on parole failure or success rates.

The results of the studies of youth are more equivocal. As for young females, one study by Adams (1966) of such a program found that it had no significant effect on recidivism; another study, by Goldberg and Adams (1964), found that such a program did have a positive effect. This effect declined when the program began to deal with girls who were judged beforehand to be worse risks.

As for young males, the studies may conveniently be divided into those dealing with juveniles (under 16) and those dealing with youths. There have been five studies of milieu therapy administered to juveniles. Two of them—by Lanlicht (1962) and by Jesness (1965)—report clearly that the program in question either had no significant effect or had a short-term effect that wore off with passing time. Jesness does report that when his experimental juveniles did commit new offenses, the offenses were less serious than those committed by controls. A third study of juveniles, by McCord (1953) at the Wiltwyck School, reports mixed results. Using two measures of performance, a "success" rate and a "failure"

rate, McCord found that his experimental group achieved both less failure and less success than the controls did. There have been two positive reports on milieu therapy programs for male juveniles; both of them have come out of the Highfields program, the milieu therapy experiment which has become the most famous and widely quoted example of "success" via this method. A group of boys was confined for a relatively short time to the unrestrictive, supportive environment of Highfields; and at a follow-up of six months, Freeman (1956) found that the group did indeed show a lower recidivism rate (as measured by parole revocation) than a similar group spending a longer time in the regular reformatory. McCorkle (1958) also reported positive findings from Highfields. But in fact, the McCorkle data show, this improvement was not so clear: The Highfields boys had lower recidivism rates at 12 and 36 months in the follow-up period, but not at 24 and 60 months. The length of follow-up, these data remind us, may have large implications for a study's conclusions. But more important were other flaws in the Highfields experiment: The populations were not fully comparable (they differed according to risk level and time of admission); different organizations—the probation agency for the Highfields boys, the parole agency for the others—were making the revocation decisions for each group; more of the Highfields boys were discharged early from supervision, and thus removed from any risk of revocation. In short, not even from the celebrated Highfields case may we take clear assurance that milieu therapy works.

In the case of male youths, as opposed to male juveniles, the findings are just as equivocal, and hardly more encouraging. One such study by Empey (1966) in a residential context did not produce significant results. A study by Seckel (1967) described California's Fremont Program, in which institutionalized youths participated in a combination of therapy, work projects, field trips, and community meetings. Seckel found that the youth subjected to this treatment committed more violations of law than did their non-treated counterparts. This difference could have occurred by chance; still, there was certainly no evidence of relative improvement. Another study, by Levinson (1962-1964), also found a lack of improvement in recidivism rates—but Levinson noted the encouraging fact that the treated group spent somewhat more time in the community before recidivating, and committed less serious offenses. And a study by the State of California (1967) also shows a partially positive finding. This was a study of the Marshall Program, similar to California's Fremont Program but different in several ways. The Marshall Program was shorter and more tightly organized than its Fremont counterpart. In the Marshall Program, as opposed to the Fremont Program, a youth could be ejected from the group and sent back to regular institutions before the completion of the program. Also, the Marshall Program offered some additional benefits: the teaching of "social survival skills" (i.e., getting and holding a job), group counseling of parents, and an occasional opportunity for boys to visit home. When youthful offenders were released to the Marshall Program, either directly or after spending some time in a regular institution, they did no better than a comparable regularly institutionalized population, though both Marshall youth and youth in regular institutions did better than those who were directly released by the court and given no special treatment.

So the youth in these milieu therapy programs at least do no worse than their counterparts in regular institutions and the special programs may cost less. One may therefore be encouraged—not on grounds of rehabilitation but on grounds of cost-effectiveness.

WHAT ABOUT MEDICAL TREATMENT?

4. Isn't there anything you can do in an institutional setting that will reduce recidivism, for instance, through strictly medical treatment?

A number of studies deal with the results of efforts to change the behavior of offenders through drugs and surgery. As for surgery, the one experimental study of a plastic surgery program—by Mandell (1967)—had negative results. For non-addicts who received plastic surgery, Mandell purported to find improvement in performance on parole; but when one reanalyzes his data, it appears that surgery alone did not in fact make a significant difference.

One type of surgery does seem to be highly successful in reducing recidivism. A twenty-year Danish study of sex offenders, by Stuerup (1960), found that while those who had been treated with hormones and therapy continued to commit both sex crimes (29.6 percent of them did so) and non-sex crimes (21.0 percent), those who had been castrated had rates of only 3.5 per cent (not, interestingly enough, a rate of zero; where there's a will, apparently there's a way) and 9.2 per cent.

One hopes that the policy implications of this study will be found to be distinctly limited.

As for drugs, the major report on such a program—involving tranquillization—was made by Adams (1961b). The tranquillizers were administered to male and female institutionalized youths. With boys, there was only a slight improvement in their subsequent behavior; this improvement disappeared within a year. With girls, the tranquillization produced worse results than when the girls were given no treatment at all.

THE EFFECT OF SENTENCING

5. *Well, at least it may be possible to manipulate certain gross features of the existing, conventional prison system—such as length of sentence and degree of security—in order to affect these recidivism rates. Isn't this the case?*

At this point, it's still impossible to say that this is the case. As for the degree of security in an institution, Glaser's (1964) work reported that, for both youth and adults, a less restrictive "custody grading" in American federal prisons was related to success on parole; but this is hardly surprising, since those assigned to more restrictive custody are likely to be worse risks in the first place. More to the point, an American study by Fox (1950) discovered that for "older youths" who were deemed to be good risks for the future, a minimum security institution produced better results than a maximum security one. On the other hand, the data we have on youths under 16—from a study by McClintock (1961), done in Great Britain—indicate that so-called Borstals, in which boys are totally confined, are more effective than a less restrictive regime of partial physical custody. In short, we know very little about the recidivism effects of various degrees of security in existing institutions; and our problems in finding out will be compounded by the probability that these effects will vary widely according to the particular type of offender that we're dealing with.

The same problems of mixed results and lack of comparable populations have plagued attempts to study the effects of sentence length. A number of studies—by Narloch (1959), by Bernstein (1965), and by the State of California (1956)—suggest that those who are released earlier from institutions than their scheduled parole date, or those who serve short sentences of under three months rather than longer sentences of eight months or more, either do better on parole or at least do no worse.⁴ The implication here is quite clear and important: Even if early releases and short sentences produce no improvement in recidivism rates, one could at least maintain the same rates while lowering the cost of maintaining the offender and lessening his own burden of imprisonment. Of course, this implication carries with it its concomitant danger: the danger that though shorter sentences cause no worsening of the recidivism rate, they may increase the total amount of crime in the community by increasing the absolute number of potential recidivists at large.

On the other hand, Glaser's (1964) data show not a consistent linear relationship between the shortness of the sentence and the rate of parole success, but a curvilinear one. Of his subjects, those who served less than a year had a 73 per cent success rate, those who served up to two years were only 65 per cent successful, and those who served up to three years fell to a rate of 56 per cent. But among those who served sentences of more than three years, the success rate rose again—to 60 per cent. These findings should be viewed with some caution since Glaser did not control for the pre-existing degree of risk associated with each of his categories of offenders. But the data do suggest that the relationship between sentence length and recidivism may not be a simple linear one.

More important, the effect of sentence length seems to vary widely according to type of offender. In a British study (1963), for instance, Hammond found that for a group of "hard-core recidivists," shortening the sentence caused no improvement in the recidivism rate. In Denmark, Bernstein (1965) discovered a similar phenomenon: That the beneficial effect of three-month sentences as against eight-month ones disappeared in the case of these "hard-core recidivists." Garrity found another such distinction in his 1956 study. He divided his offenders into three categories: "pro-social," "anti-social," and "manipulative." "Pro-social" of-

⁴ A similar phenomenon has been measured indirectly by studies that have dealt with the effect of various parole policies on recidivism rates. Where parole decisions have been liberalized so that an offender could be released with only the "reasonable assurance" of a job rather than with a definite job already developed by a parole officer (Stanton, 1963), this liberal release policy has produced no worsening of recidivism rates.

fenders he found to have low recidivism rates regardless of the length of their sentence; "anti-social" offenders did better with short sentences; the "manipulative" did better with long ones. Two studies from Britain made yet another division of the offender population, and found yet other variations. One (Great Britain, 1964) found that previous offenders—but not first offenders—did better with *longer* sentences, while other (Cambridge, 1952) found the *reverse* to be true with juveniles.

To add to the problem of interpretation, these studies deal not only with different types and categorizations of offenders but with different types of institutions as well. No more than in the case of institution type can we say that length of sentence has a clear relationship to recidivism.

DECARCERATING THE CONVICT

6. All of this seems to suggest that there's not much we know how to do to rehabilitate an offender when he's in an institution. Doesn't this lead to the clear possibility that the way to rehabilitate offenders is to deal with them outside an institutional setting?

This is indeed an important possibility, and it is suggested by other pieces of information as well. For instance, Miner (1967) reported on a milieu therapy program in Massachusetts called Outward Bound. It took youths 15½ and over; it was oriented toward the development of skills in the out-of-doors and conducted in a wilderness atmosphere very different from that of most existing institutions. The culmination of the 26-day program was a final 24 hours in which each youth had to survive alone in the wilderness. And Miner found that the program did indeed work in reducing recidivism rates.

But by and large, when one takes the programs that have been administered in institutions and applies them in a non-institutional setting, the results do not grow to encouraging proportions. With casework and individual counseling in the community, for instance, there have been three studies; they dealt with counseling methods from psycho-social and vocational counseling to "operant conditioning," in which an offender was rewarded first simply for coming to counseling sessions and then, gradually, for performing other types of approved acts. Two of them report that the community-counseled offenders did no better than their institutional controls, while the third notes that although community counseling produced fewer arrests per person, it did not ultimately reduce the offender's chance of returning to a reformatory.

The one study of a non-institutional skill development program, by Kovacs (1967), described the New Start Program in Denver, in which offenders participated in vocational training, role playing, programmed instruction, group counseling, college class attendance, and trips to art galleries and museums. After all this, Kovacs found no significant improvement over incarceration.

There have also been studies of milieu therapy programs conducted with youthful male probationers not in actual physical custody. One of them found no significant improvement at all. One, by Empey (1966), did say that after a follow-up of six months, a boy who was judged to have "successfully" completed the milieu program was less likely to recidivate afterwards than was a "successful" regular probationer. Empey's "successes" came out of an extraordinary program in Provo, Utah, which aimed to rehabilitate by subjecting offenders to a non-supportive milieu. The staff of this program operated on the principle that they were not to go out of their way to interact and be empathetic with the boys. Indeed, a boy who misbehaved was to be met with "role dispossession": He was to be excluded from meetings of his peer group, and he was not to be given answers to his questions as to why he had been excluded or what his ultimate fate might be. This peer group and its meetings were designed to be the major force for reform at Provo; they were intended to develop, and indeed did develop, strong and controlling norms for the behavior of individual members. For one thing, group members were not to associate with delinquent boys outside the program; for another, individuals were to submit to a group review of all their actions and problems; and they were to be completely honest and open with the group about their attitudes, their states of mind, their personal failings. The group was granted quite a few sanctions with which to enforce these norms: They could practice derision or temporary ostracism, or they could lock up an aberrant member for a weekend, refuse to release him from the program, or send him away to the regular reformatory.

One might be tempted to forgive these methods because of the success that Empey reports, except for one thing. If one judges the program not only by its

"successful" boys but by all the boys who were subjected to it—those who succeeded and those who, not surprisingly, failed—the totals show no significant improvement in recidivism rates compared with boys on regular probation. Empey did find that both the Provo boys and those on regular probation did better than those in regular reformatories—in contradiction, it may be recalled, to the finding from the residential Marshall Program, in which the direct releases given no special treatment did worse than boys in regular institutions.

The third such study of non-residential milieu therapy, by McCravey (1967), found not only that there was no significant improvement, but that the longer a boy participated in the treatment, the worse he was likely to do afterwards.

PSYCHOTHERAPY IN COMMUNITY SETTINGS

There is some indication that individual psychotherapy may "work" in a community setting. Massimo (1963) reported on one such program, using what might be termed a "pragmatic" psychotherapeutic approach, including "insight" therapy and a focus on vocational problems. The program was marked by its small size and by its use of therapists who were personally enthusiastic about the project; Massimo found that there was indeed a decline in recidivism rates. Adamson (1956), on the other hand, found no significant difference produced by another program of individual therapy (though he did note that arrest rates among the experimental boys declined with what he called "intensity of treatment"). And Schwitzgebel (1963, 1964), studying other, different kinds of therapy programs, found that the programs did produce improvements in the attitudes of his boys—but, unfortunately, not in their rates of recidivism.

And with *group* therapy administered in the community, we find yet another set of equivocal results. The results from studies of pragmatic group counseling are only mildly optimistic. Adams (1965) did report that a form of group therapy, "guided group interaction when administered to juvenile gangs, did somewhat reduce the percentage that were to be found in custody six years later. On the other hand, in a study of juveniles, Adams (1964) found that while such a program did reduce the number of contacts that an experimental youth had with police, it made no ultimate difference in the detention rate. And the attitudes of the counseled youth showed no improvement. Finally, when O'Brien (1961) examined a community-based program of group psychotherapy, he found not only that the program produced no improvement in the recidivism rate, but that the experimental boys actually did worse than their controls on a series of psychological tests.

PROBATION OR PAROLE VERSUS PRISON

But by far the most extensive and important work that has been done on the effect of community-based treatments has been done in the areas of probation and parole. This work sets out to answer the question of whether it makes any difference how you supervise and treat an offender once he has been released from prison or has come under state surveillance in lieu of prison. This is the work that has provided the main basis to date for the claim that we do indeed have the means at our disposal for rehabilitating the offender or at least decarcerating him safely.

One group of these studies has compared the use of probation with other dispositions for offenders; these provide some slight evidence that, at least under some circumstances, probation may make an offender's future chances better than if he had been sent to prison. Or, at least, probation may not worsen those chances.⁵ A British study, by Wilkins (1958), reported that when probation was granted more frequently, recidivism rates among probationers did not increase significantly. And another such study by the state of Michigan in 1963 reported that an expansion in the use of probation actually improved recidivism rates—though there are serious problems of comparability in the groups and systems that were studied.

One experiment—by Babst (1965)—compared a group of parolees, drawn from adult male felony offenders in Wisconsin, and excluding murderers and sex criminals, with a similar group that had been put on probation: it found that the probationers committed fewer violations if they had been first offenders, and did no worse if they were recidivists. The problem in interpreting this experiment,

⁵ It will be recalled that Empey's report on the Provo program made such a finding.

though, is that the behavior of those groups was being measured by separate organizations, by probation officers for the probationers, and by parole officers for the parolees; it is not clear that the definition of "violation" was the same in each case, or that other types of uniform standards were being applied. Also, it is not clear what the results would have been if subjects had been released directly to the parole organization without having experienced prison first. Another such study, done in Israel by Shoham (1964), must be interpreted cautiously because his experiment and control groups had slightly different characteristics. But Shoham found that when one compared a suspended sentence plus probation for first offenders with a one-year prison sentence, only first offenders under 20 years of age did better on probation; those from 21 to 45 actually did worse. And Shoham's findings also differ from Babst's in another way. Babst had found that parole rather than prison brought no improvement for recidivists, but Shoham reported that for recidivists with four or more prior offenses, a suspended sentence was actually *better*—though the improvement was much less when the recidivist had committed a crime of violence.

But both the Babst and the Shoham studies, even while they suggest the possible value of suspended sentences, probation, or parole for some offenders (though they contradict each other in telling us *which* offenders), also indicate a pessimistic general conclusion concerning the limits of the effectiveness of treatment programs. For they found that the personal characteristics of offenders—first-offender status, or age, or type of offense—were more important than the form of treatment in determining future recidivism. An offender with a "favorable" prognosis will do better than one without, it seems, no matter how you distribute "good" or "bad," "enlightened" or "regressive" treatments among them.

Quite a large group of studies deals not with probation as compared to other dispositions, but instead with the type of treatment that an offender receives once he is on probation or parole. These are the studies that have provided the most encouraging reports on rehabilitative treatment and that have also raised the most serious questions about the nature of the research that has been going on in the corrections field.

Five of these studies have dealt with youthful probationers from 13 to 18 who were assigned to probation officers with small caseloads or provided with other ways of receiving more intensive supervision (Adams, 1966—two reports; Feistman, 1966; Kawaguchi, 1967; Pllnick, 1967). These studies report that, by and large, intensive supervision does work—that the specially treated youngsters do better according to some measure of recidivism. Yet these studies left some important questions unanswered. For instance, was this improved performance a function merely of the number of contacts a youngster had with his probation officer? Did it also depend on the length of time in treatment? Or was it the quality of supervision that was making the difference, rather than the quantity?

INTENSIVE SUPERVISION: THE WARREN STUDIES

The widely-reported Warren studies (1966a, 1966b, 1967) in California constitute an extremely ambitious attempt to answer these questions. In this project, a control group of youths, drawn from a pool of candidates ready for first admission to a California Youth Authority institution, was assigned to regular detention, usually for eight to nine months, and then released to regular supervision. The experimental group received considerably more elaborate treatment. They were released directly to probation status and assigned to 12-man caseloads. To decide what special treatment was appropriate within these caseloads, the youths were divided according to their "interpersonal maturity level classification," by use of a scale developed by Grant and Grant. And each level dictated its own special type of therapy. For instance, a youth might be judged to occupy the lowest maturity level; this would be a youth, according to the scale, primarily concerned with "demands that the world take care of him. . . . He behaves impulsively, unaware of anything except the grossest effects of his behavior on others." A youth like this would be placed in a supportive environment such as a foster home; the goals of his therapy would be to meet his dependency needs and help gain more accurate perceptions about his relationship to others. At the other end of the three-tier classification, a youth might exhibit high maturity. This would be a youth who had internalized "a set of standards by which he judges his and others' behavior. . . . He shows some ability to understand reasons for behavior, some ability to relate to people emotionally and on a long-term basis." These high-maturity youths could come in several varieties—a "neurotic acting out," for instance, a "neurotic anxious," a "situa-

tional emotional reactor," or a "cultural identifier." But the appropriate treatment for these youths was individual psychotherapy, or family or group therapy for the purpose of reducing internal conflicts and increasing the youths' awareness of personal and family dynamics.

"Success" in this experiment was defined as favorable discharge by the Youth Authority; "failure" was unfavorable discharge, revocation, or recommitment by a court. Warren reported an encouraging finding: Among all but one of the "subtypes," the experimentals had a significantly lower failure rate than the controls. The experiment did have certain problems: The experimentals might have been performing better because of the enthusiasm of the staff and the attention lavished on them; none of the controls had been *directly* released to their regular supervision programs instead of being detained first; and it was impossible to separate the effects of the experimentals' small caseloads from their specially designed treatments, since no experimental youths had been assigned to a small caseload with "inappropriate" treatment, or with no treatment at all. Still, none of these problems were serious enough to vitiate the encouraging prospect that this finding presented for successful treatment of probationers.

The encouraging finding was, however, accompanied by a rather more disturbing clue. As has been mentioned before, the experimental subjects, when measured, had a lower *failure* rate than the controls. But the experimentals also had a lower *success* rate. That is, fewer of the experimentals as compared with the controls had been judged to have successfully completed their program of supervision and to be suitable for favorable release. When my colleagues and I undertook a rather laborious reanalysis of the Warren data, it became clear why this discrepancy had appeared. It turned out that fewer experimentals were "successful" because the experimentals were actually committing more offenses than their controls. The reason that the experimentals' relatively large number of offenses was not being reflected in their failure rates was simply that the experimentals' probation officers were using a more lenient revocation policy. In other words, the controls had a higher failure rate because the controls were being revoked for less serious offenses.

So it seems that what Warren was reporting in his "failure" rates was not merely the treatment effect of her small caseloads and special programs. Instead, what Warren was finding was not so much a change in the behavior of the experimental youths as a change in the behavior of the experimental *probation officers*, who knew the "special" status of their charges and who had evidently decided to revoke probation status at a lower than normal rate. The experimentals continued to commit offenses; what was different was that when they committed these offenses, they were permitted to remain on probation.

The experimenters claimed that this low revocation policy, and the greater number of offenses committed by the special treatment youth, were *not* an indication that these youth were behaving specially badly and that policy makers were simply letting them get away with it. Instead, it was claimed, the higher reported offense rate was primarily an artifact of the more intense surveillance that the experimental youth received. But the data show that this is not a sufficient explanation of the low failure rate among experimental youth; the difference in "tolerance" of offenses between experimental officials and control officials was much greater than the difference in the rates at which these two systems detected youths committing new offenses. Needless to say, this reinterpretation of the data presents a much bleaker picture of the possibilities of intensive supervision with special treatment.

"TREATMENT EFFECTS" VERSUS "POLICY EFFECTS"

This same problem of experimenter bias may also be present in the predecessors of the Warren study, the ones which had also found positive results from intensive supervision on probation; indeed, this disturbing question can be raised about many of the previously discussed reports of positive "treatment effects."

This possibility of a "policy effect" rather than a "treatment effect" applies, for instance, to the previously discussed studies of the effects of intensive supervision on juvenile and youthful probationers. These were the studies, it will be recalled, which found lower recidivism rates for the intensively supervised.*

* But one of these reports, by Kawaguchi (1967), also found that an intensively supervised juvenile, by the time he finally "failed," had had more previous *detentions* while under supervision than a control juvenile had experienced.

One opportunity to make a further check on the effects of this problem is provided, in a slightly different context, by Johnson (1962a). Johnson was measuring the effects of intensive supervision on youthful *parolees* (as distinct from probationers). There have been several such studies of the effects on youths of intensive parole supervision plus special counseling, and their findings are on the whole less encouraging than the probation studies; they are difficult to interpret because of experimental problems, but studies by Boston University in 1966, and by Van Couvering in 1966, report no significant effects and possibly some bad effects from such special programs. But Johnson's studies were unlike for the chance they provide to measure both treatment effects and the effect of agency policy.

Johnson, like Warren, assigned experimental subjects to small caseloads and his experiment had the virtue of being performed with two separate populations and at two different times. But in contrast with the Warren case, the Johnson experiment did not engage in a large continuing attempt to choose the experimental counselors specially, to train them specially, and to keep them informed about the progress and importance of the experiment. The first time the experiment was performed, the experimental youths had a slightly lower revocation rate than the controls at six months. But the second time, the experimentals did *not* do better than their controls; indeed, they did slightly worse. And with the experimentals from the first group—those who *had* shown an improvement after six months—this effect wore off at 18 months. In the Johnson study, my colleagues and I found, "Intensive" supervision did *not* increase the experimental youths' risk of detection. Instead, what was happening in the Johnson experiment was that the first time it had been performed—just as in the Warren study—the experimentals were simply revoked less often per number of offenses committed, and they were revoked for offenses more serious than those which prompted revocation among the controls. The second time around, this "policy" discrepancy disappeared; and when it did, the "improved" performance of the experimentals disappeared as well. The enthusiasm guiding the project had simply worn off in the absence of reinforcement.

One must conclude that the "benefits" of intensive supervision for youthful offenders may stem not so much from a "treatment" effect as from a "policy" effect—that such supervision, so far as we now know, results not in rehabilitation but in a decision to look the other way when an offense is committed. But there is one major modification to be added to this conclusion. Johnson performed a further measurement (1962b) in his parole experiment: He rated all the supervising agents according to the "adequacy" of the supervision they gave. And he found that an "adequate" agent, whether he was working in a small or a large caseload, produced a relative improvement in his charges. The converse was not true: An *inadequate* agent was more likely to produce youthful "failures" when he was given a *small* caseload to supervise. One can't much help a "good" agent, it seems, by reducing his caseload size; such reduction can only do further harm to those youths who fall into the hands of "bad" agents.

So with youthful offenders, Johnson found, intensive supervision does not seem to provide the rehabilitative benefits claimed for it, the only such benefits may flow not from intensive supervision itself but from contact with one of the "good people" who are frequently in such short supply.

INTENSIVE SUPERVISION OF ADULTS

The results are similarly ambiguous when one applies this intensive supervision to adult offenders. There have been several studies of the effects of intensive supervision on adult parolees. Some of these are hard to interpret because of problems of comparability between experimental and control groups (general risk ratings, for instance, or distribution of narcotics offenders, or policy changes that took place between various phases of the experiments), but two of them (California, 1966; Stanton, 1964) do not seem to give evidence of the benefits of intensive supervision. By far the most extensive work, though, on the effects of intensive supervision of adult parolees has been a series of studies of California's Special Intensive Parole Unit (SIPU), a 10-year-long experiment designed to test the treatment possibilities of various special parole programs. Three of the four "phases" of this experiment produced "negative results." The first phase tested the effect of a reduced caseload size; no lasting effect was found. The second phase slightly increased the size of the small caseloads and provided for a longer time in treatment, again there was no

evidence of a treatment effect. In the fourth phase, caseload sizes and time in treatment were again varied, and treatments were simultaneously varied in a sophisticated way according to personality characteristics of the parolees; once again, significant results did not appear.

The only phase of this experiment for which positive results were reported was Phase Three. Here, it was indeed found that a smaller caseload improved one's chances of parole success. There is, however, an important caveat that attaches to this findings: When my colleagues and I divided the whole population of subjects into two groups—those receiving supervision in the North of the state and those in the South—we found that the "improvement" of the experimentals' success rates was taking place primarily in the North. The North differed from the South in one important aspect: Its agents practiced a policy of returning both "experimental" and "control" violators to prison at relatively high rates. And it was the North that produced the higher success rate among its experimentals. So this improvement in experimentals' performance was taking place only when accompanied by a "realistic threat" of severe sanctions. It is interesting to compare this situation with that of the Warren studies. In the Warren studies, experimental subjects were being revoked at a relatively low rate. These experimentals "failed" less, but they also committed more new offenses than their controls. By contrast, in the Northern region of the SIPU experiment, there was a policy of high rate of return to prison for experimentals; and here the special program *did* seem to produce a real improvement in the behavior of offenders. What this suggests is that when intensive supervision *does* produce an improvement in offenders' behavior, it does so not through the mechanism of "treatment" or "rehabilitation," but instead through a mechanism that our studies have almost totally ignored—the mechanism of *deterrence*. And a similar mechanism is suggested by Lohman's study (1967) of intensive supervision of probationers. In this study intensive supervision led to higher total violation rates. But one also notes that intensive supervision combined the highest rate of technical violations with the lowest rate for *new* offenses.

THE EFFECTS OF COMMUNITY TREATMENT

In sum, even in the case of treatment programs administered outside penal institutions, we simply cannot say that this treatment in itself has an appreciable effect on offender behavior. On the other hand, there is one encouraging set of findings that emerges from these studies. For from many of them there flows the strong suggestion that even if we can't "treat" offenders so as to make them do better, a great many of the programs designed to rehabilitate them at least did not make them do *worse*. And if these programs did not show the advantages of actually rehabilitating, some of them did have the advantage of being less onerous to the offender himself without seeming to pose increased danger to the community. And some of these programs—especially those involving less restrictive custody, minimal supervision, and early release—simply cost fewer dollars to administer. The information on the dollar costs of these programs is just beginning to be developed but the implication is clear: *that if we can't do more for (and to) offenders, at least we can safely do less.*

There is, however, one important caveat even to this note of optimism: In order to calculate the true costs of these programs, one must in each case lucide not only their administrative cost but also the cost of maintaining in the community an offender population increased in size. This population might well not be committing new offenses at any greater rate; but the offender population might, under some of these plans, be larger in absolute numbers. So the total number of offenses committed might rise, and our chances of victimization might therefore rise too. We need to be able to make a judgment about the size and probable duration of this effect; as of now, we simply do not know.

DOES NOTHING WORK?

7. Do all of these studies lead us irrevocably to the conclusion that nothing works, that we haven't the faintest clue about how to rehabilitate offenders and reduce recidivism? And if so, what shall we do?

We tried to exclude from our survey those studies which were so poorly done that they simply could not be interpreted. But despite our efforts, a pattern has run through much of this discussion—of studies which "found" effects without making any truly rigorous attempt to exclude competing hypotheses, of extraneous

factors permitted to intrude upon the measurements, of recidivism measures which are not all measuring the same thing, of "follow-up" periods which vary enormously and rarely extend beyond the period of legal supervision, of experiments never replicated, of "system effects" not taken into account, of categories drawn up without any theory to guide the enterprise. It is just possible that some of our treatment programs are working to some extent, but that our research is so bad that it is incapable of telling.

Having entered this very serious caveat, I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say that we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment. And neither is this to say that factors *outside* the realm of rehabilitation may not be working to reduce recidivism—factors such as the tendency for recidivism to be lower in offenders over the age of 30; it is only to say that such factors seem to have little connection with any of the treatment methods now at our disposal.

From this probability, one may draw any of several conclusions. It may be simply that our programs aren't yet good enough—that the education we provide to inmates is still poor education, that the therapy we administer is not administered skillfully enough, that our intensive supervision and counseling do not yet provide enough personal support for the offenders who are subjected to them. If one wishes to believe this, then what our correctional system needs is simply a more full-hearted commitment to the strategy of treatment.

It may be, on the other hand, that there is a more radical flaw in our present strategies—that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behavior. Our present treatment programs are based on a theory of crime as a "disease"—that is to say, as something foreign and abnormal in the individual which can presumably be cured. This theory may well be flawed, in that it overlooks—indeed, denies—both the normality of crime in society and the personal normality of a very large proportion of offenders, criminals who are merely responding to the facts and conditions of our society.

This opposing theory of "crime as a social phenomenon" directs our attention away from a "rehabilitative" strategy, away from the notion that we may best insure public safety through a series of "treatments" to be imposed forcibly on convicted offenders. These treatments have on occasion become, and have the potential for becoming, so draconian as to offend the moral order of a democratic society; and the theory of crime as a social phenomenon suggests that such treatments may be not only offensive but ineffective as well. This theory points, instead, to decarceration for low-risk offenders—and, presumably, to keeping high-risk offenders in prisons which are nothing more (and aim to be nothing more) than custodial institutions.

But this approach has its own problems. To begin with, there is the moral dimension of crime and punishment. Many low-risk offenders have committed serious crimes (murder, sometimes) and even if one is reasonably sure they will never commit another crime, it violates our sense of justice that they should experience no significant retribution for their actions. A middle-class banker who kills his adulterous wife in a moment of passion is a "low-risk" criminal; a juvenile delinquent in the ghetto who commits armed robbery has, statistically, a much higher probability of committing another crime. Are we going to put the first on probation and sentence the latter to a long-term in prison?

Besides, one cannot ignore the fact that the punishment of offenders is the major means we have for *detering* incipient offenders. We know almost nothing about the "deterrent effect," largely because "treatment" theories have so dominated our research, and "deterrence" theories have been relegated to the status of a historical curiosity. Since we have almost no idea of the deterrent functions that our present system performs or that future strategies might be made to perform, it is possible that there is indeed something that works—that to some extent is working right now in front of our noses, and that might be made to work better—something that deters rather than cures, something that does not so much reform convicted offenders as prevent criminal behavior in the first place. But whether that is the case and, if it is, what strategies will be found to make our deterrence system work better than it does now, are questions we will not be able to answer with data until a new family of studies has been brought

into existence. As we begin to learn the facts, we will be in a better position than we are now to judge to what degree the prison has become an anachronism and can be replaced by more effective means of social control.

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DECARCERATING PRISONERS AND PATIENTS

(By David J. Rothman)

Every generation of Americans, from the first days of the Republic to our own times, has produced a dedicated coterie of prison and asylum reformers. Thomas Eddy and the Philadelphia Society for Alleviating the Miseries of Public Prisons in the 1790s; Samuel Gridley Howe, Dorothea Dix, and the Boston Prison Discipline Society in the 1840s; Thomas Osborne, Adolph Meyer, and the Osborne League in the 1920s—these people and their societies hold a celebrated place in our pantheon of heroes. Yet each generation, it seems, discovers anew the scandals of incarceration, each sets out to correct them, and each passes on a legacy of failure. The rallying cries of one period echo dismally into the next. Benevolent societies in the 1790s denounced prisons as "seminaries for vice," and their successors in the 1930s complained of "schools for crime." In the 1860s state investigations criticized asylums as no more than warehouses for the insane; in the 1960s, testimony at two congressional hearings condemned the lack of treatment in the nation's mental hospitals. We inherit, in essence, a two-hundred-year history of reform without change.

This grim legacy has not discouraged us from trying to do good. A multitude of organizations today continue the attempt to ameliorate the quality of incarceration. But whether these efforts will fare any better than earlier ones remains questionable. At times the rhetoric sounds tediously familiar, promising

to upgrade the physical quality of cells and dormitories, to elevate the skills of guards and attendants, as if failures were primarily the fault of incompetent administrators or niggardly legislators. There are moments today, however, when we seem to be on the verge of conceptual innovations that may produce some novel alternatives to incarceration. Abuses that others saw only piecemeal are now being defined as endemic to the system. A potential for meaningful change is beginning to develop; whether it will be realized is a challenge we now confront.

One indication of this change has been the unprecedented involvement of the courts over the last decade in overseeing custodial institutions. Judges now stand ready to bring some of the rules of law behind the walls; the courts, previously reluctant to intervene, are modifying their stance. Is this revolution in judicial practice likely to become just one more episode in the periodic discovery of abuses, our contribution to the various ways by which a society rationalizes incarceration? Or will we break with tradition to implement a new system?

THE SOURCES OF JUDICIAL RESTRAINT

For a nation that has so consistently boasted of a spirit of benevolence, it is ironic that not until the 1960s did courts rule that starvation, isolation in cells without clothes or basic hygienic facilities, and random whippings are cruel and unusual punishments; that prisoners have rights of religion and speech; that persons confined in mental hospitals on the assumption that they would receive therapy have a right to treatment. Clearly, some of the courts' unwillingness to examine postsentencing and postcommitment conditions reflected judges' reluctance to challenge administrative expertise; not only wardens but business managers received the benefit of the doubt. "Hands off" also fit well with prevailing judicial conservatism, keeping the courts out of both mental hospitals and factories. Nevertheless, a hands-off tradition did not prevent the courts from entering labor-management disputes, a field as tangled and formidable as inmate-warden relations. Judges, in other words, occasionally violated restraints when they believed it important. Their reluctance to scrutinize prisons and hospitals reflects broader social attitudes about the phenomenon of incarceration.

One major consideration keeping the courts out of institutions was the persistent notion that incarceration was rehabilitative. The idea goes back to the Jacksonian period: reformers of this 1820-1850 generation, without qualification or dissent, enthusiastically proclaimed that prisons would not merely protect society but could also, with proper procedures, eliminate crime; insane asylums, likewise, would not only segregate the mad but cure madness itself. In well-ordered, rigid, disciplined, and regimented settings, the deviant would learn the rules for right living that he had not acquired in the chaotic, mobile, open, and ultimately corrupting community outside. In origin, then, incarceration was a quasi-utopian movement; that it might produce cruel and unusual punishments seemed absurd.

State legislators, sharing this perspective, not only funded huge and elaborate structures, but minimized the opportunities for court intervention. With the promise of asylum care so great, it appeared unnecessary to encumber the commitment process with procedural formalities. Why force the insane to languish on a courtroom bench when they could be on their way to a rapid recovery in an asylum? As for the criminal, legislators empowered judges to pass lengthy sentences. Reformers fully approved; the prisons needed time to work their cure. "Very short sentences," insisted one Jacksonian, "are cruel to the criminal himself." They must be longer than two or three years, to allow the inmate "ample time for reflection . . . while subjected to the labor and discipline required." The hyperbolic rhetoric of rehabilitation made it difficult, if not impossible, for courts to consider intervening in institutional procedures.

These beliefs did not soon fade. Even as the disparity between rhetoric and reality became apparent to many observers in the late nineteenth century, the notion of incarceration as cure continued. Indeed, as we shall see, more than a trace of it is alive today. In part, the aim of rehabilitation was so decent and attractive that post-Jacksonian generations have been reluctant to confront the fact that little rehabilitation occurs inside the institutions. In part, a public and a judiciary accustomed to thinking that architecture and routine can effect cures were prone to perceive abuses as aberrations in a valuable system. Furthermore, the institutions were, in a physical as well as emotional sense, distant from society, allowing for self-delusion on the part of the public. The asylum founders, eager to conduct their rehabilitative experiment without the community inter-

fering, located the structures away from centers of population; they established regulations that restricted not only the number of visitors, but even the flow of mail and newspapers. Once a reform rhetoric legitimated these places, citizens and judges had little incentive or opportunity to investigate them.

The increasingly immigrant and lower-income character of the inmates helped buttress the hands-off doctrine. In the post-Civil War period it was the Irish who filled the wards and cells of state asylums and prisons. Later it was the Eastern Europeans, and still later the blacks. To native-born Americans these strange newcomers with their peculiar ways were, at best, threatening figures. When they turned deviant, isolating them seemed the proper response. From this perspective, the inmate became a creature fundamentally different from the rest of us, alien in all senses of the word, someone with no shared bonds with other citizens. "Our" rights were not "their" rights. For them, the Constitution stopped at the prison wall and asylum fence, "forfeited" by their behavior in the outside world. The hands-off doctrine reflected, too, the belief that inmates were hard-core deviants—the criminal too dangerous or the insane too maniacal to be kept in the community.

Beginning in 1900, some procedures that promised to reduce the population of institutions captured reformers' attention. One Progressive Era measure, probation, was intended to keep first-time and petty offenders out of prisons; another, parole, would allow well-behaved, reformed offenders to be released more quickly. The "psychopathic hospital," another innovation, would treat curable cases of mental illness locally, eliminating lengthy stays in distant asylums.

In practice, the programs did not accomplish these goals. An enormous gap divided rhetoric and reality. But the availability of these options suggested that incarceration was a very last resort reserved for bizarre or hopeless cases, for individuals too wild or defective to be turned loose. It was popularly assumed that wardens and superintendents had the terrible assignment of keeping order among this population. Surely the courts would not want to impose any restrictions on their prerogatives that might make the task more difficult.

So the issue rested through the period of World War II. As late as 1951, when hearing an appeal on a prisoner's claim of a right of correspondence, one federal circuit judge declared: "We think it is well settled that it is not the function of the courts to superintend the treatment and discipline of persons in penitentiaries, but only to deliver from imprisonment those who are illegally confined" (*Stroud v. Swope*, 1951). His colleague wrote a concurring opinion just to protest the waste of time in such a suit. "I think that a judge of a court as busy as the one below," he announced, "should not be compelled to listen to such nonsense."

SHIFT IN THE COURTS

Then, during the course of the 1960s, the courts suddenly reversed their position. From cases not directly concerned with incarceration came decisions making the Eighth Amendment binding on the states, decisions holding that petitions claiming infringement of civil rights could be brought to federal courts before state remedies were exhausted, and broadening the use of habeas corpus petitions. The tone of the Warren Court also encouraged judicial activism in lower courts.

But the reasons for this shift lie in an arena much wider than the courts. Changes in the nature of the inmate population and in the legal profession, new ideas about the deviant, about incarceration, and about our society all influenced the transformation.

The courts did not move eagerly. The hands-off policy seemed so prudent that most judges took up incarceration reluctantly, against their better wishes. The shift came inch by inch, precedent by precedent, and not as the result of a carefully conceived strategy by judges or inmates or lawyers. The reversal was haphazard, each step taken almost grudgingly, until to everyone's surprise the precedents added up to a new doctrine.

That the transformation came first to the prisons was unanticipated. One might have predicted that the courts would move initially to improve the lot of the mentally ill. The insane, after all, were the more helpless and less dangerous group. Many of them had been confined involuntarily on the promise of treatment, so that relatives with standing in the community might have sparked a protest. Instead, very different considerations shaped the story.

Prison cases originated randomly, but the sequence of issues added up to a pattern that could not have been more effective in activating the courts had it been carefully designed. The process of change is best understood by examining the roles of the three major groups of participants in this drama: the inmates

who first pressed the cases, the reform-minded lawyers who broadened the issues to be considered, and the judges whose opinions broke with the hands-off tradition.

INMATES AS ATTORNEYS

Although federal judges had insisted as early as the 1940s that prisoners should be able to contact the courts free from the whim or discipline of prison officials, these decisions did not contribute in any significant degree to the demise of the hands-off doctrine. Rather, the first breakthrough came in the early 1960s, the direct result of Black Muslim agitation.

In 1961, on their own initiative and assisted only by court-appointed counsel, Black Muslim inmates in New York and in the District of Columbia charged wardens with not allowing them to purchase the Koran, with denying them the right to hold religious services and to contact coreligionists and ministers, and with punishing them for religious beliefs. Departing from traditional inmate passivity, the Muslims submitted writs, pressed their cases, and compelled the courts to look behind the walls.

Then sporadically between 1961 and 1966, individual inmates, also on their own initiative, broadened the charges and requested relief from cruel and unusual punishments. Although the Black Muslims had focused on the unwarranted nature of prison discipline, they had also complained of bare, concrete isolation cells in which inmates were fed "one teaspoon of food . . . and a slice of bread at each meal," and were denied even blankets and mattresses. The next series of cases focused primarily on the nature of punishment. These were brought first by inmates confined in the most primitive state institutions, particularly in Arkansas, and then by politically aware inmates in New York and California. Arkansas convicts taught the courts about prison employees who whipped inmates at their own discretion; about trustees who oversaw the work lines armed with rifles, free to beat anyone who might be shirking; about prisoners who had complained to the courts and then suffered reprisals from administrators. Soledad and Dannemora prisoners taught the courts about isolation cells where prisoners spent several weeks naked, without soap, towel, toilet paper, or toothbrush under conditions that were "dirty, filthy and unsanitary, without adequate heat," where "toilets and sinks were encrusted with slime, dirt and human excremental residue."

By 1970, cases initiated by inmates contested not only particular abuses but the prison system itself. The most important and dramatic one, *Holt v. Sarver* (1970), successfully challenged the constitutionality of incarceration as it was practiced in Arkansas. "This case," noted the court, "unlike earlier cases . . . amount[s] to an attack upon the System itself . . . This is the first time that convicts have attacked an entire penitentiary system in any court."

Without a coherent sense of strategy and again without outside guidance, prisoners had moved from the specific to the general, and the courts had moved along with them. In July 1969 the Tennessee federal district court announced confidently in *Hancock v. Avery*: "As to the traditional preference for leaving matters of internal prison management to state officials, an analysis of recent cases indicated that . . . the federal judiciary . . . will not hesitate to intervene in appropriate cases." An inmate-led revolution had occurred.

LAWYERS PICK UP THE CAUSE

In the late 1960s a number of highly skilled lawyers, usually acting on their own with minimal outside support, took up the cause of prison reform. Many of them were civil rights lawyers who, in a sense, followed their clients into jail. The cases brought by inmates, particularly blacks, eventually attracted attorneys eager and accustomed to litigating issues of deprivation of rights. The chronicle of many prisoners' rights lawyers appears in their movement from civil rights litigation to contesting prison segregation to arguing the constitutionality of prison practices.

Draft-resister cases were another common point of entry during the Vietnam War. Typically, the convicted resister found himself in a federal prison, discovered to his annoyance that his favorite publication (say, the *Village Voice*) was not approved reading, contacted his lawyer, and soon was filing a suit against prison censorship. Often the civil rights and the Vietnam routes converged, and lawyers found themselves trying to protect the rights of black radicals inside state and federal prisons.

Although the efforts of activist lawyers had not sparked the prison cases, their impact was nevertheless crucial to the movement. These lawyers acted in many jurisdictions, giving national scope to the changing judicial doctrines. The precedents had been established in a few districts. The explosion of cases after 1969 took lawyers from one region to another. Moreover, activist lawyers broadened the questions to be litigated, pressing not only the religion and punishment issues, but attacking parole procedures as well.

Perhaps most important, the lawyers initiated litigation on the nitty-gritty, petty, but important details of prison life. Now judges learned not only about glaring abuses in isolation cells and the sickening practice of whipping, but about the less dramatic but still vital issues of due process, of visitation and correspondence rights, of rights to medical treatment and law books. On these issues jailhouse lawyers had considerably less expertise. The first inmate suits had impact partly because the conditions they highlighted were so gross as to stand in obvious need of remedy. But it was another matter to persuade courts that many habitual annoyances and restrictions in prisons raised fundamental constitutional issues. That required a professional and specialized corps of reform-minded litigators who had legal talent and some financial resources.

PRISONERS AS CITIZENS

Despite a deep reluctance to adjudicate inmate demands, judges in the 1960s could not perpetuate the hands-off doctrine. When Black Muslims in 1961 pressed the cause of religious freedom in prison, judges found the right too traditional, the request too reasonable, and the implications of intervention ostensibly so limited that they had to act. They ruled that inmates should be allowed to attend services and to talk with ministers without fear of penalty. "Whatever may be the view with regard to ordinary problems of prison discipline," declared the court in *Pierce v. La Valle* (1961), "we think that a charge of religious persecution falls into quite a different category." That the litigants were black, at a time when courts were growing accustomed to protecting blacks from discrimination, made the intervention all the more logical. Requiring a warden not to discriminate surely would not involve the court in having to run the prison.

Nor could the courts reject the petitions that followed. Judges were next asked to rule on prison conditions at their very worst, where the scandals brought to public attention simply could not be hurled. Were courts really to stand by helplessly as Arkansas prison guards used the Tucker telephone to give electric shocks to inmates' genitals? Were they going to permit administrators to keep convicts for weeks in cells filthy with excrement? Surely institutions could be run without such horrors. Hence the courts moved without design from requiring that inmates subject to the punishment of whipping be accorded procedural rights, to outlawing whipping altogether, to declaring in *Holt* that "the Arkansas Penitentiary System, as it exists today, particularly at Cummins, is unconstitutional."

To understand fully why in the 1960s the courts reversed position when many abuses were as old as the institutions themselves, we must also appreciate how defensive, embarrassed, and inadequate were the responses of prison officials to the challenge. When asked why they curtailed the privileges of Black Muslims, or why they maintained subhuman isolation cells, their answers were frequently lame, foolish, and illogical. Their inability to defend the system spurred judicial action. The California federal court, for example, striking down Soledad's solitary cells in *Jordan v. Fitzharris* (1966), especially noted the superintendent's tone of "futility." The court recounted one typical exchange: "Q. And would you say that the quiet cells. . . is a proper means of such control of noise? A. I don't know, I just don't know what is the proper means. The best we have so far. . . I don't know, but I certainly—nobody's happy with having to treat a human being like this."

The courts' ruling reflected, too, an awareness that inmates were not fundamentally different from other citizens. Perhaps the older, clear-cut distinctions between those inside and those outside could not be maintained after articulate black leaders served time in jail; perhaps the young, white, middle-class draft resisters helped alter popular perspectives on the prison population; perhaps sociological research, especially on the roots of criminal behavior, had its impact, encouraging a recognition that the deviant was not a creature apart. Over this decade judges too grew more sophisticated about incarceration and began to incorporate sociological findings into their perspectives. One early and important prison opinion, *Barnett v. Rodgers* (1966), commented specifically that "we may

take judicial notice of accredited social studies," moving on to cite sociologists Erving Goffman and Gresham Sykes in support of the idea that degrading prison conditions reduced the prospect of ex-inmates adjusting successfully after release.

Finally, the courts demonstrated through the 1960s a growing distrust of many types of arbitrary bureaucratic authority. Recognizing, along with many other students of American society, that decisions at the bureaucratic level often have enormous impact on our lives, judges extended procedural protections to new areas. Administrators of schools and welfare centers, as well as of prisons, found their names on court calendars.

JUDICIAL ACTIVISM TOWARD MENTAL HOSPITALS

Judges were far more reluctant to intervene in mental hospitals, despite the obvious relevance of their decisions in criminal incarceration. Although asylum conditions were often indistinguishable from prison conditions, although commitment statutes were supposed to protect the patient and not punish him, and although the insane as a class were generally less dangerous to society than were criminals, courts during the 1960s for the most part avoided bringing the rule of law to mental hospitals. To be sure, some opinions, notably those of federal judge David L. Bazelon of the Washington, D.C. court of appeals, overcame this hesitation and provided useful precedents. But innovative decisions were cited more often in law review journals than in courtrooms.

In part, the courts were less active here because asylum inmates were less active than prison inmates. Some convicts never tired of playing lawyer, writing countless petitions and briefs; asylum patients, by comparison, were decidedly passive. Sometimes this was the result of age (many inmates are more senile than disturbed), or of medication, or of the fact that benign institutions induce a more pervasive lethargy than avowedly punitive ones. In all events, mental patients did not force investigations of their confinement. Even the few judges determined to act had a paucity of cases from which to select that right combination of circumstances to occasion their opinions.

Lawyers and their organizations also remained oblivious to asylum conditions during the 1960s. Activists rarely encountered the mentally disturbed. Moreover, most reform-minded attorneys were accustomed to working only in criminal courts; rarely did a family or a judge call them to civil court to defend someone facing involuntary commitment. The chance to follow a client into the asylum did not present itself. Hence activist lawyers did little to make mental patients aware of their rights, to make the courts sensitive to their responsibilities, or to extend or popularize the few existing precedents.

Judges, for their part, were less willing to instruct psychiatrists than to direct wardens. The actions of the courts during this decade were shaped not by the nature of the clientele but by the presumed expertise of asylum superintendents. Because those on the bench considered prison officials nothing more than ordinary bureaucrats, some efficient and decent, others incompetent or nasty they could, when aroused, order them about. But the status of medicine as well as the aura of magic clung to psychiatry. When hearing a psychiatrist's court testimony, many judges were not only courteous, they were anxious. The mind doctor's bag of tricks was so intimidating that it discouraged oversight of hospital routine and staff performance.

These considerations not only limited judicial decisions but ensured that the few precedents established would not be easily and significantly widened. Practically every decision during the 1960s that affected hospital autonomy dealt only with the criminally insane or the defective delinquent. The fate of the patient involuntarily committed in a civil hospital rarely provoked a court order. One of the first cases to broach the subject of treatment, *Miller v. Overholser* (1953), concerned the transfer of a sexual psychopath out of the maximum-security wing of the District of Columbia's St. Elizabeths Hospital; the most important decision of the decade, *Rouse v. Cameron* (1966), involved the treatment of a St. Elizabeths patient involuntarily committed by the municipal court for carrying a dangerous weapon. In these and other instances the court's entering wedge was the great disparity between the time the inmate would have served in prison under a standard criminal conviction, and the time he languished involuntarily in a mental hospital. In this way judges seemed to be protecting the rights of convicted offenders, rather than telling hospital administrators how to do their job.

Further, in these cases the courts apparently were not dealing with the entire mental hospital, only the worst corner of it, that pavilion serving the criminally

insane. They were not passing rules for the core of the institution—this remained the psychiatrist's domain.

Finally, these cases were usually decided by the federal courts in the District of Columbia which, by virtue of the Capital's strange legal status, have jurisdiction over local mental hospitals. Thus they could take cognizance of St. Elizabeths conditions without having to tackle the complicated question of state versus federal responsibility. The result of all these considerations was that the courts' first encounter with mental illness and incarceration seemed both an idiosyncratic and limited venture.

THE CONTRIBUTIONS OF BAZELON AND SZASZ

Perhaps what most needs explaining is how the courts came to enter this domain at all. Much of the impetus came from Judge Bazelon, whose concern began with the issue of the insanity defense. He was among the first judges to try to bring the doctrine of criminal responsibility into accord with modern psychiatric thinking; and for his efforts he won the admiration of professional psychiatric societies and the friendship of many psychiatrists. As mental illness and psychiatric practice became less mysterious for Bazelon, he became increasingly curious about confinement and treatment. He occupied a unique position: interested in psychiatry, informed about it, and able to listen to psychiatrists without necessarily taking them at their word. When superintendents explained the absence of treatment programs or medical personnel by referring to "milieu therapy," Bazelon was not disposed to nod sagely and accept their euphemisms.

Scholarly literature also had its impact, but here too the story belongs in many ways to one man: Dr. Thomas Szasz's writings—*The Myth of Mental Illness* for example—helped to reduce the invincibility of psychiatric nostrums. Even more important, he cast doubt on the validity of the concept of mental illness, thereby narrowing the gap between the normal and the abnormal. For those who read his tracts, the denizens of mental hospitals became less alien and the awfulness of institutional conditions less tolerable. Szasz's reputation has risen with the level of court intervention in the operation of asylums. Before 1965 his work was not well received; he was placed beyond the bounds of professional respectability. Between 1965 and 1970 his reputation improved, at least to the point at which popular journals asked him to present his interesting if eccentric views. Since 1970 he has been at the center of a radical school of psychiatry, accepted almost everywhere as the spokesman for a legitimate minority position.

Occasional congressional and state investigations of mental hospitals in the early 1960s also stimulated court action. They publicized inadequate institutions and prompted legislatures to write into law the concept of the right to treatment. Although this language had little effect on actual conditions, it did provide judges with an entry point. Rather than having to confront at the outset the issue of whether a patient had a constitutional right to treatment, judges could simply insist that institutions had to satisfy legislative standards.

THE EFFECTS OF BAXSTROM

Every so often, a judicial decision would set off an unexpected but critical chain of events. One such opinion was the Supreme Court's action in *Baxstrom v. Herold* (1966). The case dealt with New York's commitment procedures for lunatics whose prison terms had expired but whom the state wanted to commit as insane to mental hospitals. The law did not afford prison inmates all the due process protections that ordinary citizens enjoyed, a discriminatory practice the Court struck down as a violation of equal protection. As an immediate result of *Baxstrom*, 992 men at Dannemora, a hospital for the criminally insane, were transferred to civil hospitals. The staffs of these civil hospitals protested; the inmates, after all, were dangerous, certified so by psychiatrists. Then, to everyone's puzzlement and surprise, few ill effects accompanied the change. Within a year, only seven of almost a thousand inmates had to be returned to Dannemora as dangerous.

The implications were too obvious for the courts to miss. As Judge Irving Kaufman put it in *U.S. ex. rel. Shuster v. Herold* (1969), courts should pay much less attention to public outcries that a judicial action will lead "society over the brink and into the abyss of administrative chaos." He cited with approval a New

York City Bar Association report finding that the massive incarceration of persons at Dannemora pointed to "another instance of institutional expectations putting blinders on our perceptions." *Barstrom*, in short, encouraged judges to question a psychiatric evaluation. Soon they would be questioning psychiatric administration.

REFORM "STRATEGIES"

The year 1970 marked a new stage not only in litigation action and court decisions, but in the thrust of reformist energies. Efforts at amelioration now focused on bringing suits in federal courts to challenge the constitutionality of a wide variety of conditions and procedures in prisons and mental hospitals. The American Civil Liberties Union, for example, helped to organize and provide funds for a prisoners' rights movement; together with a public interest law firm, The Center for Law and Social Policy, and the American Orthopsychiatric Association, it put together a mental health law project. The NAACP Legal Defense Fund also devoted much of its energies to formulating and pressing suits on behalf of inmates. In essence, the courtroom became the arena for those working to alter the system of incarceration.

Over the last decade and a half, however, the growing commitment to litigation has sometimes obscured the larger issue of the ultimate aims of reform. Lawyers often have resembled politicians on the campaign trail, moving from crisis with little time to think more than one step ahead.

Lawyers pressing prisoners' rights cases note convincingly the immediate need to make prisons less oppressive. But the prisoners' rights movement is not solely or even primarily concerned with minimal protection for inmates. Rather, it brings together two very divergent approaches to reform.

For some litigators and reform organizations, fighting for prisoners' rights is the best way to make institutions truly rehabilitative. They believe that the first step in changing convicts into responsible individuals is to grant them the procedural rights that other citizens share; then penitentiaries can educate offenders and return them to society as law-abiding citizens.

But other proponents of the litigation tactic subscribe to a crisis strategy.

They are convinced that implementing prisoners' rights will upset the balance of power within the institutions, making prisons as we know them inoperable: Once a guard is required to answer to an inmate and defend the reasons for his goal of reform. Such reformers support this decarceration position by citing the action, once a prisoner is freed from discretionary abuse, then prisons will be unable to function. Since terror and arbitrariness are at the heart of the system, granting rights to prisoners is the best way to empty the institutions. And emptying the institutions, decarcerating the inmates, they say, should be the ultimate now voluminous sociological literature demonstrating that no institutional program, be it vocational training or more intensive social casework, reduces recidivism. They point to Erving Goffman's work to argue that incarceration inherently does more harm than good; that long-term confinement, even under ideal conditions, reduces inmates to infantilism, destroying their ability to function in society. They recount the dismal historical record of reform to demonstrate that sporadic efforts to upgrade institutions have never produced permanent improvements. They insist too that the amount of crime prevented by the incapacitation through confinement of a number of convicted felons has little impact on the total amount of crime in a society, and that whatever deference prisons exert could be just as well accomplished by less brutal and debilitating punishments. Prisons, they conclude, neither rehabilitate offenders nor protect society.

A similar contradiction exists among the proponents of the right to treatment in asylums. Some see the attempt to force hospitals to provide treatment as a genuinely effective method of achieving rehabilitation. When Judge Frank Johnson in *Wyatt v. Stickney* (1972) set out seventy-four guidelines for Alabama's hospitals, guidelines that ranged from the ratio of patients to psychiatrists and the amount of living space necessary for each patient, to the size of bathroom facilities and the schedule for changing linen, he was promoting meaningful change. These guidelines, insist supporters of rehabilitation, are specific enough to be enforceable—and under them Alabama's institutions can cure the mentally ill.

But others committed to the treatment strategy share very different ambitions. They believe that the number of individuals now incarcerated makes standards of the type imposed by Judge Johnson too expensive to implement. They anticipate that a state, rather than upgrading its institutions, will recoil at the cost and

abdicate its responsibility. Convinced that asylums are no more effective than prisons, they welcome this abdication; it would bring, at the very least, a dramatic reduction in the number of people incarcerated for mental illness.

The differences among reformers' goals are not merely rhetorical. Policy implications emerge at every turn. Those who adhere to the idea of rehabilitation must be ready to resort to legislative lobbying and public appeals to force the state to meet its obligations. They must urge large appropriations for the building of bigger and better prisons and asylums, with more classrooms, staff, and vocational rehabilitation programs. The cases they bring to court must look to enforcing better systems of inmate classification and placement, the right to conjugal visits, the right to more casework and therapy.

On the other hand, those whose goal is to empty the institutions must focus on driving up the costs of treatment, ultimately to discourage legislators from funding the institutions; or, alternatively, adopt the more direct strategy of convincing those who hold the public purse strings that it is better to reduce the populations of institutions: to decarcerate.

The actual debate between the two camps has not thus far been conducted with clarity or precision. The lawyers have little time or inclination to ponder the implications of their daily decisions; and the leaders of the organizations involved have not been attentive to the question of where their efforts are taking them. Because litigation has won some impressive courtroom victories, most reformers in both camps are satisfied momentarily and have not thought hard about ultimate goals. Those who think rehabilitation possible can look forward to the implementation of Judge Johnson's standards those more determined to see the wards empty note gleefully that the entire state of Alabama has fewer licensed psychiatrists than are needed to carry out the judicial order. Similarly, both sides lauded Judge James E. Doyle's opinion in *Morales v. Schmidt* (1972, recently reversed on appeal), holding that the constitutional rights of inmates must take precedence over the needs of institutions. The idea that prisons must adhere to due process procedures or go out of business satisfies those who believe rehabilitation can work and those who do not.

Both camps have also been pleased with the impetus that court victories have given to inmate self-organization. Providing inmates with the protections of the First Amendment enables them to organize more effectively to press for ostensibly rehabilitative programs; yet it also increases the burdens on the system which must respond to their demands. Officials subjected to mounting pressures may become receptive to the call for decarceration.

THE "NOBLE LIE"

A still more critical consideration blurring the differences between the two camps and obfuscating the aims of policy is a rhetorical commitment by many reformers to both rehabilitation and decarceration. Particularly over the last year, those who once thought exclusively in terms of rehabilitation have been announcing that they too favor decarceration. When litigators are confronted with the seeming contradiction in this position—why do you promise some courts that institutions will become rehabilitative and tell others that they must be eliminated—they respond in two different ways. First, they offer an "all fronts" approach, insisting that the more varied the strategies, the more themes that are prescuted, the greater the opportunity to effect change in the system of incarceration.

Second, and more important, they argue for the "noble lie" tactic. Courts, they claim, will never decide in favor of a litigant if the case is presented as a step toward shutting down the institution. Judges are comfortable with the rehabilitation ideal, and the more enlightened among them will force administrators to meet their responsibilities. But tell judges that rehabilitation is a sham, that nothing works, that we had better begin to dismantle this cruel and expensive system, and they will avoid the issue, dismiss the contentions as too radical, and deny the inmates all relief. Further, these activists maintain that not only courts, but legislators and the general public too, must be told the "noble lie." Otherwise, we face the dangers exemplified by Governor Rockefeller's drug program for New York. He has defended his hard line—mandatory life sentences without parole for drug offenders—by announcing that rehabilitation has not worked and will not work; and has on that basis won support for his retrogressive proposals. Hence, say proponents of the "noble lie," we must continue for the sake of short-run reform to preach rehabilitation even though our long-run goal is decarceration.

THE USEFULNESS OF THE REHABILITATION STANDARD

Clearly, the rehabilitative ideal has assisted the courts in extending prisoners' rights. While judges have not based their decisions on a right to rehabilitation, they have used the concept to strengthen other kinds of supporting arguments. One of the nine justifications for the court's assertion in *Jackson v. Bishop* (1968) that whipping is a cruel and unusual punishment was that "it frustrates correctional and rehabilitation goals." So too, in *Barnett v. Rodgers* (1969), the court insisted that inmates' dietary needs took precedence over customary state prison regulations because "religion in prison subserves the rehabilitative function by providing an area within which the inmate may reclaim his dignity and reassert his individuality."

The concept of rehabilitation also helped the court in *Holt* to rule the entire Arkansas penitentiary system unconstitutional. While conceding that no right to rehabilitation yet existed, the court did consider rehabilitation "a factor in the overall constitutional equation." Therefore, "in the absence of an affirmative program of training and rehabilitation," corporal punishment, a trusty system, the degrading isolation cells, and open barracks added up to an illegal mode of confinement. Similarly, one reason the court protected an inmate's letter-writing privileges in *Carothers v. Follette* (1970) was that it would not "retard his rehabilitation." And at least the dissenting judge in *Novak v. Beto* (1971) ruled the use of isolation cells in Texas prisons unconstitutional, for they exert "a totally negative impact on any hope for rehabilitation."

Obviously, too, the rehabilitation idea has encouraged court intervention in mental hospitals. In ordering the transfer of an inmate out of St. Elizabeth's maximum-security wing, the court in *Miller* held that indefinite confinement was "justifiable only upon a theory of therapeutic treatment." Judge Bazelon, in the *Rouse* case, ordered an investigation of hospital care because "the purpose of involuntary hospitalization is treatment, not punishment." And of course Judge Johnson's guidelines in *Wyatt* rested on the notion that Alabama's institutions had not been giving treatment. In all, then, it can be argued that litigators ought to be left to press for reform case by case, using the concept of rehabilitation for the sake of winning victories in the courts.

WINNING THE BATTLE; LOSING THE WAR

The price we will pay for these concessions is alarming, however. If reformers do not face up to all the implications of their tactics they may soon discover that they have won the court battles and lost the war for meaningful change. One can appreciate how a lawsuit gaining compensation for inmate labor will reduce the asylum population. But what is to become of those whose release has been won in this way? And what effects will these haphazard releases have on the well-being of society? Already a new breed of horror story is beginning to circulate about the "communally-based" boarding houses to which a number of former inmates have been removed. Some keepers, it seems, are giving their charges breakfast and then locking them in all day; others are feeding them breakfast and locking them out all day. Ten years' accumulation of these incidents, and someone will come up with the bright idea that a thousand settings are more difficult to oversee than one. "If only we would consolidate the boarding houses into a central system, put them all under one roof. . . ." In essence, unless those now litigating for decarceration think hard and clear about alternatives, we may soon rediscover the asylum.

Perhaps the greatest potential for mischief comes from those who would use the rehabilitation concept for strategic purposes. By keeping alive the notion of therapy, they discourage a search for alternatives to incarceration. They also run the risk that legislators may actually take the rhetoric at face value and fund institutions at new levels—indeed, the Alabama legislature this last winter threatened to do just that.

THE DESTRUCTIVE USES OF REHABILITATION

It is doubtful for moral reasons as well that we would want to popularize and legitimate a "noble lie" tactic. But the most serious problem is that the concept of rehabilitation simply legitimates too much. The dangerous uses to which it can be put are already apparent in several court opinions, particularly those in which the judiciary has approved of indeterminate sentence in Patuxent, Maryland's institution for defective delinquents. Moreover, it is the rehabilita-

tion concept that provides a backdrop for the unusual problems we are about to confront on the issues of chemotherapy and psychosurgery. Consider the frightening prospect of chemotherapists and psychosurgeons, Ph.D.s and M.D.s in hand, proclaiming their ability to alter human behavior—and the courts accepting their pledge to do good as sufficient reason to medicate and to operate. This is not the right time to expand the sanctioning power of rehabilitation.

The possibilities for abuse of rehabilitation, of evoking fundamental restrictions on civil liberties in the guise of therapy, emerge vividly in *Carothers*. In the course of striking down letter-writing restrictions the court noted: "A prison regulation restricting freedom of expression would be justifiable if its purpose was to rehabilitate the prisoner." No less open-ended an opinion emerged in the celebrated *Landman* decision (1971). While extending due process protections to Virginia's convicts, the court argued that as soon as officials attempt to rehabilitate prisoners, "the best justification for the hands-off doctrine will appear." Judges have no expertise in therapy, the court said, and court intervention "might be positively harmful to some rehabilitative efforts"; hence "where the state supports its interest by demonstrating a substantial hope of rehabilitative success, deference may be owing." In this same spirit a majority of the court in *Norak* upheld solitary confinement in Texas by linking isolation to rehabilitation. "Our role as judges," insisted the court, "is not to determine which of these treatments is more rehabilitative than another." In other words, if a prison practice can somehow or other be brought under the umbrella of therapy, the courts might well sanction it.

Many of these nightmarish possibilities have already come to pass at Patuxent. Under its program, those initially convicted of criminal offenses who are later, in a separate hearing, diagnosed as having an intellectual or emotional imbalance such as to make them an "actual danger to society," are committed to Patuxent. Their sentence is indeterminate, with release to come only with cure. Patuxent, its directors insist, provides a "therapeutic milieu." Inmates receive counseling as well as "negative and positive reinforcement" for their behavior. Many of them remain there for periods longer than required by the initial criminal conviction, a circumstance that officials explain "is necessary for therapeutic reasons."

On the whole, the courts have accepted the justifications offered by administrators. Although some recent Supreme Court rulings increased the procedural rights of inmates (the Court had little trouble equating "negative reinforcement cells" with the "hole"), and ordered the release of inmates as yet uncommitted (those who refused to talk with psychiatrists and so could not be diagnosed as defective delinquents), the constitutional challenges to the continuance of Patuxent have not succeeded.

The rehabilitation ethic has legitimated it. Citing the high ratio of staff to inmates, the sizeable expenditures, the favorable impression made by the directors, the dismal record of prisons generally, and an indication that recidivism rates at Patuxent are lower than usual, the courts have allowed the system to stand. Going further, they have found Patuxent "an encouraging example," one to be emulated.

The Patuxent case is worth worrying about. An increasing number of institutions are about to present themselves as rehabilitative. The federal government is soon to open a special therapeutic prison at Butner, North Carolina; New York is planning one, and so are many other states. Undoubtedly each will have a large staff of professionals, an elaborately designed program, and dedicated and articulate directors. And using these criteria, the courts will turn away constitutional attacks. From all past indications, judges will focus not on performance, not on whether the institutions actually do any good, but on external criteria, on the size of the staff and the style of the directors, on whether the institution *promises* to do good. In affirming the constitutionality of Patuxent's procedures, the court in *Tippett v. State of Maryland* (1971) noted in very guarded terms that "there is reason to believe that the effort [to rehabilitate] may prove successful." The Patuxent recidivism rate, after all, was "lower than the combined rate for all of the penal institutions in the United States." No statistics, however, are more frequently manipulated than rates of recidivism; these rates are a slender reed on which to rest the massive structure of institutionalization in America. Yet the court seemed uninterested in and unaware of the difficulties created by using such a measure. Ultimately, the rhetoric mattered more than the reality.

AN AGENDA FOR DECARCERATION

Perhaps no other area of social policy has more traps to ensnare the well-meaning activist than that of incarceration. To an extraordinary degree, the unintended consequences of reform have been mischievous, producing at least as many difficulties as the conditions they were intended to correct. The benevolent aims of the founders of prisons and asylums did not prevent the subsequent degeneration of those institutions, and the nobility of our ambitions are no guarantee that alternatives to incarceration will not be as awful as the buildings they replace.

It is also apparent that prison and asylum reform touches only a small part of a much larger social problem. To plan for a more rational disposition of offenders after they are convicted is to do nothing about the related circumstances of poverty, racism, unemployment, and inequitable distribution of wealth and power. Indeed, we might fear not unreasonably that a more efficient, even more humane, system of processing people after conviction will only reinforce present inequities, allowing the haves to control the have-nots at lower cost and with greater effectiveness.

Moreover, from a civil libertarian point of view, alternatives to incarceration can all too easily become more deleterious than incarceration. Whatever else, prisons have confined behind walls the despotism of the warden; the community at large has remained relatively untouched by massive intrusions into people's lives. There is a risk involved in returning prisoners to the community: if it serves as a pretext for law enforcement officials, in the name of "security," to require us to wear devices that monitor our movements, or to carry coded identification cards that permit or deny access to parts of the city, or to some buildings and not others, then we might reasonably decide that despotism in institutions is better than society-wide surveillance. If the price of breaking down the walls is in effect to imprison the entire society, we may prefer the inherited system with all its evils.

Such fears, however realistic, should not stifle reform efforts. The wretchedness of our present system is too acute to let prisons go untouched until other social problems have been dealt with; the risks involved in making changes should not serve as an excuse to stifle attempts at amelioration. The procedures we now rely on are so cruel, costly, injurious, and ineffective that at least some modest efforts at improvement seem worthwhile—efforts that are modest in two senses. First, prison and asylum reform is not intended to inhibit or retard larger reform strategies. Programs must not pretend to stand as alternatives to broader efforts at ending exploitation and racism, or at redistributing opportunity and wealth, but as parts of the overall press for social justice. Second, reformers should not pretend to be able to eliminate crime or to eradicate deviancy. They should acknowledge instead that their efforts are attempts to find more humane, less costly, and less harmful ways of dealing with these problems, to do less injury at a price considerably below the \$5,000 to \$10,000 a year we spend on each person incarcerated.

Clearly, there is a desperate need for an open and full appraisal of means and ends in reform strategies. Rather than moving instance by instance, ignoring the harm done by trying to serve divergent purposes, or by not examining the implications of court victories, activists must decide on their goals, and shape their rhetoric and programs accordingly.

They should work toward decarceration—toward getting and keeping as many people as possible out of institutions. When some form of incarceration is unavoidable in the clear interest of protecting the individual and society, it should take place in small facilities in the community. When confinement in maximum security institutions is the only practical response, the length of time should be kept to a graduated minimum, based on the specific circumstances of the offender's record and the crime.

Translating these general guidelines into practice would require at the outset a major campaign to narrow the scope of criminal jurisdiction. Removing victimless crimes from the system, not punishing for drunkenness, drug use, or sexual acts between consenting adults, would dramatically reduce the numbers now inside institutions. So would a massive increase in the use of probation, keeping to a minimum intrusive supervision and special regulations governing probationers' behavior. When the risks to society are not considerable, as in petty property crimes that could be recompensed by insurance for victims, proba-

tion should be tried two, three, or four times. Scandinavian countries now allow this number of failures, and we should emulate their tolerance.

When recidivism in minor offenses becomes intolerable, or when the initial offense has presented a clear danger to the community, as with armed robbery, the resort whenever practicable should be to part-time incarceration in facilities in the community. These institutions might well be modeled on traditional college dormitories. Sign-ins and sign-outs would be obligatory, as would attendance at work or school. Visits to families and friends for set periods of time would be allowed by day or night. Residents should be provided with the opportunity for psychological counseling and support.

Under such a system violations of the rules will of course occur, the supervisory staff will have discretion that could be abused and, inevitably, some people enrolled in these programs will commit crimes for which they may have to be incarcerated. Still, under these circumstances, many offenders can be spared the deleterious effects of full-time incarceration and the subsequent difficulties of readjusting to community life.

When the offense has been particularly harmful, as when a victim of a crime has been injured, or when an offender has persistently violated previous sanctions, then confinement in a secure institution may well be necessary as a last resort. But the periods of confinement must be reduced drastically. Shorter sentences (one, two, or three years) should replace the all too commonplace five-to-ten-year terms. We must reset and lower our scale of penalties, for offenses from murder to petty larceny, in an awareness that longer periods of institutionalization accomplish nothing. In fact they may increase the likelihood of recidivism. And, if we spend the custodial funds saved on useful post-release programs, this is also the most "cost-effective" policy to present to skeptical taxpayers.

A similar kind of restraint should dictate policy toward persons seeming to suffer from mental disabilities. The bounds of tolerating eccentric behavior must be expanded. As long as no harm to self or to others is imminent, we should allow people to follow their own lifestyles. When the risk of injury appears possible the mentally disabled should be encouraged to use community treatment facilities or to take up residence in foster homes. When danger to self or to others appears immediate, involuntary commitment may be the only solution. Studies show that such intervention as a short-term expedient at moments of crisis can be effective. The periods of confinement must be severely limited—thirty to forty-five days would not severely disrupt an individual's work and family responsibilities—and due process protections must accompany every step.

At the heart of this program is the idea that the community must balance some new risks against the clear likelihood of continuing recidivism, crime, and brutalization under the existing system. We must be willing to accept some uncertainty; doubts should be resolved in favor of deliberate acceptance of risks. Furthermore, the community must minimize intervention in the guise of doing good. The most rigorous proof of effectiveness should be required before we even consider incarcerating anyone against his wishes for his own welfare.

To date, in right-to-treatment cases, Judge Bazelon has insisted that hospital officials provide the courts with individualized treatment schedules that state what is to be done with each patient. Judge Johnson has asked that criteria of adequate space and personnel be satisfied. But it would be far better to measure confinement standards by accomplishment. Intervention in people's lives must not be allowed if we merely believe but are not certain that we can accomplish good. To an astonishing degree we operate now on the basis of myths: that confinement in a state mental hospital will produce cures, that five-year-minimum terms for drug offenders will rehabilitate them, or that sentences of five to ten years will prevent or deter a significant amount of crime. Hard data and performance statistics are essential here, even recognizing all the difficulties in gathering and evaluating them.

Convincing the public to support such an experimental approach may not be as difficult a task as some might think. Evidence can be marshalled easily to demonstrate how irrational, costly, and dysfunctional the present system is—and public education to these facts must begin. In strategic terms, care should be taken not to fall into the trap of "100 percent" decarceration. The goal of reform in this campaign, it must be made clear, is not to allow the nightmarish cases, the three-time rapist or the four-time armed robber, to head right back to the streets. What the public must learn is that overpredictions of dangerousness are rampant in the criminal justice and mental health professions, and that

reform can be accomplished in the great majority of cases without compromising public safety.

Savings that accrue from a reduction in the number of inmates should be spent in ways that make decarceration politically acceptable. A federally-sponsored crime insurance program that indemnifies citizens adequately for losses due to crime should be established. Monies should be expended to improve the quality of courtroom justice, getting defendants better counsel, and reducing the time before trial. Possibly, too, funds could help to upgrade the quality of police operations so that the public could be protected without some being hassled and others being shaken down. Appropriations should be used to establish, on an experimental basis until their effectiveness is demonstrated, a broad range of voluntary programs for offenders and deviants, from counseling services to vocational training. Perhaps these programs will be more effective in rehabilitating and in preventing recidivism when enrollment in them is by choice of the client and not by dictate of the state.

The most encouraging evidence of the feasibility of change one can offer reformers is to remind them that we have begun to make some progress recently. The percentage of offenders incarcerated for crimes has actually diminished; states like California and Massachusetts are using alternatives to incarceration (more probation, more halfway houses) without increasing the risks to the community. Over the last two decades the average length of stay in mental hospitals has been reduced, and it is not impossible that by the year 2000 the large warehouse-type mental hospital will no longer be with us. At times, fiscal conservatives have united with reformers to implement decarceration programs, the one side happy to save funds, the other eager to reduce harm. In other instances, far-sighted administrators like Jerome Miller in Massachusetts have on their own initiative greatly reduced the population of institutions. The confinement of juveniles in institutions has been abolished in Massachusetts—an example that is being emulated in Minnesota and Illinois.

This agenda will not eliminate crime or completely abolish incarceration. Such millennial goals and the true-believer syndrome they engender have helped generate and exacerbate our present plight. But pursuing a strategy of decarceration might introduce some reality and sanity in a field prone to illusion and hysteria. Americans will not escape the tradition of reform without change by continually striving to discover the perfect solution. Rather, we must learn to think in tough-minded ways about the costs, social and fiscal, or a system that has flourished for so very long on the basis of fanciful thinking. If we talk openly and honestly about what we can and cannot accomplish, if we demolish the myths of incarceration, regardless of how convenient or attractive they appear to be, if we put adequate funds and support behind the pilot programs that, when evaluated carefully, should lead us to fund large-scale measures, then we may begin to reverse a 150-year history of failure.

A NOTE ON RESOURCES

Several recent publications discuss and cite the cases affecting incarceration of prisoners and mental patients. Marilyn Haft and Michelle Herman in *Prisoners' Rights* (Practicing Law Institute, two vols., 1972), have put together an excellent introduction to this material; also useful and thorough is the South Carolina Department of Correction, *The Emerging Rights of the Confined* (1972). Two handbooks published under ACLU auspices summarize the present state of the law: David Rudofsky, *The Rights of Prisoners* (New York: Avon Books, 1973); and Bruce Ennis and Loren Siegel, *The Rights of Mental Patients* (New York: Avon Books, 1973). Key references in the mental health field can be found in David Chambers, "Alternatives to Civil Commitment of the Mentally Ill," *Michigan Law Review*, 70 (1972), 1107-1200; and Jonas Robltcher, "The Right to Treatment," *Villanova Law Review*, 18 (1972), 11-36.

The historical background is provided in my study, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971). On the sociological side, one must read Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Chicago: Aldine, 1961). The writings of Thomas Szasz are voluminous; for a good introduction to his thought see *Ideology and Insanity* (New York: Vintage, 1970). Current reformist perspectives emerge vividly in the American Friends Service Committee, *Struggle for Justice* (New York: Holt, 1971); the insightful essays by Caleb Foote and Herman Schwartz in *A Program for Prison Reform*,

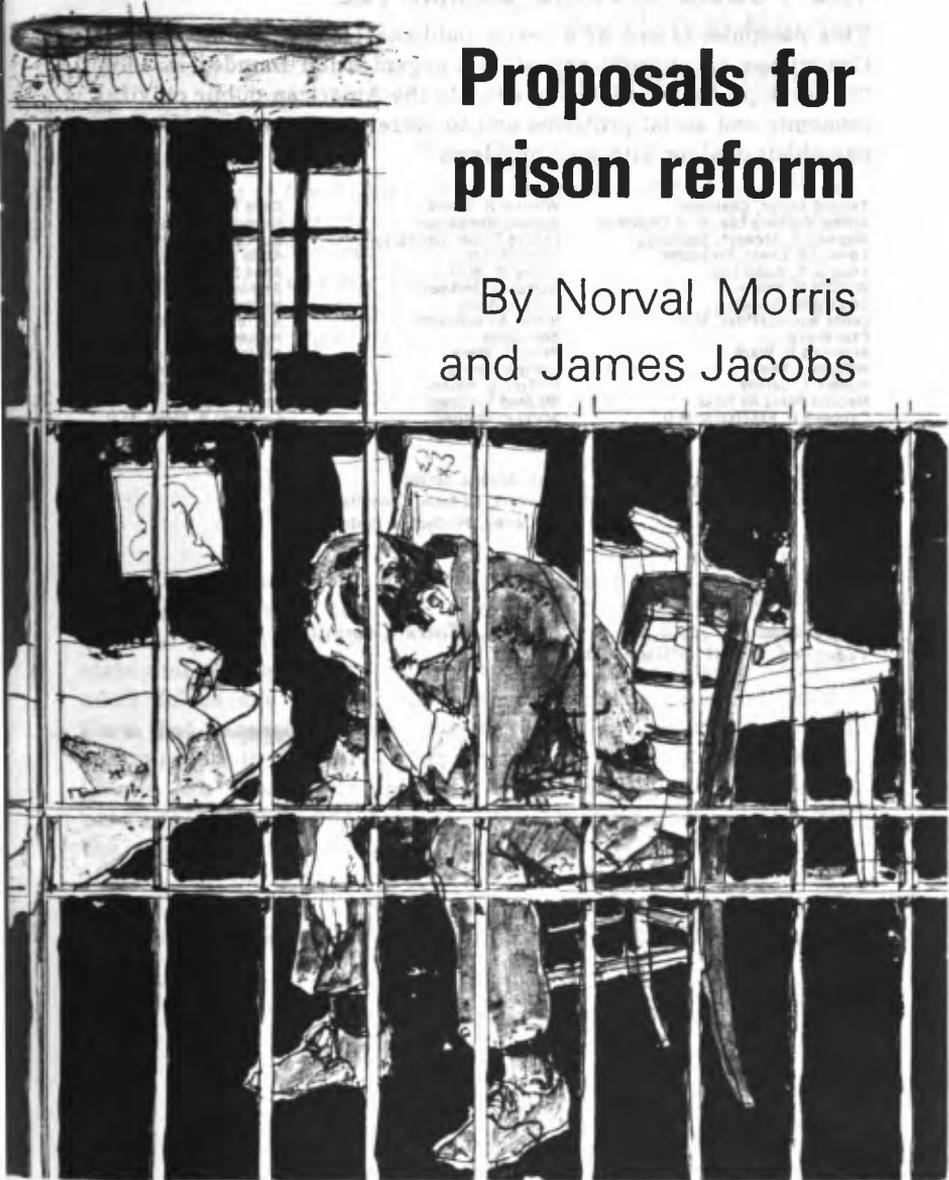
a report of the Roscoe Pound-American Trial Lawyers Foundation (Cambridge, Massachusetts, 1972); and Jessica Mitford's splendid *Kind and Unusual Punishment* (New York: Knopf, 1973). Bruce Ennis presents an interesting account of his work in mental illness and the law in *Prisoners of Psychiatry* (New York: Harcourt, 1972). Phil Stanford's article on Patuxent for *The New York Times Magazine* (September 17, 1972, 9ff.) is a good piece of reporting.

My own thinking has been assisted enormously by the working sessions of the Committee for the Study of Incarceration. A report of this group's conclusions will be forthcoming in the spring of 1974. In the course of research Stanley Bass, Judge David Bazelon, Jack Greenberg, and Aryeh Neier generously gave of their time to share with me their ideas and experiences. I am also indebted to Charles Halpern, Andrew von Hirsch, Sheldon Messinger, Herman Schwartz, and Peter Strauss for critical comments and suggestions on the manuscript. A several-hour discussion of a draft of this essay at Berkeley's Center for Law and Society, directed by Jerome Skolnick, also helped sharpen the argument.

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Proposals for prison reform

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Proposals for prison reform

By Norval Morris
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"AT BEST BARREN and futile, at worst unspeakable, brutal, and degrading"—so the 1967 President's Commission on Crime and the Administration of Justice described many of the 400 state and federal penal institutions where approximately 200,000 adult felons are incarcerated. The commission spoke of conditions that "are often a positive detriment to rehabilitation." In summing up, its Task Force on Corrections said of these prisons: "Some are grossly understaffed and underequipped—conscious products of public indifference. Overcrowding and idleness are the salient features of some, brutality and corruption of a few others. Far too few are well organized and adequately funded."

This is surely not what the reform-minded Quakers of Pennsylvania envisioned when they established the Walnut Street Jail

in Philadelphia in 1790. In this "penitentiary" the Quakers planned to substitute isolation, repentance, and the uplifting effects of scriptural injunctions and solitary Bible reading for the brutalities and inutilities of capital and corporal punishments, then serving as society's reaction to crime.

These three treatments—removal from corrupting peers, time for reflection and self-examination, the guidance of Biblical precepts—would no doubt have been appropriate for the reflective Quakers who devised the prison, but relatively few of them ever became prisoners. The suitability of these remedies for the great mass of felons who subsequently found their way to prison is very much in doubt.

The invention or reinvention of the prison by the Pennsylvania Quakers was born of benevolence, not malevolence; of a spirit of reform, not punitiveness. Perhaps the most important lesson it provides is that benevolent motives do not necessarily lead to beneficent results.

Almost from the very beginning of the prison there were those who criticized its operations and its very existence. It was immediately reported that the "silent system" of the Philadelphia penitentiary was driving men insane. Reformers of the early nineteenth century argued strenuously that prisoners should not be kept in solitary confinement but should be allowed human company and decent living conditions in order to rehabilitate themselves. Men like John Howard in England and Thomas Mott Osborn in the United States urged many of the same reforms that today are offered by contemporary critics of our prison system. Indeed, for nearly two centuries reformers and governmental commissions have repeated the same criticisms, recounted the same abuses, urged the same reforms, while the prison system continued virtually unchanged.

Perhaps the most far-reaching statement on prison reform was offered in a prison mail censorship case in 1972 by Judge James Doyle, a federal judge of the Western District of Wisconsin: "I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man. . . ."

the purpose of prison

But before we speak of prison reform we should consider the purposes of imprisonment. Society has assigned to prison a variety of sometimes contradictory purposes. Some people expect prisons to provide appropriate punishment and suffering for those who have violated society's most serious rules of behavior. Prison must also, they believe, serve two types of deterrent functions: it must be sufficiently threatening to deter potential criminals and grim enough to persuade those who have once suffered its pains to refrain from further criminality.

Society also asks that penitentiaries insure that those convicted of serious crimes are kept isolated from the community during the term of their imprisonment. Further, the prison experience is expected to inspire self-improvement so that, when they leave, the prisoners will be able to take their places in the community as law-abiding citizens.

The dilemma here may be that an institution built to carry out society's moral precepts through punishment and deterrence cannot also function as an effective means to rehabilitate the offender. An institution so secure that it will tolerate no escape and no threat of riot, for example, is unlikely to offer a relaxed and therapeutic atmosphere conducive to self-reflection and positive efforts at self-change. The very characteristics that are essential to punishment are insuperable obstacles to rehabilitation. And an effective compromise between punishment and treatment is not likely to be found in the architectural monstrosities that constitute the majority of our huge prisons.

Only within small, specially designed and staffed institutions, many experts believe, is it possible to offset some of the contradictions inherent in imprisonment. With relatively small numbers of inmates it may be possible to create a secure environment without the oppressive regimentation characteristic of large institutions. The function of deterrence is probably not dependent on the quality of prison conditions, since it is the stigma of conviction, the exile from home, and the loss of personal autonomy that most people desire to avoid—and these deprivations are part of all prisons of any size and quality.

(This pamphlet deals primarily with prisons for adult men. There are comparatively few women in prisons in the United

States, and problems faced by women's prisons are not the same as those confronting most other institutions in our penal system.)

In the foreseeable future, prison will undoubtedly continue to serve several simultaneous functions. The challenge is to find the penal reforms that best reconcile the contradictions among these functions and to eliminate needless brutalities altogether.

HUMANITARIAN REFORM

Most people who speak of prison reform do not differentiate between two distinct concepts: *humanitarian reform* and *the rehabilitative ideal*. Humanitarian reform calls for minimum civilized standards of living conditions and of physical safety within the prison. The rehabilitative ideal refers to the kind of treatment that will bring about the successful reintegration of prisoners into society.

It is possible to speak of humanitarian prison reform without even mentioning the word rehabilitation. Since our institutions—schools, hospitals, nursing homes as well as prisons—reflect the character of our society and the kind of people we are, we owe it to ourselves to maintain them in a way that will not shame us.

What are the minimum standards of living conditions and safety that need to be maintained in our prisons so that we as a society can have respect for ourselves? How do our prisons measure up? What changes should we encourage?

The first principle of humanitarian reform is that imprisonment in and of itself is sufficient punishment. Being deprived of liberty is painful enough without the prisoner's being exposed to further penalties and brutalities inflicted on him by other inmates or by staff. He must be protected from assault, extortion, theft, and rape. Prisons that are unable to meet this standard because of outdated architectural design, decrepit physical plant, overcrowding, or insufficient staff must be swiftly abandoned.

Once the prisoner's safety is assured we may turn our attention to other areas of his daily life. It seems obvious that he should not be deprived of nutritious food, decent hygiene, and adequate medical care and recreation. Imprisonment surely does not require denial of these basic needs.

Aside from fear of personal injury and sexual abuse, the most prevalent complaint heard from prisoners is boredom. American

prisons fail to provide even the rudiments of a full day's work—a sentence to “hard labor” is, for the most part, a historical phenomenon. Fearful of competition from prison industries, labor unions as well as manufacturers have used political influence to whittle away the kind and range of industrial tasks allowed to prison inmates. In most prisons there is work for only very few inmates for a few hours a day.

Every prisoner should have the opportunity to work a full eight-hour day in prison, and penal institutions should provide meaningful work to relieve the deadening boredom. But prisons should not exploit the inmate's labor. While a “minimum wage” equal to that paid in the community may not be necessary inside the prison—for the prison provides room and board—it is, nevertheless, essential that the prisoner be paid more than a token pittance.



fair and orderly administration

Perhaps the most important recommendation of humanitarian reform is the establishment of fair and orderly administrative procedures within the prisons. Thanks in great part to the judicial abandonment of the "hands off" doctrine, under which the courts inquired only into the legality of imprisonment and not into the legality of prison conditions, in recent years there has been progress in correcting administrative abuses in many prisons throughout the country. But much yet remains to be done.

In dealing with questions concerning prison jobs, transfers, furloughs, parole, opportunities for early release, and especially prison disciplinary punishments, due process must prevail. This means, at the very least, that the prisoner should be given a set of written rules covering all matters of prison life and that these rules must be adhered to by the prison administration as well as by the prisoner. Furthermore, on disciplinary matters, the prisoner should always be given a right to be heard as well as some possibility of appeal against the abuse of administrative discretion. Punishments for violation of prison rules should not be excessive, and food should never be restricted or withheld as a disciplinary measure.

Felonies committed within the prison should, of course, be turned over to the state's attorney for prosecution in court. But for minor infractions, confinement to the prisoner's cell for a period not to exceed thirty days should be the maximum punishment; there is no need for any special punishment cells. And in no case is there justification for corporal punishment, strip cells, or unsanitary disciplinary cells.

With excessive punishments eliminated, and with small prison populations (say, about 200), it is reasonable to believe that the violence now so pervasive in our prison system would be substantially reduced. And without the threat of violence, many restrictions on inmate freedoms could be removed.

prisoners and their families

Prisoners should be given ample opportunity to maintain ties with family and friends through liberal visiting procedures, unrestricted mailing rights, and uninhibited access to all published material that is sold outside the prison. Serious thought should

be given to home furloughs and to conjugal visiting, too. Home furloughs allow a prisoner to take progressively longer and less restricted trips back into the community in order to maintain family ties, to scout for job prospects, and to maintain a sense of connection with the larger community.

In California, for example, a prisoner with a good conduct record can apply to have his wife come to the prison to spend a weekend with him in a trailer home within the compound. Allowing the convicted man to maintain an intimate relationship with his wife is certainly a step in the direction of humane treatment. Sexual deprivation and disintegration of family were never intended to be part of the punishment and should be ameliorated when possible rather than exacerbated. Experts disagree on whether conjugal visitation should be extended to common-law wives, girl friends, and prostitutes. For most prisoners a program of regular furloughs would seem a preferable course to a similar goal.



the swedish system

Many countries are far ahead of the United States in instituting such basic humanitarian reforms. The Swedish Adult Correctional System provides an excellent case study. In Sweden, there is as little interference with the convicted criminal's life as is reasonably possible. An energetic attempt is made to preserve his social ties through probation systems rather than imprisonment. If he has to be incarcerated, the prison term is as brief as possible and in conditions of relative comfort, with as little disruption of his social ties as possible. There are no large penal institutions in Sweden and regular home leave is part of the system. Over one-third of the prisoners are held in "open" conditions, which means no bolts, bars, or walls. Adequate work and vocational training are provided and there is a sense of near equality in relationships between prisoners and staff.

Equally important is the development of the Swedish ombudsman system. The ombudsman is appointed by the Prime Minister and is responsible only to him. Prisoners can bring complaints of any kind to the ombudsman and his staff, and are assured of impartial treatment from an agency not directly connected to the Department of Corrections. Complete freedom of access of the prisoner to the ombudsman and his staff allows one agency of the state to protect the prisoners from excesses in the punishment or rehabilitative process run by another agency of the state, the Prison Authority.

THE REHABILITATIVE IDEAL

As desirable as improvement of the physical and administrative setups would be, few critics of our prison system have been content to rest their case on humanitarian reforms. They have pointed to high rates of recidivism—repetition of criminal acts—and have argued that prisons, even humanitarian ones, are failures if they cannot also change the prisoner's behavior for the better and prevent future criminality.

In our society—and in many other societies as well—there is a pervasive belief, if not in man's perfectability, at least in his susceptibility to improvement. Since our earliest experiences with prisons, reformers and many prison officials themselves have not been content merely to "store" prisoners—they have stated

their intention to "cure" or rehabilitate them. Of course, rehabilitation itself is an ambiguous term. In general, it refers to reform of the prisoner. To some it means changing the prisoner's values and attitudes toward conventional norms. To others it means training the prisoner in educational or vocational skills so that he will be employable upon release and therefore less likely to revert to crime.

Psychiatrists, psychologists, and social workers have been the strongest advocates of the rehabilitative ideal. Just as Sigmund Freud argued at the turn of the century that the insane were "sick" rather than "possessed" or "morally degenerate," so too the advocates of the rehabilitative ideal begin with the assumption that the criminal is sick, or at least so lacking in personality resources as to be thoroughly inadequate. Crime is thus seen as psychologically abnormal and aberrational behavior, requiring psychiatric attention.

Most advocates of the rehabilitative ideal deplore the principle of punishment and argue that prisons should become more like mental hospitals, where prisoners would be neither blamed nor punished but rather diagnosed and treated. One form of treatment frequently recommended is group psychotherapy—in the belief that by admitting, sharing, and confronting their problems, fears, and anxieties, prisoners will develop a healthy insight into their behavior and will therefore be motivated away from crime. Strong advocates of the rehabilitative ideal are, of course, also in favor of helping the prisoner gain social, educational, and vocational skills—measures that are, at least in principle, accepted by all reformers, critics, and administrators of prisons.

the controversial "indeterminate sentence"

Central to successful implementation of the rehabilitative ideal, according to some prison reformers, is the controversial "indeterminate sentence." Just as the mentally ill are committed to institutions until they are cured and no longer a danger to themselves or to others, so, it is argued, prisoners should be released when experts on behavior determine that they are "cured" and no longer dangerous.

Supporters of the indeterminate sentence point out that no judge can predict at the time of trial how long it will take for



an individual to gain insight into his behavior and to become safe for release. The indeterminate sentence has been accepted in some states; for example, in California and at the well-known Patuxent Institute in Maryland, the judge sentences an individual to a term of one year to life (or until cured), and in the course of the prison term the professional staff of the department of corrections sets the time and date of release.

halfway houses

An important corollary of the rehabilitative ideal is the establishment of after-care facilities to treat the offender after his release and during his readjustment to the community. Halfway houses and work-release and educational-release centers allow the prisoner to go into the community daily or to live away from the prison before the end of his term. During the day he may work in any number of areas within the community or attend school. After work or the end of classes for the day, he must return to the work-release center or halfway house, where he may take part in group therapy sessions or informal recreational activities.

Thus, work release and educational release within the context of a halfway house are seen as a way to slowly reintegrate the offender into life patterns acceptable in the community.

why doesn't it work?

The rehabilitative ideal, at least insofar as it seeks to "treat" criminals, has for several reasons been an unfortunate development in American prison reform. For one thing, it promises too much. The answer to the American crime problem is not to be found in the prisons. Those who claim that various prison measures can reduce recidivism and thereby substantially reduce crime on the streets are deluding the public. The vast majority of serious felons are never even apprehended and are thus unaffected by changes in prison policies. Those who are apprehended often go free because of inefficient courts and the reluctance of witnesses to testify. And many others, sentenced to relatively long terms for less serious crimes, graduate as well-tutored criminals, thus contributing to a high rate of recidivism.

The answers to crime will be more profitably sought by developing a more efficient and rational criminal justice system and, of course, by examining the relationship between crime and poverty, racial discrimination, poor schools, broken families, unemployment, alienation. By offering a cure for crime, the rehabilitative ideal has placed prison reform on a shaky foundation. If rehabilitation fails or is only moderately successful, should further efforts at reform cease? Hardly. Prison reforms should be vigorously pursued for humanitarian reasons whether or not prisoners are "rehabilitated" or recidivism is reduced.

Contrary to some viewpoints, prisoners are not "sick." No scientific study of prison populations has ever shown a greater incidence of psychosis than is found in the general population. By focusing on the prisoner's psyche, many penal experts believe, we have neglected the critical importance of job opportunities, family ties, relations with police, and the parole experience in determining whether the released prisoner returns to crime. The implication that crime itself can be explained in terms of individual deficiencies diverts attention from the fact that society itself generates the types and amount of crimes we experience.

The indeterminate sentence, wherever it has been applied—to

juveniles, to "sexual psychopaths," or to "habitual" criminals—has been a dangerous and unsound experiment in American penology. It is the belief of many penologists that it should be abandoned. Power over a criminal's life, it is felt, should not be taken in excess of what would be justified by the aims of criminal justice: punishment, deterrence, and incapacitation. We should use our reformatory skills to assist the prisoner toward social readjustment; but we should never seek to justify an extension of power over the prisoner on the grounds that we are thus more likely to effect his rehabilitation.

The whole rehabilitative scheme is replete with efforts at predicting future criminality—an impossible task, given our present state of knowledge. Every effort to do so (whether at the time of sentencing or parole) which has been empirically tested has always been found to overpredict the number of prisoners who would return to crime after release.

"coerced cure"

The concept of "coerced cure" in the correctional field is also a dangerous delusion. In the field of psychological medicine it is widely agreed that psychotherapy, particularly if it is of the psychoanalytic variety, must be voluntarily entered into by the patient if it is to be effective. In this respect it differs significantly from physical medicine, where the cooperation of the patient, although desirable, is not always necessary, and where "cure" is a vastly different concept. Yet in the field of penology—despite the view held by some people that all offenders are psychologically sick—the analogy with physical medicine has dominated correctional practice.

We should, many experts believe, abandon the model of physical medicine as a guide. Education, vocational training, counseling, and group therapy should continue to be provided, but on an entirely voluntary basis. There should be no suggestion that a prisoner's release might be accelerated because of participation in any prison programs—or delayed or postponed because of his failure to participate. Nor, in reality, should these factors have anything to do with the length of sentence served. The approach adopted in rehabilitation programs should in no way be coercive but simply facilitative.

abuse of power

Another major objection voiced by critics today is the abuse of discretionary power at each stage of the existing criminal justice system. It has been recognized that the rehabilitative ideal constitutes an implicit threat to human rights. The literature is immense, including many important novels. Aldous Huxley in *Brave New World*, George Orwell in *1984*, and David Karp in *One* all sketched a conforming, regimented, painfully benevolent world in which the criminal law is used as an instrument of tyrannical coercion in the guise of reformatory treatment. *A Clockwork Orange* and *The Terminal Man* are merely more recent literary examples. The danger is that more and more citizens who deviate from the established norm will be involuntarily subjected to "treatment" in order to make them conform to society.

The rehabilitative ideal presupposes largely unfettered discretion. While the treaters seem convinced of the benevolence of their treatment methods, those being treated often take a different view. Their doubts deserve our attention. Without a definition of the proper limits of the rehabilitative ideal, skepticism about such treatment is entirely justified and healthy. The white-coated jailor with a doctorate remains a jailor, but with even larger powers. In the assumption of power for rehabilitative purposes there is the danger of abuse of human rights.

The search for a "cure" for the criminal has sometimes even taken us beyond the bounds of civilized treatment. Drugs, electroshock therapy, sterilization, and even psychosurgery have all been used to "reform" the prisoner's behavior. What little evidence there is has shown that behavior is seldom changed for the better and that the prisoner's hostility and aggression are often increased when subjected to such treatments. In addition, such techniques have often been misused for purposes of punishment in order to reinforce prison rules, rather than for genuine rehabilitative purposes.

Finally, if treatment and educational programs are tied to the prisoner's date of release, rehabilitative programs will not be effective. There will be great pressure on the prisoner to engage in such programs to please the parole board and other prison authorities in order to advance the date of his release. This tack will lead the prisoner to rely on manipulative and deceptive be-

havior—quite the opposite of the honest self-evaluation that is necessary for attitudinal and behavioral reform. “Contracts” between the prisoner and the paroling authority agreed on early in the prison term may ease the prisoner’s anxiety by giving him a definite release date (if he upholds his obligations), but this “reform” is also unduly coercive and is not likely to generate sincere motivation toward self-help.

BEYOND THE REHABILITATIVE IDEAL

What, then, are the alternatives? One important proposal is that convicted felons should not be sent to prison at all unless a lesser punishment would unduly minimize the seriousness of the offense; unless other, less serious punitive measures have failed repeatedly or recently with that offender; or unless a prison term is necessary for deterrent purposes. This view holds that an individual should not be sent to prison to be reformed, cured, or rehabilitated. Many prison reformers recommend that only dangerous offenders should be imprisoned.

Once in prison the individual should not be coerced into participating in prison programs by promises of an early parole. Indeed, parole boards as we now know them should be abolished, for no man has the prescience to predict accurately when a prisoner is “ready” for parole. Instead, the date of release should be determined early in the prisoner’s career not on the basis of a prediction of future criminality but on the basis of community attitudes toward his crime and the limits of their tolerance of his living among them. Assuming that he is not convicted of another felony while in prison and that he manages his home furloughs successfully, the date of release should remain unchanged.

Prisons themselves must change if prison programs, even those voluntarily chosen, are to have any impact. A basic question is whether effective prison reforms are possible at all within the context of the typical megaprison. There is good reason to believe that prisons containing over one thousand men cannot be managed in a civilized way regardless of the good intentions of those in charge. Prisons that large present such great threat of personal attack and widespread riot that very restrictive policies on movement and freedoms within the prison must be established, and conditions thought necessary to control and contain the most

difficult and turbulent prisoners are then applied to all prisoners.

A much better model of imprisonment is the minimum security institution, which today is gaining increased acceptance in many states. The minimum security prison substitutes dormitories for massive cell blocks and private rooms with doors for group cells with steel bars. It suggests the possibility of a relaxed atmosphere in which relations among inmates and between inmates and staff can be more normal.

Forty years ago the American Prison Association warned that no prison should contain more than 1,200 inmates. Today, not only do some forty-five state and federal institutions contain more than that number but there are also a number of prisons—among them the State Prison of Southern Michigan at Jackson, San Quentin in California, and the Ohio Penitentiary at Columbus—that hold more than three times that number. Yet even 1,200 inmates would be regarded as far too many by most penologists today. The British Howard League for Penal Reform has stated that 150 is the optimum size; in Sweden, 60 is widely regarded as the maximum desirable population for a penal institution.

Although the Swedish prison administration has not yet succeeded in putting this ideal into practice, there are 88 prisons for their 5,000 prisoners—some holding fewer than 60 inmates but others holding quite a few more. With a range and diversity of small prisons and with more than one institutional staff member for every two prisoners, it has proved possible to set up a correctional system that avoids the mass anonymity characteristic of the penal system in the United States. The Swedish system also largely avoids the hothouse growth of the evil subculture that has flourished in our correctional system.

the prisoner in society

It is of crucial importance to bring the prison and the prisoner back into society. The current emphasis on community-based corrections is to be welcomed. Locating small prisons, halfway houses, and work-release centers near the cities from which the prisoners have been drawn helps to maintain family ties, provides opportunities for reintegration into the community, and allows the prison to draw upon the considerable resources that are only available in such population centers.

It is not inappropriate to regard improvements in parole supervision as a part of prison reform. In the first months after leaving prison, the ex-convict usually experiences many crises—financial, social, and psychological. Even if he leaves the prison with the firmest intentions of “going straight,” seeing criminal friends again, close and sometimes obtrusive surveillance on the part of the police, lack of success in finding and holding a job, and the hesitation of society to accept a man stigmatized as an ex-convict may result in a relapse to old patterns of criminal behavior.

The ex-offender needs to be able to turn to a trained person who has an active interest in his post-prison career. It is preferable for the parole agent to be the same person who worked with him while he was in prison. In any case, it is crucial that the parole agent's case load be small enough to allow him to give



the kind of individual attention that is necessary. And there is the further serious question whether the roles of supervisor and helper can be combined in the one parole agent.

If reintegration into the community is not to mean a return to previous criminal patterns of behavior, preparation should begin early in the prison term. Many prison programs should focus on possible problems. Of course, furloughs, work release, and other techniques of graduated release have the primary purpose of helping the prisoner toward resettlement in society.

In its turn, the community must become more supportive of ex-offenders if prison reform is to go beyond socially appealing rhetoric. The development of Big Brothers, "next friends," and other groups interested in providing post-prison support should be encouraged. The last vestiges of "civil death" statutes and all other legal restrictions on the ex-convict's full participation in the political, economic, and social life of the community must be removed.

staffing our prisons

A major requirement for sound prison reform is better staff recruitment and training. Front-line staff turnover in most of our major penal institutions remains an extremely serious problem. Career lines and in-service training programs can help make correctional work a professional and appropriately remunerative vocation. And new personnel can be found among women, members of minority groups, and handicapped persons, all of whom should be actively recruited.

The ranks of convicts and ex-convicts themselves are an additional source of potentially valuable recruitment. Some people who have themselves been involved in a criminal career and have experienced the prison world are particularly sensitive to the concerns, fears, and problems of the prisoner. Ex-convicts serving at all levels and in all areas of corrections are a welcome recent correctional development. Not only do they become role models and living proof of the possibility of a different future, but such a career provides a good living and socially useful work and is a powerful rehabilitative tool in itself.

The use of female staff in penal institutions in the Swedish correctional system offers us a valuable lesson. There, women

work in institutions for young offenders and throughout the adult correctional system. They work not only in the front offices, outside the security perimeter, but within the walls and within the cell blocks. And there are women governors of men's prisons. A one-sex society is avoided even in the main long-term institution of Hall, the central prison for persistent and professional criminals. Only in Langholmen, the central prison of Stockholm, is there an exclusively male society. Indeed, at the institution of Mariefred, where eighteen- to twenty-one-year-old male offenders are held, the warden is a woman. Women may bring a softening influence to the prison society, as well as enabling the institution to more realistically reflect the "outside world."

What are the possible disadvantages or risks involved in employing women, which would be sensible and fair even if we did not face chronic staff shortages? They seem to be fourfold: loss of discipline; a barrage of obscenity; sexual assault; successful courtship between female staff and male prisoners. The first we doubt; the second is a matter of staff training; the third is not a serious threat; and the fourth is to be occasionally expected and welcomed.

There are, however, precautions that should be taken. Women staff members should not be isolated among a large number of recalcitrant, hostile male prisoners; the bulk of the custodial staff should remain male, as it is in Sweden, but there should be a substantial number of women guards. And, of course, women also should be employed within the correctional institution in administration, and as psychologists, caseworkers, counselors. Nothing but advantage to the entire correctional system will ensue from desegregating it sexually.

the prisoner and his rehabilitation

Correctional practices must cease to rest on surmise and good intentions. They must be based on fact. We are under a moral obligation to discover whether and to what extent our various penal sanctions do in fact reform. The prisons must be opened to social scientists so that they can test the efficacy of various programs and administrative techniques. Experiments with counseling, therapeutic communities, pre-release, and other prison programs that seem to promise some reformative success should be scien-



tifically tested with the use of control groups. For too long prison officials have been defensive and uncooperative in their relationships with scholars and social scientists, while for too long social scientists have acted only as critics. What is needed is a concerted and constructive effort to find the most economical and effective means toward both humanitarian reform and rehabilitation.

Reform and rehabilitation cannot be imposed. It is universally agreed that an inner and anxious desire for change is a prerequisite; and such a desire, the authors strongly believe, is rarely the product of isolated contemplation, exhortation, or severe punishment. It comes more readily from a larger understanding of oneself and one's relationship to society. And that, in turn, often emerges from free interaction with others who have lived and suffered in similar ways—hence, Synanon and Alcoholics Anonymous and many other groups in which individuals with similar problems support one another.

One recent development in many correctional systems merits attention. Through group counseling, group therapy, guided group

interaction, unstructured group discussions—however it is described—groups of prisoners are being brought together in relatively free verbal association to discuss their adjustment to society. This topic is not forced upon them; it is what invariably emerges after the settling-down period of complaints about the prison, its administration, and its staff. From such peer clashes, from the interaction between the small group and the individual, some prisoners are able to better understand their previous careers and the risks they run if they continue to pursue the same patterns.

In an attempt to counteract some consequences of the social isolation of prison, group methods have been adopted on a large scale in California and New Jersey, in the United Kingdom, in the Scandinavian countries, and, to an extent, in Australia, New Zealand, and elsewhere. The prisoner and the prison authorities look to the prison community itself—the prisoners and the staff—for a group wise in the ways of crime, punishment, and reform, who will help the prisoner achieve self-understanding and the motivation to pursue an acceptable social life.

The prison group itself is for the first time being mobilized for correctional rehabilitation. This is a far different situation from imprisonment in social isolation for punishment, for repentance, even for reformation.

REFORMING LOCAL JAILS

In 1970, the President's Task Force on Prisoner Rehabilitation noted that local jails (with a daily population of 250,000) are "generally the most inadequate in every way. . . . Not only are . . . facilities old but many do not even meet the minimum standards in sanitation, living space, and segregation of different ages and types of offenders that have been obtained generally in the rest of corrections for several decades."

One of the functions of the local jail remains, as it always has been, the custody of persons pending trial—indeed, at one time that was almost its sole function. It has been estimated that 40 percent or more of the jail population is made up of unconvicted defendants, a large proportion of whom—perhaps 40 percent—will later be released without being convicted. The conditions under which these persons, not yet convicted of a crime and legally

innocent, are detained have been described in a legislative report on one jurisdiction: "The indignities of repeated physical search, regimental living, crowded living, crowded cells, utter isolation from the outside world, unsympathetic surveillance, outrageous visitors' facilities, Fort Knox-like security measures, are surely so searing that one unwarranted day in jail in itself can be a major social injustice."

Commenting on this report, the Task Force on Corrections of the 1967 President's Commission on Crime said that "it is doubtful that the situation in this [jurisdiction] is much worse than in most others and it may be superior to many."

the inequities of bail

In addition to those found not guilty and released, there are many persons in local jails who, on conviction, will be given terms shorter than what they have already served while awaiting trial, or placed on probation rather than imprisoned at all. The majority of them are in jail because they cannot afford to pay bail. A 1963 survey found that 84 percent of the people awaiting trial in the District of Columbia jail were eligible for release on bond but could not raise it. As President Johnson said on signing the 1966 Bail Reform Act: "He does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only—because he is poor."

It should be obvious that both justice and economy demand a substantial increase in the numbers of persons released pending trial. Quite apart from the costs in terms of human suffering and the waste of human resources involved in needless pretrial detention, the dollar cost is enormous. The Task Force on Corrections estimated that for the nation as a whole "pretrial detention-expenditures probably exceed \$100 million per year." Clearly, pretrial detention should be reduced to the minimum possible—that is, to "the relatively small percent of defendants who present a significant risk of flight or criminal conduct before trial." This can be achieved by the abolition of money bail and the release of all defendants save the few for whom the interests of the community require detention.

It has been argued, against such a plan, that it would be improper to empower magistrates and judges to jail defendants they believe to be dangerous because methods and data for predicting dangerousness have not been developed. But judges at present commonly set high bail as a means of detaining persons they fear will commit crimes if released, although the only recognized constitutional purpose of the bail system is ensuring appearance at trial. Whether they are able to predict dangerousness has been challenged on occasion, but a more cogent objection is that setting money bail is an inadequate measure both against flight and against criminal conduct pending trial. The Task Force on Corrections reported: "Dangerous persons with sufficient funds to post bail or pay a bondsman go free; in fact, a Commission study indicated that some professional criminals appear to consider the cost of bail bonds a routine expense of doing business. . . . Moreover, the need to raise funds for a bond premium may have the unintended effect of leading the defendant to commit criminal acts."

It is also pertinent to remark that judges are no better qualified to predict nonappearance than to predict dangerousness, although the whole bail system presupposes their ability to do so. In our view it is essential that current research into the circumstances that affect the risk of flight before trial be continued and intensified. We also need to know more about what affects the likelihood of a person's committing an offense while out on bail. This does not mean, however, that we can afford to preserve the present largely ineffective, highly inequitable, and almost criminally wasteful jailing system until this research has been done.

As the Commission's Task Force Report on the Courts put it, "Society has an important interest in securing protection from dangerous offenders who may commit crimes if released before trial." But the Vera Foundation Manhattan Bail Bond Project in New York City and similar programs elsewhere have demonstrated that it is possible to have "vast numbers of releases, few defaulters, and scarcely any commissions of crime by-parolees in the interim between release and trial." If defendants can establish a "credit rating" in terms of job stability and family ties, the defendants' promise to appear for trial is accepted in lieu of the usual cash bail or bond. It has been estimated that between 50

and 60 percent of those currently detained can meet the requisite criteria for release. The yearly cost of unnecessarily detaining such persons: \$50 million.

PROSPECTS FOR PRISON REFORM

A clear advance since the last century is the realization that the politics of correctional reform are vastly more complex, more interrelated with the work of the police and the courts, and ultimately more dependent on social structure than was previously believed. Corrections inherits many of the defects in the organization and work of the police and the courts. It is only a subsystem of the criminal justice system and we cannot fully affect the prison system in isolation—without equal attention to causes of criminality, the chaotic court system, arbitrary sentencing. Unless we plan for effectively linking police, courts, and corrections subsystems, we will be merely tinkering and patching, wasting whatever potential for crime prevention and rehabilitation the criminal justice system may be capable of.

Yet, while the modern correctional administrator may be more modest in his expectations than his predecessor, the criminal justice system in which he works is remarkably lacking in modesty. The criminal law has been used in this country not only to protect citizens against violence and the threat of violence, against major deprivations of their property, and against attacks on the processes of government, but also to coerce men to private virtue—and with a startling lack of success. The criminal law grossly overreaches itself to embrace a host of victimless crimes against "morality." Many convicted of these crimes pass through the jails as through a revolving door. This is a major obstacle to the development of a rational criminal justice system.

We have legislation making public drunkenness and vagrancy crimes, and extending the law's reach beyond its competence in relation to narcotics and drug use, gambling, disorderly conduct, abortion, an extensive range of consensual adult sexual practices, and the noncriminal aspects of juvenile delinquent behavior.

This overreach of the criminal law has made hypocrites of us all, turned some into law violators, overloaded the criminal justice system, and confused the mission of corrections. Too many nuisances, who have committed no social harm, are sent to jail or

prison or are placed on probation. Too often we are busy fighting the wrong war, on the wrong front, at the wrong time, weakening our capacity to protect the community and help the convicted offender. Corrections, as indeed the rest of the criminal justice system, must reduce its load to one it has some chance of carrying effectively.

the high costs

Sound prison reform is expensive. Already, it costs the taxpayers in some states more than \$10,000 a year to keep one person in prison. That cost will soar if, as we have suggested, the huge prisons that have existed for decades are torn down and prisoners are redistributed to small minimum-security prisons of not more than 200 persons. Meaningful programs, a talented professional staff, a modern physical plant, and up-to-date facilities all require a substantial commitment of funds.

The reformers who promise they can do better with less money deceive themselves. Additional funds will have to be drawn to this area if reforms are to be achieved. Such funds would have to be taken from other programs. That might violate other priorities and cost more votes than correctional reform attracts.

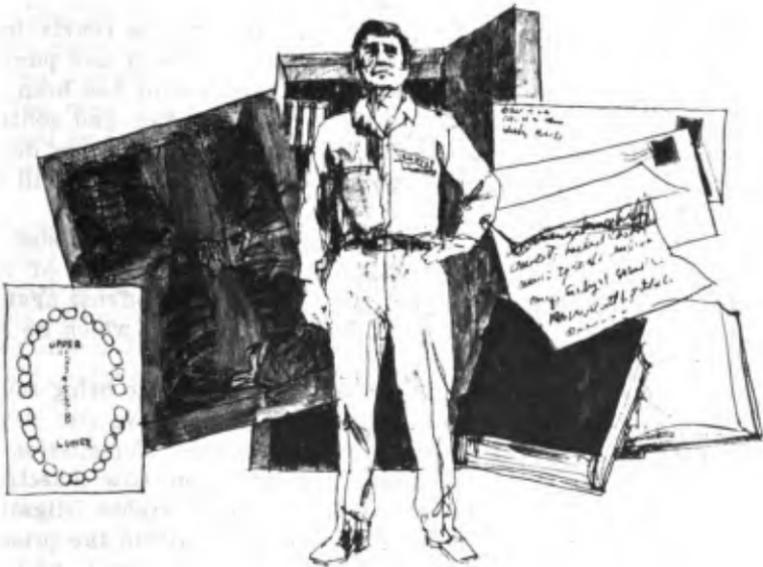
Penal reform lacks a constituency. Why should a governor or a political party support reform in the criminal justice system? When the "law and order" appeal is not merely an appeal to racial prejudice, it does not seem to have been a very successful vote-getter. Similarly, appeals to the desirability of substantial reform in the criminal justice system will attract few votes—indeed, they may lose them. So we have to rely on that precious commodity, disinterested political leadership. And for that we have to persuade both major political parties to depoliticize correctional reform.

Over the last decade prison reform has gained some powerful allies. Two Presidential Crime Commissions came out strongly in favor of completely revamping the prison system. The National Council on Crime and Delinquency and the American Bar Association's Commission on Corrections have added their substantial support to prison reform efforts. Journalists and scholars have begun to take a greater interest and to speak up more forcefully. Traditional reform groups, like the John Howard Associa-

tion, and ex-offender groups, like the Fortune Society, have continued to conduct studies and to act as watchdogs. But perhaps the most significant development has been the increasing attention of the legal profession and the courts to prison conditions.

prisoners' rights

Until recently, the courts almost unanimously adhered to the view that once a man was sent to prison he lost the protection of the federal and state constitutions. The few inroads on this "hands-off" doctrine made in earlier decades eventually led to the courts' critical scrutiny of prisons and prison conditions, and subsequently to a flood of prisoners' rights litigation. State and federal courts are beginning to look into every area of prison administration: living conditions, hygiene, mailing and visiting privileges, dietary rules, medical and dental services, restrictions on literature and reading materials, and particularly disciplinary measures.



In several spectacular cases, jails, prisons, and whole correctional systems have been declared unconstitutional. The courts appear to be moving toward a new theory of constitutional rights which holds that the constitution follows the individual into prison and that rights may be taken from him only if absolutely necessary for the effective running of the prison. Section 1983 of the Civil Rights Act, together with the liberal use of injunctions and class-action suits, has generated a legal revolution in prisoners' rights litigation.

In the area of First Amendment rights, several courts have held that prisons must recognize the rights of prisoners to practice their religion. Such rulings were of particular relevance to the large number of prisoners who are Black Muslims. Other important First Amendment litigation has established the principle that written materials cannot be banned from a correctional institution without proof by the prison administration that such material would represent a clear and present danger to the staff or to other inmates.

With respect to the Eighth Amendment, which protects the individual from cruel and unusual punishment, the courts have taken a close and strict view of various disciplinary and punishment systems. In most states corporal punishment has been declared unconstitutional, and unsanitary segregation and solitary confinement cells have been prohibited. In addition, sensory deprivation, in the darkness of a solitary steel-lined strip cell, will not be tolerated.

Perhaps the most important decisions are those grounded on the Fourteenth Amendment, which insures the right of due process. Before a prisoner can be punished for an offense against prison discipline he must be allowed a hearing at which he can speak in his own behalf.

The courts have been most active in attempting to bring sound reforms into the prison but other citizen groups have also played a significant role. The American Bar Association Commission on Corrections has made an influential contribution. Law collectives around the country specializing in prisoners' rights litigation have, at no charge, trained jailhouse lawyers within the prisons and taken test cases before the higher courts. Nonlegal and non-professional community groups have also become involved. Many

of them go into the prisons to give educational or vocational or recreational instruction, counseling, or other services that might be helpful to or requested by inmates.

Perhaps the most dramatic prison reform group today are the prisoners and ex-prisoners themselves. Gone are the times when prisoners "did their own time" silently in prison, waiting patiently for the day of their release. Today prisoners have become aware of their rights, and are actively communicating with the outside society through newspapers, legal suits, articles and books, and even disturbances and riots in order to alert the public to their plight.

in summary

Prisons will be with us for some time to come, if only to satisfy the community's need to set moral standards through punishment. The increasingly widespread use of probation and other alternative programs is to be applauded. But there is no doubt that the prison population of today is, for the most part, a more serious offender group than in the past because less serious offenders are selected for such programs. Thus, because today's prisoners are a more difficult group, finding new creative and effective programs presents a special challenge.

The most important principle to bear in mind is that no one should be kept in prison a day longer than the amount of time society would demand as just for the particular crime in question. People should not be imprisoned in order to be saved. Deprivation of liberty itself and removal from the free community should be all the punishment the individual is exposed to. The administration of prison day-to-day life should be dictated by standards of humane concern for fellow human beings, with continuing efforts to help them find the smoothest way back into the mainstream of society.

CRIME AND DELINQUENCY

THE NONDANGEROUS OFFENDER SHOULD NOT BE IMPRISONED

A Policy Statement—Board of Directors, National Council on Crime and Delinquency

Prisons are destructive to prisoners and those charged with holding them. Confinement is necessary only for offenders who, if not confined, would be a serious danger to the public.

For all others, who are not dangerous and who constitute the great majority of offenders, the sentence of choice should be one or another of the wide variety of noninstitutional dispositions.

This approach to disposition of offenders is supported by two fundamental constitutional concepts:

1. The law favors the liberty of the individual.¹
2. When government has available a variety of equally effective means to a given end, it must choose the one which interferes least with individual liberty.²

THE NONDANGEROUS OFFENDER SHOULD BE KEPT OUT OF PRISON

In a policy statement on "Institutional Construction,"³ we said: "No new detention or penal institution should be built before alternatives to incarceration are fully achieved." When we consider the greatest possible use of community correction, it is feasible and desirable to avoid institutional commitment of any offenders except for those so dangerous (as defined in the Model Sentencing Act) that they cannot be left at liberty.

PRISONS: A COSTLY FAILURE

Having established [in the Model Sentencing Act] a carefully studied distinction between dangerous and nondangerous offenders, we must now question why prison terms of up to five years should be authorized for the latter. Why need we imprison any nondangerous offender? It is time to propose the virtual abolition of imprisonment for nondangerous offenders. . . .⁴

Why imprison any nondangerous offender?

Prisons "must be judged by their actual functioning rather than by their stated objectives."⁵ They have proved to be (1) ineffectual, (2) probably incapable of being operated constitutionally, (3) themselves productive of crime, and (4) destructive of the keepers as well as the kept.

1. In the long run, imprisonment is very little protection: virtually all prisoners are ultimately released, most of them within a few years. Furthermore, as studies have shown, the longer the term of imprisonment, the more likely it is that the ex-prisoner will return to crime; the earlier the release, the greater are the chances for success.⁶

That imprisonment is not a significant protection is evident from comparing the number of persons imprisoned for a specific period for a particular crime with the incidence of that crime during that period. We have analogous data in our policy statement on preventive detention. Of 130 persons who had been released on bail after being indicted for robbery in one recent year in the District of Columbia, forty-five were again indicted for a total of forty-nine robberies while on bond. In that year, ten thousand robberies were committed in the District of Columbia.⁷ Similar comparisons could be made for other kinds of crimes.

Prisons do not rehabilitate offenders. For all practical purposes, prisons are wholly punitive. Given this reality, they accomplish only three limited functions: Protection of society from a relatively small number of dangerous convicted per-

¹ S. RUBIN, H. WEINOFFEN, G. EDWARDS, & S. ROSENZWEIG, *THE LAW OF CRIMINAL CORRECTION* ch. 19, § 8 (1963).

² *Less Draastic Means and the First Amendment*, 78 YALE L.J. 464 (1969); *Goodwin v. Oswald*, 462 F.2d 1237 (1972) (Oakes, J., concurring); Klappmuts, *Community Alternative to Prison*, 5 CRIME & DELIN. LIT. 305-37 (1973).

³ 18 CRIME & DELIN. 331 (1972).

⁴ RECTOR, Foreword to NCCD COUNCIL OF JUDGES, MODEL SENTENCING ACT III (2d ed. 1972).

⁵ First Annual Chief Justice Warren Conference on Advocacy, Final Report 9 (1972).

⁶ J. ROBINSON, *THE CALIFORNIA PRISON, PAROLE, AND PROBATION SYSTEM* (1970).

⁷ NCD Board of Trustees, *Preventive Detention*, 17 CRIME & DELIN. 4, 5 (1971).

sons for a limited period of time; possibly some deterrence of a limited segment of society at large; retribution for blameworthy acts. Furthermore, recidivism rates indicate that prison "caging" maladjusts prisoners and thus actually exacerbates the crime problem.⁸

A prominent California legislator recently said :
California operates the largest penal system, and the best. Yet, if you were to enter this progressive system as a misfit in 1971, you would be virtually certain to emerge in 1975 not only less able to function on the outside, but much more defeated and dangerous than you were when you entered.⁹

A Wisconsin task force for criminal justice planning has submitted a five-year plan to phase out penal institutions. The introduction to the report is an excellent summary of the argument for replacing penal institutions with noninstitutional programs. It opens as follows :

The Study Committee on Offender Rehabilitation has unequivocally established as its most fundamental priority the replacement of Wisconsin's existing institutionalized correction system with a community-based noninstitutional system. Two questions come immediately to mind with respect to such a seemingly radical proposal : "Why, and what does it mean?"

The answer to the question of why to change the system so fundamentally revealed itself gradually but relentlessly to the Study Committee : no amount of resources, however great, can enhance a convicted citizen's chances for productive re-entry to a democratic society when that citizen has been confined in an institution too large to provide individual services, too geographically remote to provide vital life-contacts, and too regimented to foster self-esteem. In short, current Wisconsin institutions cannot rehabilitate. That judgment was predicated on the sometimes frustrating, sometimes angering, and often depressing personal experiences of Study Committee members upon the occasion of visits to institutions and discussions with inmates and institutional personnel, and upon review of voluminous materials from throughout the nation.

In retrospect and upon reflection, the carefully and painfully reached judgment against currently existing correctional institutions in Wisconsin seems so sensible as to cause one to wonder why it was so hard to reach. The logic of "the golden rule" is compelling : if you were required to live in a cell with few facilities, little privacy, limited contact with other persons significant to you, limited access to employment, and a high degree of authoritarian regimentation, how might you fare upon re-entry into the broader, more competitive society, there to be greeted by the stigma of having been "away"? The shared human response of many of the Study Committee members to the dehumanizing pattern of institutional life unquestionably moved the Study Committee members toward their conclusion.¹⁰

U.S. Court of Appeals Judge Irving Kaufman wrote recently :

Five years ago criminal and constitutional lawyers were occupied primarily with fairness and equity in the ways people are processed through the criminal courts. Today, however, the focus seems significantly different. Attention has shifted from how people are processed through the criminal justice system to an intensive examination of the system itself. . . . What can prisons, or police, or the criminal law generally do to prevent violent street crime like mugging?¹¹

2. Abominable conditions in prisons have led the courts to apply the Eighth Amendment, forbidding cruel and unusual punishment, most widely to prison practices. Whole systems—some of them no worse than others where the courts have not acted—have been held to be unconstitutional.¹²

In condemning as unconstitutional a restraint on correspondence imposed by the prison, United States District Court Judge James E. Doyle wrote, in a case decided recently :

I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards, and probably less rational. . . .

⁸ Final Report, *supra* note 5, at 9.

⁹ Karablan, *California's Prison System: We Must Bring It Into the Twentieth Century*, 2 BLACK L.J. 145 (1971).

¹⁰ Wisconsin Council on Criminal Justice, Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation (1972).

¹¹ Kaufman, *Prison: The Judge's Dilemma*, 41 FORDHAM L. REV. 495, 496 (1973).

¹² *Holt v. Sarver*, 309 F. Supp. 362 (1970), *aff'd* 442 F.2d (8th Cir. 1971).

It is not contended that these latter rules and regulations, which are often referred to as matters of internal discipline but which I will describe as rules for institutional survival, are intended to serve any deterrent or rehabilitative function. . . . These rules are intended . . . to provide protection of the guards and administrators from the inmates; to protect the inmates from one another; and to maintain some kind of internal routine. . . .

The genuineness of the prisoners' grievances, the humiliating and degrading effects of many of the rules, the invasion of the innermost core of human privacy, all compel serious and sympathetic attention to these complaints. . . .

In my view, in passing upon these challenges to the rules for institutional survival, the balance must be struck in favor of the individual rights of the prisoners. That is to say, if one of these rules of institutional survival affects significantly a liberty which is clearly protected among the general population, and if its only justification is that the prison cannot survive without it, then it may well be that the constitution requires that the prison be modified. Specifically, if the functions of deterrence and rehabilitation cannot be performed in a prison without the imposition of a restrictive regime not reasonably related to these functions, it may well be that these functions can no longer be performed constitutionally in a prison setting. Also, with respect to the comparatively few offenders who simply must be physically restrained for periods of time to prevent them from committing antisocial acts, it may well be that the society will be compelled, constitutionally, to allocate sufficient resources for physical facilities and manpower to permit this function of physical restraint to be performed in a setting which little resembles today's prisons.¹²

Recently a judge, releasing an offender who was a homosexual instead of committing him to prison, said:

There have been stabbings and fights over this situation, and yet all they can do is give verbal instructions to the prisoners. I just couldn't see throwing him into that situation. It would be cruel and unusual punishment. He'd become an object of barter there, completely dehumanized, if he wasn't killed.¹⁴

This is applicable to all prisons.

3. Prisons themselves are, in fact, one of the causes of crime; they are, to use a familiar phrase, "schools of crime," and far more crimes of violence are committed there than in any other community.

4. The prison destroys not only its prisoners but also their keepers. Russell G. Oswald, Commissioner of Correctional Services, New York State, described the plight of prison guards who constantly are confronted, in the course of their work, with "possible injury, capture, and even death":

Correction officers, too, have the right to be treated as men, and such niceties as having food, urine, glass, and other objects thrown in one's face, or to be constantly referred to as pig (or less kindly epithets) or constantly provoked in front of the inmate population, tend to reduce the officer's stand and posture with the inmates.¹⁵

"These limitations," said the Conference on Advocacy, "must be candidly recognized and the employment of imprisonment and other criminal sanctions must accordingly be sharply curtailed. Indeed, the release of the majority of the prison population, coupled with the provision of community programs and services, would not increase the danger to the public, and ultimately would enhance public safety."¹⁶

A resolution adopted by the Congress of Correction in 1972 referred to imprisonment as a "sentencing alternative" that should be reserved for "dangerous and persistent offenders."

TREATMENT IN THE COMMUNITY

Our 1972 policy statement held that "no new detention or penal institution should be built" at any time when community correction was not being funded, staffed, and utilized as much as possible. Our Saginaw, Mich., demonstration project some years ago expanded the use of probation to a degree well below its maximum potential, and even with that deliberately conservative goal cut

¹² *Morales v. Schmidt*, 340 F. Supp. 544 (1972)

¹⁴ Judge David O. Boehm, Monroe County Court, N.Y., as reported in *New York Times*, Nov. 13, 1972, and *New York Post*, Nov. 13, 1972.

¹⁵ Oswald, *Rights of Correctional Personnel*, AM. J. CORR., November-December 1972, at 20.

¹⁶ Final Report, *supra* note 5, at 9.

prison commitments in half. We do not know of a single jurisdiction that is making the fullest possible use of all the forms of community treatment briefly summarized below.

1. *Diversion*.—Of all the convicted persons who overload and do not belong in our penal institutions, the ones who overload them most and belong in them least are those who commit "victimless crimes." As Judge Kaufman asked, "What function is served by sending drunks, drug addicts, prostitutes, and gamblers to prison?"¹⁷ Indeed, what function is served by processing such persons through the courts? Both society and the "victimless offender"—as well as the average petty misdemeanant—would be better served if he were referred to an appropriate social agency or even if he were the object of "benign neglect." More communities than ever before are adopting a policy of diversion of such cases—sometimes before appearance in court, sometimes after arraignment—with no discernible loss in deterrence and no damage to these persons' chances of successful readjustment.¹⁸

2. *Probation and Suspended Sentence*.—These dispositions can be used in as much as 90 per cent of all convictions without resulting in a poorer recidivism rate compared with imprisonment.

Probation services can and should be improved, but the use of probation can be expanded without waiting for this improvement.

We achieve success even now with many probationers who receive little or no actual help or guidance from their overworked probation officers. Can we not assume that these offenders would have been equally successful if they had received suspended sentences, without probation? When we speak of trying to achieve greatly increased use of probation, we are really referring to both probation and suspended sentence.

There are cases in which the risk of failure on probation involves sufficient threat to the community to warrant commitment to penal institutions—unless there is a skilled probation service to minimize the danger. In the absence of enough skilled probation officers, these borderline cases are often committed to penal institutions. On the other hand, much of the average probation caseload is made up of the obviously safe risks, persons who do not present difficult problems of treatment or whose behavior is not a threat particularly not a physical threat, to persons in the community. If they were released without supervision—if they were given suspended sentences instead of probation—the staff could devote a far greater proportion of its time than it now can to the difficult cases, those for whom expert casework service is sorely needed to avoid commitment.

This does not imply that with caseloads reconstituted as suggested, we now have enough well-trained probation officers to do the job that has to be done. Most positively we do not. But only by some such redistribution of judicial dispositions can probation begin to make its proper impact on the prison problem. Such a course has not been regularly followed, except in a few instances. Perhaps that is why the prison problem becomes more acute every year.¹⁹

3. *Deferred Conviction on Consent*.—Use of this form of community treatment is supported in Section 9 of the Model Sentencing Act (second edition):

Upon receiving a verdict or plea of guilty the court may, without entering a judgment of guilt or accepting the plea and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such terms and conditions as it may require. Upon fulfillment of the terms of probation the defendant shall be discharged without court adjudication of guilt, and an order shall be entered expunging the verdict or plea of guilty. Upon violation of the terms, the court may enter an adjudication of guilt and proceed as otherwise provided in this Act.

MANY STATES HAVE EQUIVALENT PROCEDURES

4. *Fines*.—This sentencing alternative has never been sufficiently used in the United States. In England the ratio of prisoners to total population is now much lower than it is here because some years ago that nation authorized the installment payment of fines, a procedure that permitted it to close down several prisons. Now, in the United States under a Supreme Court decision, an indigent cannot be imprisoned immediately upon nonpayment of a fine; he must be given an opportunity to pay in installments.²⁰ "This Court," said Justice Harlan, "will

¹⁷ *Supra* note 11.

¹⁸ Do'eschal, *Victimless Crime*, 3 CRIME & DELIN. LIT. 254-69 (1971).

¹⁹ Laws, *Criminal Courts and Adult Probation*, 3 NPPA J. 357-58 (1957).

²⁰ *Tate v. Short*, 401 U.S. 395, 91 S. Ct. 668 (1971).

squint hard at any legislation that deprives an individual of his liberty—his right to remain free."²¹ The California Supreme Court has gone further, absolutely prohibiting imprisonment of an indigent for nonpayment of his fine.²²

The most effective step so far has come by way of legislation in Delaware, where no one—indigent or not—may be imprisoned for nonpayment.²³ Rather than reducing the amount of money collected on fines, the law has increased it, has effected a saving of jail costs, and, from all that appears, has entailed no loss in deterrence. The Model Sentencing Act would permit the use of fines in all misdemeanors and all felonies except those committed by dangerous offenders.²⁴

Traditionally the threat of imprisonment has been regarded as necessary to enforce fines. To this the California Supreme Court has replied:

As applied to indigents we fail to see how either the threat or the actuality of imprisonment can force a man who is without funds to pay a fine. . . . Even if it is assumed that imprisonment of indigents serves the state's purpose of enforcing collection of fines, it is clear that this particular mechanism for promoting the state interest is not "necessary" in the constitutional sense. In *Williams* the court held that the particular type of "workout" sentence there involved was not necessary to promote the state's legitimate interest because there existed alternative and less intrusive means whereby the state could further its interest.²⁵

5. *Restitution*.—Restitution is one of the sentences provided for in the Model Sentencing Act,²⁶ and it is authorized in the statutes of Delaware²⁷ and Pennsylvania.²⁸ It has been used with white-collar criminals; it can be used with others, particularly persons involved in organized crime.

Restitution may have a potentially greater use and social benefit than the fine, a punishment of uncertain effect (although clearly more desirable, where feasible, than imprisonment). Whitney North Seymour, United States attorney in the Southern District Court, New York, points out that many persons convicted of securities fraud, forgery, smuggling, larceny, etc., profit handsomely from their crimes because the victims are usually without resources to seek restitution or damages and the available sanctions for the criminal violation do not include setting up a fund to repair the harm that has been done. The court should require the defendant to pay over the amounts of funds obtained illegally, and an effective deterrent to white-collar crimes might be developed if public law enforcement officers were authorized to seek double or treble damages as a penalty. Seymour said:

One of the primary reasons for suggesting a shift in remedies is that our courts often do not use even present criminal sanctions effectively to deter what has been waggishly termed "crime in the suites." The glaring fact is that white-collar criminals almost invariably receive relatively light punishment. . . .

These penalties present a bitter contrast to the lengthy prison terms so frequently meted out to less fortunate defendants charged with such common offenses as robbery or burglary. Compare, for example, the average prison sentence of 8.2 months for income tax fraud with the average 85.3 month sentence meted out by the federal courts for bank burglary. . . . [With establishment of] a punitive system embracing compensation as well as incarceration, the gross and egregious inequities presently existing between sentences meted out for white-collar crimes and those handed down for other serious infractions of the law could at least be mitigated. In permitting perpetrators of white-collar crimes to retain their lucre without suffering any significant jail term, the legal system not only fails to ameliorate the plight of victims but also causes the criminal law to fall in its essential purpose—the discouragement of similar acts hostile to the public welfare and the rehabilitation of the transgressor. Compelling restitution and damages within the scheme of criminal justice can serve to readjust the present imbalance of the system, achieving the purposes for which it was designed.²⁹

6. *Boarding Homes*.—Once we determine to examine the possibilities of sentences other than imprisonment, new forms of community treatment will be dis-

²¹ *Williams v. Illinois*, 399 U.S. 239, 259 (concurring opinion) at 263 (1970).

²² *In re Antazo*, 89 Cal. Rptr. 255, 471, P.2d 989 (1970).

²³ Del. Session Laws 1969, ch. 198.

²⁴ NCCD COUNCIL OF JUDGES, MODEL SENTENCING ACT § 9 (2d ed. 1972).

²⁵ *In re Antazo*, *supra* note 22.

²⁶ *Supra* note 24.

²⁷ *Supra* note 23.

²⁸ 18 Purdon Pa. Stat. § 5109, added Laws of 1970, P.L. 257.

²⁹ Seymour, *Major Surgery for the Criminal Courts*, 38 BKLYN. L. REV. 571, 576 (1972).

covered and old forms will be expanded or modified. One recent development of this kind, superior to imprisonment in every respect, is the adult boarding home (patterned on the foster home for the placement of juvenile delinquents), a residence for a small number of offenders, supervised by correctional personnel or volunteers. Another perhaps even more useful adaptation of this community treatment concept is the placement of offenders individually in hotels, boarding houses, or other living facilities, which avoids the problem of establishing a residence to be used specifically and exclusively for them and thus, because of its normal living arrangement, may cultivate faster integration.

THE DANGEROUS OFFENDER

Confinement is necessary for the kinds of offenders identified in the Model Sentencing Act as dangerous; they must be held in secure institutions until it is safe to release them.³⁰

The Model Sentencing Act defines two types of dangerous offenders: (1) the offender who has committed a serious crime against a person and shows a behavior pattern of persistent assaultiveness based on serious mental disturbances and (2) the offender deeply involved in organized crime.³¹

Only a small percentage of offenders in penal institutions today meet the criteria of dangerousness. In any state no more than one hundred persons would have to be confined in a single maximum-security institution, which, because of its small size, could be staffed for genuine treatment.³²

Neither mental hospitals nor prisons are now capable of treating such offenders. Some correctional leaders advocate super-maximum security institutions for large numbers of offenders. The achievement of their proposals would worsen the prison problem: it would intensify the commingling of the small number of dangerous persons with nondangerous persons who then appear to be or become dangerous because of their maximum security environment. Therapy for the seriously disturbed is now, under these conditions, almost unobtainable, and it will remain unobtainable until the prison system is changed, to deal with *only* the dangerous offender.

Those who support the present system of imprisonment have arrived at the ultimate defense: that prisons need to be made humane. But the more one becomes concerned with the humanization of prisons, the clearer it becomes that the only way to achieve this is to avoid incarceration altogether except for the dangerous few.

³⁰ NCCD Council of Judges, *Guides to Sentencing the Dangerous Offender* (1969).

³¹ NCCD COUNCIL OF JUDGES, *supra* note 24, at § 5.

³² *Id.*, Comment on § 5, at 11.





An American Archipelago...
THE UNITED STATES BUREAU OF PRISONS

An American Archipelago
The United States Bureau of Prisons

Presented
at the

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National Institute on Crime and Delinquency

Statler-Hilton Hotel
Boston, Massachusetts

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by
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William G. Nagel, since October 1969, has been the Director of the American Foundation Incorporated, Institute of Corrections, an endowed organization. From 1964 to 1969 he served as Executive Secretary for Human Services in the Office of the Governor of Pennsylvania. Prior to that he held several positions in the correctional field including eleven years as assistant superintendent in a New Jersey correctional institution.

He has served on numerous national, state and local commissions dealing with correctional and criminal justice matters. Recently, Walker and Company published his book entitled The New Red Barn: A Critical Look at the Modern American Prison.

Three years ago, David J. Rothman, a young professor with a Ph.D. from Harvard -- just across the Charles River from here -- published a book called The Discovery of the Asylum. Rothman is a historian by profession and in his book he explores American history in order to find out why, beginning in the 1820's, the United States suddenly and extensively constructed such public institutions as penitentiaries, alms houses, reformatories, and insane asylums, for the care of its deviant and dependent population. If you have not read it, I would like to recommend that you do, because it is, in my opinion, one of the few very important books that have been written about corrections.

Rothman suggests that asylums, alms houses, and prisons were born out of the naive assumptions about human nature prevalent in Jacksonian America. Essentially they were these. (1) If deviants were isolated from contact with corruption and introduced to steady habits, the right organization and routine, they would be cured of their deviance: and (2) society would be cured of its tendency toward deviance.

One exuberant enthusiast, the Rev. James Finley, chaplain at Ohio Penitentiary back in 1851, put it this way:

"Could we all be put on prison-fare for the space of two or three generations, the world would ultimately be the better for it. Indeed, should society change places with prisoners ... taking to itself the regularity, temperance, and sobriety of a good prison" the goals of peace, light, and Christianity would be furthered. Finley concluded that "taking this world and the next together... the prisoner has the advantage."

Hallelujah!

The American people did not subscribe to the Rev. Finley's prescription for salvation -- at least not for themselves. They did accept that the alms house, the asylum, and the prison might have laudable effects upon the new American and especially the immigrant who was having trouble making the adjustment from old world to new world culture. Rothman, drawing from the records of the times, shows how, starting in the 1850's, our institutions all over the country became receptacles for the foreign born who were not making it.

The rhetoric of the Jacksonian period had justified confinement. Since then a succession of Reverend Finley's have glorified the American prison as a place where the poor, indolent, insane, sick, intemperate, jobless, or dependent could find salvation. A gullible (or cynical) American public has ever since found it easy to use confinement as a means of separating the out-group from the in-group.

Earlier out-groups -- Irish, Germans, etc. -- soon lost their accents and their funny clothes, and in time were assimilated --

became part of the in-group. They have largely been replaced in the American prison by the current out-groups -- the blacks, Indians, Chicanos and Puerto Ricans.

Assimilation for these will not be so easy. It was relatively easy for white Europeans to become part of the mainstream of American life. It remains to be seen whether Americans of color will be permitted or will permit themselves similar integration. I am both optimistic and pessimistic.

I am like the man who, last week, at the meeting of the Investment Committee of my Foundation said that he was optimistic about the future of Wall Street. "Why then" someone asked, "do you look so worried?" And the man replied "Because I'm not so sure my optimism is justified."

My pessimism is nurtured almost daily.

I can look from my skyscraper window in downtown Philadelphia at an ugly, decaying inner city with 400,000 to 600,000 desperate, denied, and sometimes discouraged people. Slop, garbage, and bottles are on the street. Many houses are rat infested fire-traps. Large numbers are falling down.

My friends in the Bureau of Employment tell me that the unemployment rate among the inner-city youth in my Philadelphia exceeds 40%, and that the unemployed -- underemployed rate probably exceeds 70%. At least 48,000 young people, the equivalent of over 3 divisions of infantry, lounge on our corners or walk the streets of this one American city without legitimate income and without hope.

Since 1967 the unemployment rate in the nation has risen 37 1/2% and our financial advisers tell me that it will rise another 25%, or a total of 62 1/2% between now and the end of the year. For some white people this will be difficult. For the black in the inner-city it will be catastrophic.

And daily I see the effects of these things.

Each morning at 8:30 a.m. I pass through the courtyard of the magnificent French Renaissance building that is our City Hall. There, 15 to 20 policemen (Friday 19 of the 20 were white) with shiny boots, Nazi-type hats, mace, shot guns, pistols and police dogs oversee the unloading of two, three, four blue buses marked Philadelphia Sheriff's Department. And anywhere from 70 to 150 prisoners -- almost exclusively black -- file out in handcuffs and sometimes chains. They have been locked up in our jail, in our handcuffs, in our chains, and that night -- after their day in court -- many will be locked up in our prisons. As Bill Moyers has observed we are withdrawing into a locked up society with locked

up minds; locked up homes, locked up expectations; locked up human urges. We are not an integrated people, we are a separated people.

Much of our criminal justice process compounds this separation problem. During my remaining moments I will dwell on just one -- The Federal Bureau of Prisons.

Until the last decade of the 19th century the federal government had no prisons for persons convicted of violating a federal law. Such criminals were boarded in state prisons. In 1895 there were 2 1/2 thousand prisoners in the several state prisons. That year the Department of Justice was authorized to use temporarily the military prison at Fort Leavenworth, because the state prisons were so overcrowded with those Irish and Italians about whom I have already spoken. Of course, nothing is ever temporary and two years later the Department authorized the building of a new prison at Fort Leavenworth to accommodate 1,200. That prison was opened in 1906 and was hailed as the greatest creation since the Pyramids. Today it remains a monument to man's shortness of vision, his inhumanity, and above all to his regression from integration to separation. The tier on tier of open cells shout "predator, animal, cage". Quite understandably, the present leadership of the Federal Bureau wants to tear it down.

About the same time, a federal prison was authorized for Atlanta and the territorial jail on Puget Sound was developed into the McNeill Island Penitentiary. For three decades these three prisons comprised the sum total of Federal government's prison operation.

During the 1920's several nation-shaking events took place, and two of these -- the passage of the 18th amendment prohibiting the manufacture and sale of alcoholic liquors (1920), and the establishment of the Federal Bureau of Investigation (1924) shook America's law enforcement apparatus. Prohibition brought with it massive and organized criminal activity. The establishment of the FBI brought J. Edgar Hoover, and an aggressive, efficient, and highly publicized national police force. Crimes which had hitherto been investigated by local police and prosecuted in the state courts became Federal crimes, as Congress gave more and more responsibility to Hoover's organization. Kidnapping, bank robbery, transmission of extortion demands, transporting stolen property, and many other crimes were added to the Federal list.

The three Federal prisons and the tiny office of Superintendent of Prisons in the Department of Justice were hard pressed to meet this flood of new commitments. As a result the Federal Bureau of Prisons was established in 1930. An extensive building program was immediately undertaken, and during the 30's

and 40's thirteen correctional facilities were built. Six more have subsequently been constructed. Prohibition was repealed shortly after the Bureau's establishment, but it had opened the gates for this new Federal bureaucracy. Since then, its existence and growth have continued almost unchallenged by penologists or politicians.

In 1972 the Bureau startled many of us when it produced a so-called Master Plan calling for 35 new institutions during the next decade. A bureaucracy which had existed with only 3 prisons during its first thirty years, and which had gradually increased to 24 facilities during its next 4 decades suddenly now planned to add 35 new correctional institutions costing over \$500 Million. During a decade when people all over the country were seriously questioning -- even rejecting -- the desirability of creating any new correctional institutions at all the Federal Bureau decided to go construction crazy. It has caused many, including myself, to take a new look at the Federal Bureau.

My look has caused me nagging doubts about the Bureau's function; its unilateral and almost secret planning methods; and most importantly, a Federal Prison system's place in an era marked by a rebirth of federalism.

First, its function.

The President's Crime Commission (1967), the Advisory Commission on Intergovernmental Relations (1971) and the Advisory Commission on Criminal Justice Standards and Goals (1973) all emphatically recommend unified correctional services. True their recommendations were directed toward the states, but their arguments are relevant for the Federal Government. Yet the Federal Bureau is a Bureau of Prisons. This strongly defines the Bureau's role which is to build and operate prisons. It almost has to follow that the success or failure of the Bureau's administration is directly tied up with its success or failure in perpetuating the so-called "institutional solution" to the nation's crime problems. Perhaps that explains why the head of the Bureau's Office of Planning and Development is an architect. His job is to plan and build prisons. Yet people all over the country are reminding us that the prison is the out-of-sight, out-of-mind response to the problem of crimes -- that it provides only the illusion of protection, not the substance.

Second, and related to the first, is its isolated and secretive planning. If you don't like my use of the word "secretive" just try to obtain copies of the Bureau's Master Plan, or even its plans for next month. They are deeper and darker secrets than ever were the Pentagon papers. Last week the Bureau opened a regional office in Philadelphia. Its personnel were "embargoed" from discussing this until after the lease had been signed.

As I have already mentioned -- the Bureau published a Long Range Master Plan (sic) in May, 1972. It called for a half billion

dollars in construction and renovation during this decade. Included would be 12 adult male prisons, 12 reformatories, 4 women's institutions, 4 psychiatric facilities, and several new jails, now euphemistically called Metropolitan Correctional Centers. Together these would house 11,200 prisoners.

Yet nowhere in that Master Plan can one find references to possible future intentions of the Federal Probation Service, the Board of Parole, the Administrative Office of the Courts. How in reason, can one suggest the need for five hundred million dollars in construction without planning with the courts and probation services about future sentencing practices, and with the parole board about release policies? The Federal Courts, incidentally, use probation far less than those many, many states that have well-developed probation services. Should not this fact be presented, pressed, and argued before facilities are proposed?

Nowhere do we see presented projected inmate profiles. The Bureau plans 12 new youth institutions for the future at a time when the peak of our youth population has apparently passed. In 1972 our largest single age group was 18. By 1975 the dominant age group will be 21-22. By 1985 the center of gravity will have floated upward to the 25-35 age group. Nowhere do I see evidence that these age shifts were considered.

One more comment about planning. In one large state, the Youth Authority had overbuilt while the Federal Bureau was planning to build. That state's officials approached the Bureau in an effort to work out a mutually beneficial accommodation. The plans fell apart because the Bureau was bent on building. In my own city, the Federal Bureau has planned a facility without consulting with the State Criminal Justice Planning Agency of which I am Vice-Chairman, or with the State Bureau of Corrections, or with the City's Commissioner of Prisons, or with the regional office of LEAA though it is located only two blocks from the proposed site. The same is true in New Jersey and scores of other places.

Everywhere the Bureau approaches its problems in secret, ignoring its sister agencies in the Federal Government and its cousins in the states and localities. Such actions are the anti-thesis of total systems planning; they ignore any concept of Federalism; and they make a mockery of the term "community corrections."

It has caused local officials to complain bitterly. Recently, for example, the Attorney General of Arizona, Gary Nelson, wrote to his Federal counterpart, William Saxbe, raising serious questions as to just how the Federal Bureau plans. He wrote:

"As I am sure you are aware, the National Commission on Criminal Justice Standards

and Goals, on which I was honored to serve, recommended a moratorium on the construction of major penal institutions, particularly without a clear finding, after careful planning and analysis, that no alternative is possible. While these recommendations were only aimed at the states, there was every hope that they would also be considered for implementation at the federal level, particularly where they involved general concepts as opposed to something peculiar to state and local government. It may well be that these new federal institutions are perfectly consistent with the recommendations of the Commission above, but we have not been provided with information sufficient to make that determination."

Even straight line projections of population trends causes one to wonder about the need for this massive expansion. According to the Federal Bureau's own statistics, it had 19,730 prisoners in its 11 prisons way back in 1940. Thirty years later its 22 prisons held only 19,623 (107 less). What cataclysmic social upheaval is going to create the 27,000 prisoners it is now building for? Certainly not that many people are involved in Watergate. Since the Agnew revelations I am suspicious enough to think that pork-barrel politics plus construction kickbacks are important enough to partisan patronage that a \$500,000,000 prison building bonanza would be attractive to politicians -- especially politicians who operate in the crime-ridden and racial tense atmosphere that is Washington, D. C. In that atmosphere prison construction equals law and order. It is not only patronage but attractive politics.

Before I go on to my third problem with the Federal Prison, I want to dwell, for a moment, on the racial implications of this 500 million dollar construction proposal. The Federal Prisons, like state and local prisons, are -- as I have already noted -- becoming blacker and blacker. In my city of Philadelphia, for example, the percentage of blacks in our county jail has increased from 50% to over 95%. In the state as a whole with a citizen black population of 9.4% we have a 62.9% black population in our jails. And the Federal prison minority population has been trending upward too, while the white population in Federal prisons has decreased. We must conclude, therefore, that the new prisons are for blacks. This is not the Bureau's fault. It is the result of attitudes that pervade our economic, educational, and health systems and which also pervade our system of criminal justice. It affects the Federal Bureau's population in many ways including the following.

First offender, second offender, third offender, and fourth offender blacks receive significantly longer sentences than first offender, second offender, third offender, and fourth offender whites, and are therefore held longer.

Offense by offense, blacks get the more punitive federal prison sentences. For example, the black averages 5 more months for assault, 2 more for burglary, 19 more for drugs, 6 more for embezzlement, 5 more for robbery and, strangely, 10 more months for selective service violations, than his white counterpart. For whatever Federal Justice is, one thing it is not. It is not color blind. If these differences in sentencing practice were to be rectified, the Federal Bureau of Prisons would have hundreds of vacant cells.

The third and final question that concerns me is a most fundamental one.

"Why, " I ask, "does the Federal government operate prisons at all?"

I worked for several years as Executive Secretary for Human Services in the administrations of two of Pennsylvania's Governors. I was forever in contact with Federal agencies on human service matters. I came slowly to recognize a curious fact -- that in the delivery of human services (other than insurance programs) a remarkable partnership existed. Let me explain.

Employment services were mandated and largely funded by the Federal government, but were operated by the states.

Vocational rehabilitation and public assistance services were mandated and largely funded by the Federal government, but were operated by the state and local governments.

Medical assistance, mental health and mental retardation programs, educational activities, poverty programs, legal services, and, through LEAA, law enforcement services, all became part of that precariously balanced system. Even interstate highways, largely the product of Federal standards and money, were built, owned, and operated by the states. This we know as "Federalism."

"Why then, " one must logically ask, "must there be a separate network of correctional institutions to serve persons convicted of federal rather than state offenses?" Are such criminals so different? I think not.

They are men and women. They are from big cities and small. They are mostly, but not all, young. They are unmarried, married, divorced. They are white, black, Chicano, Indian. They are first offenders and multiple offenders.

And by far the majority (88%) of them are confined for the same kinds of crimes which might have gotten them to state prisons --

larceny, robbery, guns, auto theft, drugs, murder, and the like. Only a relative handful are confined for such esoteric crimes as income tax evasion (78), perjuring themselves before congressional committees, resisting the draft, or conspiring to deny psychiatrists of their civil rights.

What makes them so different? They committed Federal rather than state offenses.

What are Federal offenses? Federal offenses are those which the Federal Congress declares to be Federal offenses. For example. A kid steals a car and drives it from Boston to Springfield, Massachusetts. That's a state crime. He goes to a state prison. Another kid steals a car and drives it from Boston to Providence, Rhode Island. That's a Federal crime. He goes to a Federal prison. A bookkeeper steals from his employer, an insurance company. That's state law. He goes to a state prison. A bookkeeper steals from his employer, a bank. That's Federal law. He goes to a Federal prison.

The Congress is thinking right now of stricter gun controls, and indeed it should. One of the proposals is that all crimes in which guns are used should become Federal offenses. Let's suppose that such a law were passed next week. Thousands of heretofore state offenders would suddenly become Federal offenders. Should the Federal Bureau build 10,000 new cells? Should the states close 10,000 of their cells? Of course not. But if that law should be passed, the Federal Bureau would want to build 10,000 new cells.

This administration and especially LEAA has been marked by a commitment to "creative federalism." Its nature is triune.

The Federal Government should enable.

The State should administer and supervise.

The Locality should operate.

This approach has worked well, as I noted early in this talk, in scores of other human endeavors.

It has fostered the development of reasonable human services in several states.

It has insured local involvement and interest.

It has worked toward the deinstitutionalization of our almshouses, asylums, and colonies for the feeble-minded.

And it has prevented a remote bureaucracy from playing fast

and loose with precious freedoms.

Of all human services, should not the prison system be closest to public scrutiny and control? Could any other service more threaten our freedoms?

Earlier in these remarks I stated that I feel both pessimism and optimism. I have spoken more pessimistically than optimistically. But I am nevertheless optimistic. The very fact that numerous church groups, the American Assembly, the National Council on Crime and Delinquency, the National Advisory Commission on Criminal Justice Standards and Goals, the National Clearinghouse for Criminal Justice Planning and Architecture, and many thoughtful and influential groups and persons have, during the past few years, spoken out so clearly against prison construction and even bigger prison bureaucracies leads me to believe that this nation may soon devote its great energy to establishing economic and racial justice and not to seek vengeance on those who have been denied that justice.

We can have order, without new prisons, if we pursue social and economic justice.

We will have chaos, even with a thousand new prisons, if we deny it.

The Academy for Contemporary Problems

Crime and Justice

#2

Toward A New Corrections Policy: Two Declarations of Principles

by The Group for the Advancement of Corrections
and The Ex-Prisoners Advisory Group

The Academy for Contemporary Problems was established in 1971 by Battelle Memorial Institute and The Ohio State University to assist citizens, technical experts and decision-makers in working together to solve urgent public problems. In that effort the Academy:

- Serves as an exploratory organization to identify future human needs and alternatives for meeting them;
- Facilitates cooperative social invention on such critical issues as metropolitan governance, crime and justice, the future of work, and mass communications;
- Assists in the translation and communication of knowledge essential to constructive public problem-solving;
- Operates as a center of public service to help couple community aspirations with expert knowledge.

The Academy publishes work by its Fellows and Associates in order to promote open public discussion of alternative approaches to urgent societal problems. Unless otherwise stated, the interpretations and conclusions in these publications are those of the authors. The Academy is responsible for the selection of issues worthy of study, the competence of its Fellows and Associates, and their freedom of inquiry. This is one of a series of Academy occasional papers on issues of crime and justice.

TOWARD A NEW CORRECTIONS POLICY: TWO DECLARATIONS OF PRINCIPLES

**The Group for the Advancement of Corrections
and
The Statement of the Ex-Prisoners Advisory Group**

FOREWORD

In no other field of human services has the contrast between aspiration and reality lasted so long or been so pronounced as in the administration of criminal justice. For centuries spokesmen for the law have refined a lofty rhetoric expressive of all that is best in the cultural and ethical heritage of the race. We firmly espouse the ideals of fairness, even-handedness, humane treatment of those who are wards of the state, and rehabilitation of the offender. Yet our daily practice has always been at odds with the ideals which are given voice in ritual and oration. The discovery of this gap is hardly new. Shakespeare and Dickens had much to say about it; John Howard and a long succession of penal reformers from his time to the present have identified the shortcomings of our criminal justice system to the point of nausea. In the United States we have accustomed ourselves for the last hundred years to articulation of the most noble objectives by correctional administrators presiding over conditions of continuing squalor. From the promulgation of the Declaration of Principles by the American Prison Association in 1870 to the recent publication of the reports of the National Advisory Commission on Criminal Justice Standards and Goals, we have shown that we know what should be done in prisons and with prisoners, but we seldom manage to do it.

The events of recent years give cause for both hope and alarm about the conditions of American corrections. On the one hand, in some jurisdictions we find that we do not need to use custodial measures for the control of offenders to nearly the extent which formerly seemed necessary. Alternatives to incarceration have been tried and found feasible. The use of community-based correctional services and measures to divert offenders from criminal justice processes is increasing steadily. We can foresee the time when the fortress-prison enclosing a concrete jungle can safely be abandoned.

But on the other hand, a rising crime rate, public demand for repression of the convicted offender, and the continuing entrenchment of the traditional correctional bureaucracy present formidable obstacles to change. Deteriorating prison facilities, inherited from the nineteenth century, seem to administrators and legislators to necessitate vast building programs, justified in the name of humane care of the prisoner. Riots and violence in maximum custody facilities demonstrate to the satisfaction of many citizens the need for increasingly draconian treatment of those confined. It is not fanciful to plot a scenario of regression for the years ahead, though reason and experience offer so much cause to hope for better things. The gap between rhet-

oric and practice may well widen rather than contract.

In its initial reconnaissance of the strains on American society, the Academy for Contemporary Problems identified the agonies of the criminal justice system as among the most formidable. Perhaps because the damage was so clearly evident it seemed that the system might well be responsive to plans for change. We were particularly concerned with the condition of those correctional systems in which fundamental changes in ideology were fermenting. We saw an opportunity to contribute to change by helping to define its direction and the means by which it could be accelerated.

It did not take long to find a number of state correctional administrators who entertained the same hopes and alarms. We were able to bring them together in a loose organization which was designated The Group for the Advancement of Corrections. Formally agreeing to work together and with us in November 1972, the Group settled on a program beginning with ideology and then proceeding to specific action. The first product of the Group's work is found in these pages, a new Declaration of Principles which brings together out of examined experience some conclusions about the ends and means of penology.

From the Group's debates no una-

nimity was expected or achieved. The Declaration contains dissenting views which are specifically given expression. But in spite of our differences on means, the directions are clear, the reasons for hope rather than apprehension are explicit, and an agreement to continue to work together is grounded on consensus on the need for a common effort.

There are others interested in correctional change besides the administrators. Academic observers and critics of the system joined with us in formulating the program. We also brought together some former prison inmates, initially to review the changes we had drafted. They preferred to hammer out their own declaration, which is also incorporated in these pages. Its similarity in structure and emphasis cannot be ignored. Thoughtful and decent men and women who are intimately familiar with the problems of corrections agree on directions with impressive unanimity.

The work of the Group for the Advancement of Corrections continues through a strategy of documenting the nature of change and the means for achieving it. A survey of recent changes in the youth corrections agency of Massachusetts, written by Andrew Rutherford, a Fellow of the Academy, has already been published under the title *The Dissolution of the Training Schools in Massachusetts*.

In the near future a comparative study of change in other state systems will be published, and other inquiries are projected. Our objective in this process of documentation is to provide an explicit and authoritative description of change, and to define the forces combining to produce it and the constituencies supporting and opposing it. We believe distortions can be corrected by a presentation of the facts. One of the most unpleasant features of the struggle for change in corrections has been the frequent circulation of untrue rumors. Some such rumors are wish-fulfillment; others reflect a willful desire to damage programs which threaten the conventional order of things. We cannot do more than set down the facts as observers see them, but by doing so we may make the work of

the rumor-monger more difficult.

Moreover by describing how change has been effected we may encourage other administrators to take on the exciting but risky courses of action which will lead to change. We do not pretend that what has been done will duplicate the verdict of the social scientist using all the weighty instruments of his profession over unlimited time. What we hope for is the credit given to a referee making the most honest judgements he can as the game goes on.

John P. Conrad
Fellow in Crime and Justice
The Academy for Contemporary
Problems

THE GROUP FOR THE ADVANCEMENT OF CORRECTIONS

Administrators or former administrators:

- John Boone
former Commissioner of Correction, Massachusetts
- * Allen Breed
Director of the California Youth Authority
- * Milton Burdman
Deputy Secretary, Department of Social and Health Services, State of Washington
- * Bennett Cooper
Director, Ohio Department of Rehabilitation and Correction
- William Ensign
former Director of the Ohio Youth Commission
- * David Fogel
former Director, Minnesota Department of Corrections
- Joseph Leavey
Commissioner, Massachusetts Department of Youth Services
- William Leeke
Director, South Carolina Department of Corrections
- * Milton Luger
Director, New York State Division For Youth
- Jerome Miller
Director, Illinois Department of Children and Family Services
- * Thomas Pinnock
Chief, Office of Juvenile Rehabilitation, State of Washington
- * Kenneth Schoen
Commissioner, Minnesota Department of Corrections
- * Evans Tracy
former Commissioner, Kentucky Department of Child Welfare

Other members:

- Simon Dinitz
Professor of Sociology, The Ohio State University
- Robert Martinson
Chairman of the Department of Sociology, The City University of New York
- Sheldon Messinger
Professor of Criminology, University of California, Berkeley
- Lloyd Ohlin
Professor of Criminology, Harvard University Law School
- Leonard Ryan
formerly with the Ford Foundation
- * Linda Singer
Executive Director of the Center for Correctional Justice, Washington DC

Staff:

John Conrad and Andrew Rutherford, Fellows in the Crime and Justice Program at the Academy for Contemporary Problems

*Dissenting opinions by the members are footnoted in the text and printed on pages 14-15.

DECLARATION OF PRINCIPLES

I: Preamble

This is a time of unprecedented strain on the adult and juvenile criminal justice system. As correctional administrators* desiring to apply knowledge to practice, we are disturbed about the trends which these strains are creating in corrections, the area of our primary concern. Although the mission of adult and juvenile corrections within the criminal justice system is to contribute to greater public safety, it is important that expectations should not be over-stated. It is probable, however, that as presently organized much correctional effort is counter-productive.

We believe that this is the time when our collective experience should be brought to bear on the changes which must take place. We have therefore derived the principles which follow from our experience and urge their consideration on those who make policy.

In this Declaration we shall state briefly the aims of corrections as they are determined by fairness and realism. We shall then describe the essential features of a system which can realize these aims with justice, effectiveness and economy.

*The Group's membership includes several individuals who are not correctional administrators.

II: Aims

Our first responsibility is to administer the sentences of the court to adjudicated offenders. The execution of the sentences must conform to the requirements of justice and to the principles of due process which the Constitution, the courts and the legislatures have prescribed.

Within the strict construction of these terms, the achievement of subsidiary aims should be pursued so far as knowledge and resources allow. Dangerous offenders must be kept in sufficient custody for the duration of their sentences. The interests of the victims of crime are to be considered and protected. Wherever restitution can be made in whole or in part, correctional authorities should assist the court in requiring offenders to provide it. In all these matters and in all other actions by which the correctional apparatus undertakes to carry out its first aim, the guiding principle is minimal interference with the capacity of the offender to be a citizen in good standing. It follows that offenders should therefore be removed from society to the least possible extent so that their return as good citizens will not be unduly difficult.

Therefore, the first maxim for corrections should be: *Let the sentence be administered in such a way as to increase the probability of the offender's recon-*

ciliation with society when his restraint is complete.

III: The Sentencing Structure

For most of the present century, the sentencing structure in most American jurisdictions has depended on the concepts of indeterminate or indefinite sentencing. A complex apparatus of information collection, decision-making, and offender supervision has been developed for the purpose of individualizing sentencing and relating decisions to the special circumstances of each offender. Evidence is accumulating that this system does not accomplish its objectives, does not play a significant part in the resocialization of the offender, and does not affect recidivism sufficiently for the effect to be statistically detectable.

We advocate the discontinuance of indeterminate sentencing in favor of fixed maximum terms to be imposed by the court at the time of sentencing.¹ Remission of a portion of the fixed term may be granted administratively, under strict regulation, for cooperative conduct while under control. These fixed terms would, for adults, not exceed two years, and for juveniles the maximum period should not exceed six months.² We recognize that these are arbitrary periods, but long for the persons required to serve them. We also recognize that in the present condition of our knowledge longer periods of confinement are required for the protection of the public from certain exceptionally dangerous offenders.

Courts should be required to state reasons for sentences imposed, and an appellate procedure for the speedy review

of sentencing decision should be provided to assure uniformity and fairness. Further, we hold that the following general principles should govern sentencing practice:

- Incarceration should be restricted to certain offenders whose recorded criminal behavior indicates that the protection of society cannot be afforded in any other way, or where surveillance in the community has been without effect. The obligation to prove the necessity for restricting freedom should always rest with the state.
- Where the interests of justice and the offender's situation permit, arrangements should be made for the exclusion of arrested offenders from the criminal justice system before adjudication. In the light of our present knowledge and experience, diversion should be the disposition of choice for juvenile offenders and for most adult offenders, with appropriate safeguards for the rights of such persons.
- Upon conviction a suspended sentence should be imposed unless there are significant reasons for actual sanctions.
- For the vast majority of offenses fines or restitution orders, or both, should be imposed in preference to sanctions involving the restriction of freedom.
- Surveillance in the community should only be imposed on those offenders who, in the opinion of the court, are unable to comply

with the terms of an agreed upon plan. The surveillance should not be continued beyond the point when the offender is seen to be responding to the court's orders.

IV: Control and Justice

When a court sentences a citizen to prison or to probation a status results which is difficult to administer in conformity with the principles of a democracy. In the past, this difficulty has been swept aside by denying its existence. Convicted offenders were statutorily designated as "civilly dead", without rights except those which were individually restored as an act of grace by the state. Civil death is a term which is still to be found in the laws of many states. It still influences policy-makers throughout the country.

We hold that a convicted offender is a citizen with all the rights of any citizen except those which are specifically but temporarily suspended because of the requirements of control. Social theory and the requirements of effective practice lead us to this position.

Deprivation of rights without necessity established in due process is an injustice which is obviously intolerable in a democracy. No class of citizens can be subjected to arbitrary deprivation without endangering the entire structure of rights. Therefore it follows that the restrictions on the rights of the offender must be limited to those which must be imposed for the maintenance of control to assure that the rights of others are not jeopardized. Offenders in custody are entitled to protection. The State in assuming responsibility for that control is obligated

to provide all necessary precaution for their personal safety.

Corrections is also responsible for the process to assure the early and full restoration of all civil rights and also for making sure that eventually an offender is completely relieved of all disabilities resulting from his conviction.

All correctional authorities confront the practical difficulty presented by the task of returning to the community a convicted offender whose liberty has been restricted by confinement. Generally, it is true that the longer the incarceration and the more strict its conditions the more difficult will be the offender's reinstatement in normal society. Regardless of its necessity, incarceration leads to alienation from socially accepted norms, incapacitation for normal social interaction, and strain on or severance of family and friendship ties.

Although we urge that sentencing authorities should limit intervention to the least control required by the situation, we recognize that for the foreseeable future confinement and surveillance will continue to be required by the criminal justice system. The administration of these controls for the achievement of the ends for which they were intended requires that all decisions pertaining to them must be made under conditions in which due process is carefully observed. These conditions require:

- Actions prejudicial to the interest of any offender or group of offenders may be taken only under the authority of rules which have been publicly established and are well known to all who are subject to them.

- Procedures for the enforcement of rules and the adjudication of their violation must explicitly provide for impartial decision making and appellate review.
- Representation of the offender's interests by persons of his own choosing should be permitted and encouraged.
- Regular review and monitoring of the policies, programs and procedures of correctional agencies should be undertaken by some person or group independent of the agency. The results of such reviews should be public information.
- Grievance procedures must be made available to all offenders. At a minimum, these procedures must provide for guaranteed responses to all grievances within specified time limits and review by some person or body outside the correctional agency and acceptable to both offenders and employees.³

Fair play in correctional institutions or agencies will always be difficult to assure. We hold that justice is the first virtue of social institutions, without which other attributes are valueless. Certainly this principle must be applied to corrections through the habitual vigilance of all concerned in the making and execution of decisions. The maxim to which this section leads is: *Neither efficiency, economy nor administrative convenience should interfere with the observance of the due process of law in the actions taken in or by a correctional institution or agency.*

V: Services to Offender and Community

All citizens need services to meet needs which they cannot meet with their own individual skills and resources. A great deal of wasted effort in corrections has resulted from the invalid assumption that most offenders have some pathological peculiarity or difficulty. Offenders have violated the law for many reasons and if they require services these should be consistent with their own life situations. If there are problems that are peculiar to offenders these relate to the consequences of being so categorized and processed. These traditional difficulties are especially acute immediately on release from custody. The heavily prescriptive approach to the offender, arising from which the medical model is merely a recent consequence, should be replaced with arrangements which encourage the offender to make a genuine initiative as to the services to be provided to him.

Correctional agencies have attempted to be self-sufficient as to services. They have provided vocational training, educational, medical and psychiatric services and such programs have almost always been the sole authorized service available. The consequence of claimed self-sufficiency has been to relieve the ordinary social services of any responsibility for the offender. A correctional agency should facilitate access for the offender to services over and above any that the agency might itself provide. It should also enable offenders to develop self-help programs and to become involved in community service. The counseling services of the probation officer are usually the only services afforded the probationer. The service options pre-

sented to the client have been very meager. There are two inevitable and fatal disadvantages to this form of service delivery. First, the offender becomes part of a caseload, and as a unit of justification for a unit of service he becomes subject to prescription. His volition is rarely engaged and indeed, more often than not, his participation in programs is under explicit duress. Second, the services provided by the state are seldom of satisfactory quality. Professionals in most occupations tend to consider the correctional setting unattractive. The corrections system has never been accountable to those it has provided services.

We therefore hold that experience has amply demonstrated that, with a few notable exceptions, correctional services in the domains of health, education and welfare are generally inadequate as to either quality or quantity and usually both. Whenever possible, these services should be delivered through the channels by which they are available to ordinary citizens. The administrator should be the broker for needed services, not the provider. He should give more weight to the offender's expressed need for service rather than to professional prescription, no matter how sophisticated. Participation by the offender must be at his own volition, and those who choose not to participate should not be penalized.

Although we rule out the prescriptive approach, implying as it does the feasibility of rehabilitation under duress, we advocate a wide range of services for offenders; we recognize the administrator's responsibility for making them available both in the community and in correctional institutions. These services should be purchased by the agency for the

offender-client to the greatest extent possible, including the stimulation of appropriate organizations to organize the services needed.⁴

No state agency should be authorized to establish services which can be more effectively and inexpensively provided to the offender in or around the area in which he is placed or resides, whether that be an institution or the community. The maxim for this section is: *The offender must have a free choice as to services, and the correctional agency has the responsibility to assure that such services are delivered within or as near to the location of the offender as possible.*

VI: Correctional Advocacy

The incidence of crime in all its variety is a sensitive gauge of a society's health. Individuals must be held responsible for their actions and that responsibility is exacted through the correctional system. Nevertheless, much crime arises from pathological social situations, and indeed is indicative of the nature and extent of social pathology.

Both correctional personnel and offenders possess a unique store of knowledge about the sources of crime. Their access to the failures of socialization constitutes a basis for a critical examination of the effectiveness of our social institutions in achieving the goal of domestic tranquility. This knowledge is seldom organized and little used. There is a weighty responsibility of correctional staff to convert the latent knowledge in their possession into contributions toward the better understanding of crime and the surround-

ing social problems. This responsibility is neither met nor generally recognized.

The reason lies in the historical isolation of corrections from the mainstream of the community. Corrections has no public constituency and even its thrust for desired reforms has been blunted by public and legislative indifference. But true reform can only come from awareness that solutions to the crime problem are only to be found in increased understanding of the forces that produce crime. When the correctional leadership can present its case in these terms, a constituency will be built.

It follows that the roles of correctional staff and concerned offenders, too, must include responsibility for the advocacy of positive change. This responsibility calls for more than a critique of social institutions and conditions. It must be based on a creative effort to find alternatives and push for their adoption. Although this effort must originate in the collective understanding of the staff and the offenders, its utility will be lost unless planning and development can shape proposals for change.

Our maxim is: *Correctional administrators, staff, and offenders themselves must use the knowledge gained from their experience for the effective advocacy of social changes needed for the reduction of crime.*

VII: Evaluation and Experimentation

Correctional programs exist in an environment of change. The kinds of

people subjected to them change, their social and economic needs change, and public feeling about crime and those who commit it is subject to change. In the light of this condition of continuous flux, the correctional administrator has a public responsibility to maintain accountability. At all times he should have at hand sufficient data on program participation and results to enable him to know how well funds and personnel are put to use. Recognizing that in corrections failure is a characteristic reality in a society in which success is expected, the administrator has a special motivation to attempt innovative programs based so far as possible on the lessons to be learned from experience. Although the conditions which cause recidivism are generally beyond the administrator's power to change, we accept a responsibility to design purposeful steps to minimize recidivism through the effective reconciliation of the offender with society. There is no justification for the avoidance of evaluation of established programs. The evaluation of correctional efforts has, when properly conducted, reached a sophisticated level. Surveys of such research have concluded that most programs have had little or no impact upon recidivism. This upset to correctional optimism should serve as a reminder to corrections to avoid searching for new panaceas. Federal and state agencies should coordinate research activity so that both mediocre research and the duplication of effort can be avoided. With well coordinated evaluation, correctional developments, which by their very nature should be dynamic and responsive to new information and changing circumstances, should become more effective and accountable.

VIII: Corrections and the Community

The idea of community-based corrections is currently very much in vogue. The means for achieving a community base and the implications of its achievement are not equally well understood. We hold that the reconciliation of offenders can only be accomplished in the community in which they must live. It follows that offenders must be removed from the community to the least extent possible. An offender on probation or parole lives in his ordinary domicile. An offender required to reside in a halfway house should reside in one in his own community except in extraordinary circumstances. Even where incarceration is necessary, as will be the case with dangerous offenders, it should take place in a prison as near as possible to the offender's family.

These principles provide no justification for federal operations in corrections. The demobilization of these federal bureaus should be the object of planning now, and this will be made more difficult if they make plans for their own perpetuation. Federal agencies should instead

fund and support a diverse range of programs within the community where the offender resides. Federal funding agencies such as the Law Enforcement Assistance Administration must develop new priorities which would move the emphasis from programs organized by established agencies to groups which are more representative to the communities involved. Real incentives would then be provided for communities to take on the responsibility for a variety of programs which would become a part of that community and not merely based within it. A valid case cannot be made for building more penal institutions. Each system should have a plan for phasing out most of its institutions within the next two decades. In the case of youthful offenders this process should be carried out in the immediate future.

Correctional administrators must be in the fore in the advocacy of the firm changes in direction that are needed. It is our hope that this Declaration will be a contribution to the political resolution that is required as the basis for urgent and fundamental change.

Notes of Dissent

1. *Note of Dissent by Milton Burdman, Milton Luger, Bennett Cooper and Kenneth Schoen.*

We cannot subscribe to the section dealing with the indeterminate sentence. Whilst we cannot argue well for the indeterminate sentence as presently administered, the alternatives offered in the Declaration are worse. The entire issue of sentencing revolves around questions of standards and criteria for applying actions and for measuring the validity of those actions. The issue needs to be addressed this way, whether one is looking at indeterminate or determinate sentencing. To arrive at the conclusion that the indeterminate sentence is bad and that determinate sentencing by the courts would be better really begs the question seriously. In our view, we have a better chance of getting at standards and criteria if we have a more systematic way of imposing and reviewing the sentencing structure. This will more likely occur through indeterminate sentencing procedures rather than having widely distributed, aloof and unassailable judges!

Opting for fixed sentences might dissipate the thrust for judicial and agency training in the area of sentencing and differential treatment. Wide exposure and intensive research might throw the spotlight on the prejudicial nature of most practices in the area of inequitable sentences.

2. *Notes of Dissent by David Fogel, Allen Breed, Linda Singer, Thomas Pinnock and Evans Tracy*

David Fogel believes that the maxi-

imum period of incarceration for juveniles should be 12 months, and for adults it should be 5 years with a provision for statutory good time off (maximum a year off) for adults in the low to middle risk categories, but longer sentences may be necessary for high risk offenders.

The judge should simply sentence to the time prescribed by law and the Corrections Department should be permitted to release earlier, but never later. The high risk group however might only gain release upon sentence completion minus statutory good time off.

In this way we preserve some indeterminacy but do not permit such wide discretion when maximum sentences are known in advance.

Allen Breed and Linda Singer believe the maximum period for juveniles should be twelve months, and three years for adults.

In Thomas Pinnock's view the maximum period for juveniles should be eighteen months with the possibility of extending it a further twelve months after a hearing before the court in which cause is shown why it should be extended.

Evans Tracy believes: The Court should be able to set the minimum period for a juvenile offender's confinement in an institution. That period should never be less than four months. The Court should also be able to set the maximum period. That period should never, under any circumstances, exceed twelve months.

- Correspondingly, the Agency should have the discretion of re-

turning a child to the community anytime after the fourth month or prior to the twelfth month of confinement depending upon individual, family, and situational changes which occur.

- As indicated, I am thoroughly convinced that only a very few juvenile offenders should be institutionalized at all. However, of those few who, indeed, are removed from the community, an even smaller percentage of that number should have to remain in a juvenile institution for any longer than six months.
- For any juvenile who is required to remain in an institution longer than six months, it should be determined that he is considered clearly dangerous to himself or others. As one safeguard only, I would further suggest that those youths remaining in an institution after six months have the

right to a thorough review of their situation by an objective body appointed from outside the Agency.

3. *Note by Lindo Singer added after the Declaration had been agreed to by the Group.*

There should be staff and offender participation in the development of these grievance procedures.

4. *Note of Dissent by Milton Luger*

It is rather simplistic to believe that allowing private mental health, education and welfare services into the correctional system will bring in a good deal of enthusiasm and expertise by those who rejected the offender previously all along the line. Private practitioners have even more faith in the medical model than we do, and allowing these groups into the institution or system will certainly not insure the kind of philosophy or approaches we are advocating.

THE EX-PRISONERS ADVISORY GROUP

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STATEMENT OF THE EX-PRISONERS ADVISORY GROUP

Introduction

We cannot continue to address issues regarding the criminal justice system in isolation from the larger issues confronting our society. The criminal justice system in general, and the correctional system in particular, is reflective of the inequities prevailing throughout our so-

ciety. The system is an unjust system, reflected by the fact that the majority of incarcerated "offenders" are poor, disadvantaged, or minority group representatives, and their incarceration creates institutional ghettos which are reflective of the racist, sexist and economic values prevailing in our society. The only common-denominator of these constituencies

is that they have no voice or recognition in the so-called democratic process.

As ex-offenders who have gone through the maze of the criminal justice system in America, we, like nther interest groups invlved in the structure and goals of the present system, would like to express our concerns and comments towards influencing the course of change which must take place in the correctional system if it is to ever become a system of justice instead of injustice.

As a group, and as individuals, we feel that we have a contributinn to make which must be considered by anynne who seriously desires change. For we represent the captive, client pnpulation that has traditionally been manipulated, used, and often abused to gratify the needs and political ambitions of a small number of persans who in the name of social protection have acted in an extremely antisocial manner.

In this statement we shall state *briefly* some of our concerns which must be explored in an attempt to end the wasteful and destructive drain of lives, tax dollars and energy which is now being expended on one of America's most un-social institutions.

Myths

The criminal justice system, under the pretense of dispensing justice, has perpetrated and prmmed numerous myths. These myths both delude a society into believing it has an effective carrectional system and prevent necessary reform. Some of the myths are:

- convicts are violent, illiterate, agitators; they are sick and degraded people;

- corrections has a developed body of professional knowledge about the treatment and care of incarcerated individuals;
- currectional institutions can "help them" by rehabilitating those people;
- corrections has well-trained and professionally prepared staff and only these staff can do the rehabilitation task;
- corrections must protect the rights of individual prisoners; therefore, no one should have access to correctional decision-making;
- corrections has adequate facilities and programs to provide humane care;
- long sentences in correctional institutions deter prisoners from returning to crime.

In general these myths are perpetuated under the guise of administering justice, when in reality corrections is justifying its own existence.

These myths, perpetrated by the criminal justice system, have created a false sense of security as well as a dependence on an "out of sight, out of mind" correctional philosophy. The Group for the Advancement of Corrections, if nothing else, could provide a realistic focus in society by providing factual education about our current state of knowledge in corrections. Only the processes of violence, confrontation and investigation have provided realistic information to a shncked public about prisons. If we are advocating the need for change, we must advocate a correctional system that pro-

vides society with truthful statements about its knowledge and capabilities of working with prisoners. We must inform the public of inadequate and unjust systems and dispel the myths that prevent change.

If we are advocating the advancement of corrections, we must also become advocates for social change in the larger society. We must challenge the myths of corrections, the judiciary, law enforcement and the American way of mediocrity in our society. In doing this we must look at our own operation and not continue to perpetuate societal inequities. If society is to protect itself, then the criminal justice system must be held accountable for its actions.

Punishment

We reluctantly recognize that society will continue (at least for some period in the future) to insist upon punishing some persons for acts which the society designates to be harmful to others. As things stand, this tendency is often converted into a diffuse punitive response towards large "classes" of persons or against a few individuals selected in an arbitrary and discriminatory fashion. Moreover, the society has established as crimes many acts which are not actually harmful to others and has failed to respond to other forms of behavior which render serious harm to many citizens. In addition, many forms of punishment have been called by a different name and passed off as non-punitive measures.

We submit that a crime be defined as an act which in some concrete way deprives people of their property, harms them physically, or damages the quality

of their lives, and not those acts which merely offend the moral sensibilities of some individuals or groups in the society.

We suggest further that it be recognized that any form of restraint or control is punishment. This includes imprisonment, probation, parole, placement in community-based "treatment centers", or forced involvement in any treatment program.

We recognize that long periods of punishment or severe forms of punishment are very often extremely damaging to those persons being punished and do not increase the likelihood of deterring others from committing criminal offenses since the certainty and swiftness, not severity, of punishment has the greatest deterrent effect.

We recommend, therefore, that in operating a system of punishment the following principles be adhered to:

- Crime must be defined as an act which in some concrete manner deprives a person of his/her property, harms him/her physically, or damages the quality of his/her life. This will entail an extensive rewriting of the law far beyond removing victimless crimes from the statutes.
- The punishment must fit the crime. Characteristics of the individual, individual needs, or other irrelevant criteria must not influence the length or severity of punishment. Indeterminate sentences must be ended. Maintaining incarceration because it is predicted that the prisoner presents some future danger must also come to an end.

- Punishment must be of short duration. The death penalty is unacceptable.
- During periods of restraint there must be no more loss of rights or freedoms than is necessary to maintain the system of restraint. Restraint itself is the sole punishment and there must not be any punishment beyond this. Denial of any rights must be justified on the sole criterion of maintaining the security. The restrained person has all rights guaranteed the citizen under the Constitution.
- When the period of punishment is terminated, the individual should have all his civil and human rights restored. This not only entails restoration of the obvious rights, such as voting, but also procedures for eliminating discrimination in employment and other areas.

Human Rights

Incarcerated persons must NOT be considered "things, objects, clients or possessions". They have the right to be respected as human beings and to be self-determining. These rights must include the following:

- The restraining system must provide or have access to adequate medical, vocational-educational services, and employment opportunities (on a voluntary basis only).
- Acceptance or refusal of any pro-

gram by prisoners must not be the basis of any decision affecting the length of confinement.

- Employment within a restraining institution must not be used solely for institutional convenience.
- A restraining facility or agency should provide the prisoner access to services over and above any of those the facility or agency might itself provide.

Correctional Service

It is imperative that the prisoner and ex-prisoner's perspective be incorporated in every aspect of the program planning, decision-making and implementation within the restraining system. In spite of the social stigma, the ex-prisoner who has been able to function in the community is perhaps in a better position than anyone else to help the prisoner change the direction of his life, to create for himself a new image, a new conscience. Having himself made the trip the prisoner is on, the ex-prisoner is in touch with what he is up against. Because he has accomplished a successful transition from prison to community life, he is a person the prisoner can listen to, speak with, identify with and emulate. He is in a position to communicate with the prisoner both while he is in prison and after his release and to help change the course of his life. One who has been able to function in the community can help create a new self-image for himself and for others in the system and society. Therefore, ex-prisoner organizations do indeed have an impor-

tant role to play in the development of correctional services.

Correctional services must be generated out of a community collaborative effort; resources and leadership (including the ex-prisoner) must be made available to the prisoner on a truly voluntary basis. Leadership must be vested with appropriate authority and be accountable. Participatory management under quality leadership should be the primary goal. Specifically we must:

- Foster the development of ex-prisoner organizations that can be looked to and called upon as planning, programming and consulting resources in seeking solutions to the problems of the prisoner.
- Include the prisoner on every committee and decision-making body not only in all segments of the system of criminal justice, but also on all social service and related committees in the community.
- Increase the use of ex-prisoners as probation officers, parole agents, correctional officers, counselors and administrators.
- Institute more college classes taught by ex-prisoners.
- Use ex-prisoners to involve and develop volunteer resources in the community.
- Use ex-prisoners as speakers at schools, clubs and service organizations, as public relations men and as expert witnesses.
- Concrete efforts should be made by state governments to insure that violations committed by correctional personnel within the restraining setting will be dealt with and not excused or justified. If we expect our restraining institutions to reflect a society of justice, that justice must be extended to include the treatment of people within those institutions.
- Correctional administrators must become more honest and responsive concerning their particular systems. Traditional methods of correctional management have as a guiding principle the overt perpetuation of public control through the skillful and deceptive use of press releases. These not only create a false sense of security within society as to the effectiveness of the correctional system, but also create the seeds of discontent and frustration within the prisoner bodies when what they read is not what they receive.
- The thrust of corrections should be public information and involvement instead of public relations and manipulation.

Academy Occasional Papers on Crime and Justice

1. The Dissolution of the Training Schools in Massachusetts,
by Andrew Rutherford (March 1974)
2. Toward A New Corrections Policy: Two Declarations of Principles
by the Group for the Advancement of Corrections
and the Ex-Prisoners Advisory Group (July 1974)

EVALUATING WORK FURLOUGH: A FOLLOWUP

(By Alvin Rudoff, Ph.D., and T. C. Esseistyn, Ph.D., Department of Sociology, California State University, San Jose)

This is a followup of a preliminary report of the same title which was published in *FEDERAL PROBATION*, March 1971.¹ It was explained there that in 1965 the Sheriff of Santa Clara County, California, called upon the present authors to undertake an independent and detailed evaluation of the work release or work furlough program which had been administered in his Department since 1957. The financial returns to the county and to the inmate were not an issue although this was investigated. What the Sheriff wanted to know was what impact the program had on continued criminality, on family ties, and on the job history of the inmates after release. These were accepted as the problems which the Work Furlough Study would explore. While work furlough had gained wide popularity as a correctional expedient throughout the United States, its growth was based largely on faith rather than on reliable evidence. Support in kind was provided by the Sheriff's Department, funding was provided through the U.S. Department of Health, Education, and Welfare,² and the State Department of Rehabilitation provided a vocational counselor on a salary reimbursement basis. The Work Furlough Study began in 1967 and concluded with the submission of its final report 4 years later.

The preliminary report in *FEDERAL PROBATION* (March 1971) explained that the Sheriff's staff operated the work furlough program from the Elmwood Rehabilitation Center. This is a minimum-security facility housing about 600 jail inmates serving sentences ranging from a few days to a year or longer in the event of consecutive sentences.

On any one day, about 200 Elmwood inmates out of this total of 600 were off the premises working at their civilian jobs at prevailing wages. They returned to Elmwood each night. This is work furlough—furlough or releasing an inmate or standard civil employment during the day on condition that he return to custody at night. This process continues until his sentence expires. All Elmwood inmates were eligible for work furlough. Many applied. Some did not. Some were accepted, some were denied. The process of selection and the criteria governing it had been developed by the Sheriff's staff over many years. Neither the process of selection nor the criteria were modified by the Work Furlough Study during its 4-year history. It was designed to test the results of the existing program. The only change in the ongoing system was the introduction of a Department of Rehabilitation counselor on an experimental basis to provide special services to a limited number of jail clients.

METHODS

The methods employed can be summarized here only roughly. Between 1968 and 1970, data were collected on 2,360 inmates. Forty-two percent of these were on work furlough, 58 percent were not. Thus the Study was able to compare the traits and performance of two groups—work furlough and nonfurlough inmates. Data were collected through various standard test instruments and some that were developed specifically for this project. Some instruments were applied only once, for example, the Inmate Background Questionnaire and the Family Background Questionnaire. Some were applied upon arrival and on the eve of release for longer-term inmates—the California Psychological Inventory, the Adjective Check List. Some involved a search of the records of other agencies, for example, records of the Department of Social Service and the Criminal Investigation and Identification Division. All data were coded, keypunched, and transferred to computer tapes. Various statistical manipulations were then undertaken depending upon the problem to be analyzed. This was partially true also of data on staff although some of this could not be quantified.

These methods yielded voluminous findings on the characteristics of a jail population for that part of the United States and on the outcome of its work furlough program. Some of these findings are presented in summary form in this article. Others require the study of detailed tables. Tabulations have been completed and will be released in a Technical Report to about 200 addressees as soon as possible.

¹ Alvin Rudoff, T. C. Esseistyn, and George L. Klrkham, "Evaluating Work Furlough," *FEDERAL PROBATION*, Vol. 35, No. 1, March 1, pp. 34-38.

² CSRS Grant No. 12-P-55261/9-04 (RD-2506-G). See Alvin Rudoff, T. C. Esseistyn, *Jail Inmates at Work*, Final Report, 1971. Copies available on request through the authors, California State University, San Jose.

Selecting out of the mine of information those findings which might command more general interest, and omitting those that are either too particular or too well-known, we may concentrate on the following few observations:

- (1) The inmate's self-image.
- (2) The image which his family has of him.
- (3) His views of the criminal justice system.
- (4) The inmate and the world of work.
- (5) His criminal behavior after release.

In the following discussion of these topics, findings will be reported for the Elmwood population as a whole followed by a comparison between the work furlough and the nonfurlough groups.

SELF-IMAGE

The California Psychological Inventory and the Adjective Check List were used to probe for data on how the inmate viewed himself. There were over 850 valid CPI protocols and 1,050 valid ACL protocols.

While not extremely divergent from male norms, the CPI scores showed the total inmate population to be immature, defensive, unambitious, capable of poor judgment, and unsure of their perceptions of right and wrong. They felt like helpless victims, powerless, pawns of fate, and not aware of how they contributed to their own "Troubles." They reflect a passive rebelliousness—stubborn and opinionated rather than overtly aggressive. All of these are departures from established norms only in a moderate degree rather than in a degree suggesting gross pathology.

The work furlough group, while still below the CPI norms, scored better on these traits than the nonfurlough group. On the Adjective Check List, the total inmate sample fell well within the normal range, although all inmates tended toward feelings of ineffectiveness in their daily lives. Work furlough inmates scored comparatively as more serious and moody, even more embittered. Non-furlough inmates scored as more lively and carefree, work furlough inmates as more concerned with convention and conformity.

The foregoing represent aspects of self-image on arrival. The same instruments were used to probe for data on self-image at time of release. There were slight changes. The initial characteristics for the whole sample became somewhat aggravated. Inmates became more immature, defensive, and distrusting. They became more embittered against "the system" and were even less inclined upon release to accept responsibility for their condition than upon arrival. The work furlough group changed the most and changed in the direction of the impulsivity and lack of concern shown by the nonfurlough group. Similar results appeared on the ACL, with the work furlough inmates taking on the pessimistic and negative image of the nonfurlough segment.

It should be stressed that these changes, though statistically significant, remained within normal limits. The suggestion is that the institutional experience had a disturbing, but perhaps transitory and superficial impact upon the inmate's view of himself. Changes were more marked and more negative among the work furlough men than among the nonfurlough men.

SIGNIFICANT OTHERS

A "significant other" was identified by the inmate as the person closest to him—parent, spouse, sibling, child, or relative. A Background Questionnaire paralleling the kind given to staff and to inmates was mailed to "significant others" who were to complete it and return it. Nonresponses were followed up by a personal visit from a staff worker. The useable returns totaled 111. Forty-seven percent were work furlough families, 53 percent were nonfurlough families. Thirty-one percent of the significant others were spouses, 45 percent parents, and 24 percent were close relatives.

Three-fourths of these respondents said that the inmate was responsible for his own predicament. Forty-four percent said he received the sentence he deserved. Sixty percent felt that jail inmates were not really criminals, 20 percent were undecided. The large majority said the true purpose of jail confinement was rehabilitation. A large minority—19 percent—was undecided. Respondents showed a fairly even distribution around agree-disagree-undecided when asked opinions on such items as bias in the courts, presumption of innocence, and police harassment. There were no differences in the work furlough and nonfurlough responses to any of the foregoing. However, two-thirds of the replies from families of men

on work furlough said that the incarceration of the inmate had an undesirable effect on their lives, and 28 percent even blamed themselves. They were more ready to perceive the inmates' difficulty as their fault than was true of family respondents from the nonfurlough group.

In brief, somewhat closer family ties characterized the work furlough sample. Further, work furlough families were more apt to see the inmate as a troublesome problem for them to accept than as a criminal pariah for them to reject.

THE CRIMINAL JUSTICE SYSTEM

As previously indicated parallel Background Questionnaires were administered to both staff and inmates. Among other purposes, these made it possible for both samples to express attitudes and opinions toward police, the courts, the Elmwood facility, and general social practices. Much of the material here amplifies the previous section on self-image.

Most of the inmates felt that they were not criminals. They saw themselves as individuals who had problems for which they needed help, not punishment. They also felt they would get into difficulties again because of their problems. Those on work furlough were more apt to see themselves as noncriminals and to see other inmates as criminals. Individually, they rejected the label but felt that it applied to others around them. They saw themselves as having made mistakes and saw the system of criminal justice as improperly treating them as criminals.

Inmates, whether work furlough or nonfurlough, accepted staff in general. They felt no pronounced hostility toward staff. They preferred the nonuniformed staff to the custodial ranks and felt that all staff could perform either function. Any antagonism toward staff appeared more as an individual matter than as a trait widely shared among all inmates. In a sense, inmates seemed to be saying of staff: We are just like you and you are just like us.

Fifty-six percent of the inmates felt the courts presume guilt until one proves his innocence. They saw police as harassing the man with a record and as concerned with the petty offender to the neglect of the "real criminal." They did not define the police as having any pronounced bias toward minority groups. The work furlough group was less rejecting of the court and the police than the nonfurlough inmates. Conversely, the work furlough group was less accepting of Elmwood than those not on work furlough. This seems to be related to the greater tendency on the part of the work furlough inmate to define himself as noncriminal: Since I am not a criminal, why am I in Elmwood where so many are criminal?

In contrast to this last fact, staff perceived inmates more negatively than inmates perceived themselves. Staff defined inmates as criminals and in general, behaved toward them as such. Staff tended to deny the inmates' assumption that they and staff were essentially the same and shared the same conventional values. Staff denied further the contention of the individual on work furlough that basically he was not a criminal. Thus, one had here an Elmwood version of *Faust*. It was a struggle for the soul of the inmate, with staff insisting that the inmate was a social castoff who must be brought back to the fold, and the inmate insisting that he was not a castoff since he never left the fold in the first place. Inmates, especially those on work furlough, struggled to maintain a positive self-image. Staff, perhaps inadvertently, struggled to destroy it.

THE WORK WORLD

Deep in the ethos of the United States is the normative value of work, historically at least. While the history of work for inmates is spotty and loaded with incredible inconsistencies, work furlough supports the work ethic with its emphasis on frugality, industriousness, and the determination to get ahead.

Based on data produced from questionnaires and from administrative records, it is seen that Elmwood inmates conform to the picture of low occupational achievement found among many jail populations. Two-thirds were employed in semi-skilled or unskilled factory or labor jobs. One-half had remained on their last job 1 year or less, two-thirds had been on the job less than 6 months. Two-thirds had received a limited amount of job training. Sixty-two percent expressed satisfaction with their job careers, 39 percent expressed dissatisfaction. The work furlough population had a more stable and favorable occupational background. On a specially developed Vocational Attitude Set Inventory, inmates from this group scored more positive attitudes toward work than the nonfurlough groups.

One-half of the work furlough inmates remained employed on the same job they held prior to sentence. The Elmwood staff, found jobs for 29 percent. A high proportion of these—36 percent—received jobs lower in the occupational scale than the one they usually held. The gross results therefore suggest that the work furlough program perpetuated a disadvantaged occupational status, inasmuch as most men on work furlough were occupationally marginal to start with, and some were found jobs which downgraded them.

There are serious problems here. In emphasizing work per se, a work furlough program may entrench criminality by freezing inmates into low-grade work slots and thus aggravating their sense of resentment and frustration. The temptation of a jail administrator is to say that any work is better than no work at all. This might be challenged on two counts. A short-term vocational training program inside the walls which affords minimal work skills and some promise of occupational mobility upon release may be of more all-around value to the inmate and to society than a dead-end work furlough job. Secondly, the inmate needs protection from unscrupulous employers if work furlough is not to degenerate into the old convict labor system with a few modern touches. Both of these possibilities were recognized by the Sheriff's Department although, except for one brief demonstration project, no vocational training programs existed at Elmwood during the period of this Study.

Inmates were, however, specifically protected from employers known to operate below minimum standards and as a matter of policy, the needs of the employer were a secondary consideration in assigning an inmate to work furlough.

While the work furlough program reported on here was essentially geared toward men, the Study project took advantage of the opportunity to collect data on a sample of 89 relatively long-term women offenders. The occupational similarities and differences between the men and the women were about what one would expect. Most of the women had unstable work histories with much employment at unskilled tasks for brief periods and much job jumping. On standard and special tests, they scored low on occupational image and work socialization and high on alienation-pessimism toward the work world. Reflecting sex roles assigned by society, they had a pre-women's lib view of themselves as women first and foremost and workers a far distant second. Still, on an opinion scale, the women checked work furlough as among the programs they liked the most even though it was extremely unusual for a woman to be included in it up to the time the Study ended. During the following year, however, a considerable number of women were admitted to work furlough.

It was mentioned at the beginning of this article that a vocational counselor was assigned to the project on an experimental basis to provide special services to a limited number of inmates. This turned out to be a high-cost, low-yield venture measured by the number of inmates who completed a plan developed with their participation and resulting in job training or job placement lasting for at least 3 months after release. The number of such closures, as they were called, was far lower than that for any comparable group and the cost per client was over twice as much. The Elmwood caseload was about half the size of that carried by other vocational counselors in the local area performing similar services.

There were many reasons for this unfavorable showing. The principal explanations seemed to be that whereas the average vocational counselor's client was already in the community, the Elmwood client had to make the transition from custody to freedom upon his release. The adjustments were more complicated for him, leading to discouragement and a readiness to abandon his vocational plan. It is also probable that the Elmwood client was a far less promising candidate to begin with. Objectively he scans as immature, defensive, unambitious, and with a minimal sense of responsibility. Subjectively, he may be described as a failure in both criminal and noncriminal undertakings, with jail looming as one of the few stabilizing influences in his life, at least while he is incarcerated.

It could be said, however, that this is not a very good argument for jail confinement, and that on the contrary this is the very subject for whom expert vocational counseling is most needed over a lengthy period, even in the face of a succession of false starts and comparatively high costs per client. Not to provide him with special vocational counseling may cost even more although the cost becomes hidden as it shifts from training and job placement to the commission of a crime, prosecution, and subsequent disposition into the correctional apparatus.

POSTRELEASE CRIMINALITY

One of the key questions of the Study was: What are the differences in criminality of the work furlough and nonfurlough inmates after release and to what extent is the observed difference due to the work furlough experience rather than to the selection process?

Addressing the first question, one is speaking here of recidivism. The differences between the two groups are quite large and are all in favor of the work furlough inmates. During an 18-month period after release, the inmates who had been on work furlough experienced significantly fewer arrests than the nonfurlough group. As to the kind of offenses for which they were rearrested, both groups showed a decline to the same index point in offense severity.³ Since the nonfurlough group measured lower in offense severity before the instant offense, a decline of both to the same index in 18 months after release would indicate that the work furlough group had made the greater drop. Of those rearrested and reconvicted, the average number of free days for the work furlough group was 91; for the nonfurlough group, it was 71. Considering the total length of time reincarcerated during the 18-month period after release on the prior offense, the average was 83 days for reincarcerated work furlough men and 120 days for the reincarcerated nonfurlough men. It is thus apparent on both of these measures, that is, free days before rearrest, and number of days reincarcerated in an 18-month interval, that the work furlough groups spend much more time at liberty than the nonfurlough men. A fifth measure of recidivism, judicial outcome, showed that while 63 percent of the work furlough group were reconvicted, 71 percent of the nonfurlough releases received new sentences. It is true that the length of these sentences tended to be shorter for the nonfurlough sample due to their greater involvement in alcohol, locally perceived as innocuous. But it is also to be noted that the proportion of work furlough releasees who were reconvicted was much smaller.

Turning to the second question, it could very well be that the favorable showing of the work furlough group was due to careful selection. Their slightly better education, somewhat more favorable work histories and view of the work world, their greater family stability and concern for their dependents, their greater sobriety and freedom from addictions, their general acceptance of the criminal justice system, and their self-image as noncriminal—all of these traits, would lead to their selection for work furlough in the first instance and to a loading of chance in the direction of a more favorable outcome in the release epoch. Hence all that could be said about the program in Santa Clara County would be that it is making the right choices and needs now only to experiment with the bad risks to see what can make them more promising candidates.

Yet while none of these considerations can be dismissed, there is evidence that the favorable outcome for the work furlough group is additionally due to the work furlough experience itself. This evidence derives from a study of carefully matched samples of work furlough and nonfurlough inmates.

There were 100 in each sample. All were married; all alcoholics and drug users were eliminated. These were the three most influential factors in selection bias. With both samples identical in these variables, selection bias was neutralized to a marked degree. Bias was further reduced by matching the two samples for age distribution, attitudes, and personality characteristics. With selection bias controlled as completely as possible by these measures, it was found that the postrelease performance of the work furlough inmates was far better than that of the nonfurlough inmates on all major measures of recidivism.

The work furlough releasees in this special sample remained at liberty 44 days longer than the comparable nonfurlough releasees, spent an average of 90 fewer days incarcerated if incarcerated at all, and decreased the seriousness of their offenses in the release period. Twice as many nonfurlough releasees were rearrested, and two and one-half times as many nonfurlough releasees were committed to a state prison system some time after release. Thus, with selection bias neutralized in the matched samples, the results show that men who had been placed on work furlough fared better recidivistically than those who had not. It is inferred, then, that the difference was due to the work furlough experience itself.

³ As measured by the Sechrest Severity Index. Dale K. Sechrest, "Comparisons of Inmates' and Staff's Judgments of the Severity of Offenses," *Journal of Research in Crime and Delinquency*, Vol. 6 (January 1969), pp. 41-55.

This is consistent with other findings of the Study. The experience of being at least half free, as he is when he is on his furlough job, enhances the inmate's self-concept to the extent that he does not regard himself as all-inmate, all outcaste. He practices the values of the ongoing society, he has a commitment to them, and experiences some of their rewards. The stigma of jail bird or ex-con is reduced. Since he was never wholly that anyway, he experiences a kind of propulsion toward conventionality. When on work furlough his feelings of helplessness, powerlessness, and infantalism are minimized by the fact that he retains important degrees of self-direction. He arranges his own transportation. He directs what disposition shall be made of his earnings. He chooses to abide by the extended rules which Elmwood imposes on work furlough inmates and thus deliberately assumes normal life risks which are, nevertheless, greater than those imposed on fellow-inmates not on work furlough.

Thus, while not denying that good selection produces good results for the work furlough group, one must still argue that this is not the whole story. Good results are additionally a consequence of work furlough itself.

CONCLUSION

Part of the charge of the Work Furlough Study was to develop a theory of work furlough and a model program which could be exported to other jurisdictions. Ordinarily, theory-building would precede the design of a study such as this. Actually that could not be done since the program which was to be studied had been under way for a decade and no one knew what its theoretical underpinnings were. So far as could be determined after the fact, work furlough arose from a combination of punitive, rehabilitative and deterrent motives. Thus it typified what Grupp and others have called an integrative theory of punishment and it was administered primarily with those three elements in mind.⁴

The present authors came to the conclusion that such a theoretical base would not suffice if work furlough were to fulfill its promise. The entire local correctional machinery would have to be elevated so that it is on a par with local law enforcement. It might even be independent of law enforcement. Certainly the day has long past when it can properly remain secondary to or as an afterthought of, the law enforcement function. While the theoretical support for such an expanded and elevated view of the local correctional task has not been fully articulated as yet, the time for such a development is fast approaching.

It might be predicted that when that day arrives, it will be accompanied by the discovery that jail inmates, unlike prison inmates, have lost few, if any, of their civil rights. Whatever this means politically, it means socially that jail inmates are in a position to demand that many community services be made available to them as a matter of right rather than as an act of grace. This includes adult education, welfare counseling, employment services, motor vehicle training, tax-supported health care, financial counseling from private loan companies, legal advice, advice on union and veterans benefits, and much else. All of these need to be built in as integral parts of a jail or local correctional program. It is inevitable that this will occur. The correctional task inevitably includes these ramifications. The only question is whether this will come about as a part of orderly and planned social change or whether it will come as a consequence of grudging concessions wrung by outraged citizens and inmate groups.

Thus then it can safely be concluded that work furlough is the forecast of program change in local corrections. As that occurs, the integrative theory of punishment will have to be modified as the role of the county jail is modified to meet the complex demands of the unfolding social order.

ILLINOIS DEPARTMENT OF CORRECTIONS,
Springfield, Ill., December 30, 1974.

FACTS ABOUT FURLOUGHs

What is a furlough?

A furlough is the temporary leave of a selected inmate from a state correctional center for one of the purposes authorized by law.

Why does the Department of Corrections have the authority to administer such a program?

⁴ Stanley E. Grupp, "Work Furlough and Punishment Theory," *Criminology*, Vol. 8, No. May 1970, pp. 63-79.

The Illinois General Assembly enacted the State's first furlough law effective July 31, 1969. The law was amended in the 1972 session of the legislature and went into effect January 1, 1973. This law, Illinois Revised Statutes, Chapter 38, Section 1003-11-1, authorizes the Department of Corrections to conduct furloughs.

What are the purposes for which furloughs may be granted?

The law provides as follows:

"(a) The Department may extend the limits of the place of confinement of a committed person under prescribed conditions, so that he may leave such place on a furlough. Whether or not such person is to be accompanied on furlough shall be determined by the Chief Administrative Officer. The Department may make an appropriate charge for the necessary expenses of accompanying a person on furlough. Such furloughs may be granted for a period of time not to exceed 14 days, for any of the following purposes:

1. To visit a spouse, child (including a stepchild or adopted child, parent (including a stepparent or foster parent), grandparent (including stepgrandparent) or brother or sister who is seriously ill or to attend the funeral of any such person; or
2. To obtain medical, psychiatric or psychological services when adequate services are not otherwise available; or
3. To make contacts for employment; or
4. To secure a residence upon release or parole or discharge; or
5. To visit such person's family; or
6. To appear before various educational panels, study groups, educational units, and other groups whose purpose is obtaining an understanding of the results, causes and prevention of crime and criminality, including appearances on television and radio programs.

(b) Furloughs may be granted for any period of time under paragraph 15 of Section 55a of The Civil Administrative Code of Illinois."

What is the value of furloughs?

Offenders are less likely to return to crime after release from prison if they have a decent job, residence, and family situation. Furloughs help to ensure this support. In addition, they help to bridge the offender's reentry into the community from prison. They aid the Parole Board in decision-making by providing a chance for the prospective releasee to demonstrate how he handles responsibility. They provide a better alternative than conjugal visits for relieving homosexuality in prison. The furlough program improves inmate morale by providing a sense of hope. In summary, furloughs are a necessary part of prison reform and crime reduction programs.

How many other states have a furlough program?

Illinois' furlough program is not unique; 43 other states as well as the federal corrections system have furlough programs.

What is the success rate of the Illinois' furlough program?

6,457 furloughs have been granted through June 30, 1974. Of this total, seven resulted in new arrests and 28 in AWOL's. This means that 99.4% were successful.

How does Illinois' furlough program compare with other states?

According to the American Correctional Association located in College Park, Maryland, Illinois' furlough program is conservative compared to other states. For example, Connecticut in a one-year period furloughed 5,640 persons. In New York State, since July, 1972, 9,501 inmates were furloughed. The American Correctional Association has noted, "It is impossible for any state to have a perfect record and for all intents and purposes Illinois has produced a near perfect record which probably cannot be topped by any other state."

When was the first furlough recorded in Illinois?

The first furlough was made September 12, 1969, from what was then the Joliet State Penitentiary. This was for the purpose of attending a funeral. Furloughs began at Pontiac and Dwight in 1969, Vienna in 1971, Mcnard and Vandalia in 1972, and Sheridan in 1973.

What are the criteria used for furloughs?

Refer to the attached Department of Corrections Administrative Regulation 817 which governs the entire program.

What percentage of the total prison population is on furlough on any given day?

On an average day, approximately one-half of 1% of the State's total 6,400 prison population is on furlough.

How long is the average furlough?

Furloughs average 48 hours; however, the duration may be anywhere from a few hours to attend a funeral to three-day family visits.

Who pays for the furlough?

In most cases the resident or his family is required to pay for a furlough. However, there are exceptions; such as when the resident is on an emergency medical furlough or when there is a funeral and the family cannot afford to pay the resident's expenses to the funeral and back.

How many times may a person go on furlough?

The frequency with which furloughs are granted varies with the individual person depending upon his need.

Why are persons sentenced for violent crimes allowed furloughs?

It is important to recognize that 98% of all men and women who are sentenced to prison one day will return to the community. Since at least 1953 the law has provided that even those with lengthy sentences are eligible for parole consideration after 11 years and 3 months. The law recognizes both that there is an appropriate degree of punishment and that most people are capable of changing their behavior. Offenders who have spent many years in prison need a furlough program as much as or more than others to re-establish family ties and find jobs. In such cases, furloughs are granted only when there is probability of release on parole or expiration of the maximum sentence.

Why are those residents who have been denied parole allowed to go on furlough?

When a resident is denied parole, a new parole hearing date is established. A resident must meet the requirement of being within a specified time of his new parole hearing date before a furlough is granted. The resident must also meet all other furlough eligibility criteria.

How does the department inform law enforcement officials about persons on furlough?

The Department makes available certain data on all persons approved for furlough fifteen (15) days in advance to states attorneys and places such information in LEADS (Law Enforcement Agency-Data System) which may be accessed by law enforcement officials.

DEPARTMENT OF CORRECTIONS, FURLOUGHS THROUGH JUNE 30, 1974

Type of furlough	Residents	Number of AWOLS ¹	Number of incidents ²	Total number of furloughs resulting in either AWOL or incidents
Home and family.....	3, 977	26	6	32
Medical.....	1, 066	0	1	1
Educational.....	551	0	0	0
Employment.....	226	0	0	0
Family illness ³	239	1	0	1
Funeral ³	398	1	0	1
Total.....	6, 457	28	7	35

¹ When a resident has violated the administrative regulations as to the time of return to the correctional center.

² When a resident has been arrested and/or is suspected of involvement in a new criminal offense.

³ These categories on occasion overlap.

Note: The success rate of 99.4 percent is for AWOLs and incidents. If incidents are considered alone, the success rate of the program is 99.999 percent. $7 \div 0.001$ percent of 6,457.

THE AMERICAN CORRECTIONAL ASSOCIATION,
College Park, Md., September 6, 1974.

HON. DANIEL WALKER,
Governor of Illinois,
Springfield, Ill.

DEAR GOVERNOR WALKER: The American Correctional Association, which is the only nationwide membership organization representing professional corrections personnel and which brings together persons from all professional disciplines in corrections, wishes to support the State of Illinois in its inmate furlough program.

Each state which has successfully operated an inmate furlough program is to be congratulated. Bringing corrections into the 20th century is no easy task, and each state must assume some risks in trying to be meaningful and relevant to the public at large and the persons who come in immediate contact with corrections.

Your Department of Corrections, led by Director Allyn Sleaf, has produced a most impressive record since the furlough program began in 1971. The Department has released 6,457 inmates in all types of community release programs prior to complete release, and 99.4% of the inmates returned and did not commit any criminal act while in this status.

It is impossible for any state to have a perfect record, and for all intents and purposes Illinois has produced a near perfect record which probably cannot be topped by any other state.

Your Department has shown that it has the capability of proper screening and selection and has leaned toward a conservative approach. For instance, Connecticut furloughed 5,640 persons in fiscal year 1974 and their success rate was 99.7%. They have released almost as many inmates in 1973-74 as your Department has done since 1971, and your state is considerably larger than Connecticut.

In New York State, since July 1972, some 9,501 inmates were allowed to return on furlough status with over a 99% success rate. Governor Wilson is pleased with this result and hopes that the experimental program is made permanent.

There are similar experiences of great success in furlough programs in states such as Ohio, Oregon, Massachusetts and the Federal Bureau of Prisons. Well over half the states and the Federal system have furlough programs, and most other states are pressing vigorously for a furlough law.

Furloughs are significant to a modern, progressive correctional system. They do tend to reinforce family relations, self-esteem of the inmate, and they serve as a bridge to the open community. It is a strong aid to a positive release program.

We are sure your Department takes into consideration every aspect of an inmate's situation and that they do not release a dangerous person. The record shows that concern.

Hopefully your program can continue and be enlarged over the next several years. You have the support of our Association.

Peace,

ANTHONY P. TRAVISONO,
Executive Director.

AMERICAN ASSOCIATION OF WARDENS AND SUPERINTENDENTS,
September 9, 1974.

Hon. DANIEL WALKER,
*Governor, State of Illinois,
Springfield, Ill.*

DEAR GOVERNOR WALKER: Recent press and public criticism of the Illinois Department of Corrections' furlough and work release programs has come to the attention of the American Association of Wardens and Superintendents.

The Executive Officers of the Association, being duly authorized to speak for the Association, have concurred in my taking the liberty to convey our thoughts and position relative to this criticism of the Illinois Department of Correction furlough and work release programs.

We have sought and obtained the following facts regarding the overwhelming success rate of both these programs. From the inception of the furlough program in 1971, there have been 6,457 furloughs, of which there have been 35 who have then become absent without leave, or only a .5% failure rate. The instances of new crime have been seven, or a .1% failure rate. Compilation of this reflects an overall success rate of 99.4% since the inception of the program.

From work release during the same period there have been 2,797 furloughs, of which there have been 11 absent without leave, for a .4% failure rate. There have been six instances of crime, or a .2% failure rate. This gives to this aspect of the work release program a rate of 99.4% success as well.

These figures reflect to us that there has been extremely prudent selection and highly responsible management of these very worthwhile programs.

We are vitally concerned with the crime problem in our Country, but we must be ever mindful of the need to take minor risks for the avoidance of even greater risks. The overwhelming majority of men who are incarcerated today in our Nation's prisons will, in the very near future, again be free to roam our streets and either pose hazard to or make a contribution to our society. It matters a great deal that we develop and maintain every possible tool that might tend towards their successful return to society as contributing rather than menacing individuals.

Throughout the Country the appropriate use of furlough and work release for training, education, work experience, family and social reintegration are among the most meaningful and successful tools recently employed.

It is our experienced observation that to turn back on these programs in the light of their overwhelming success, especially as indicated in the success rates of the Illinois program, would not only be an instant mistake, but one for which our society would long suffer.

The pressures of your office and the views of those who do not choose to look at the total picture undoubtedly places you in an extremely difficult position when this kind of criticism mounts. We offer the opinions and the services of the American Association of Wardens and Superintendents to aid you in any way in assessing this situation or in communicating the real seriousness of these considerations.

Most respectfully submitted, On behalf of the American Association of Wardens and Superintendents.

LOU V. BREWER,
First Vice President.

P.S. You may feel free to call upon any of the officers of the Association for verification or other assistance relative to these views.

[From the Library of Congress, Congressional Research Service]

PRISON POPULATION AND COSTS—ILLUSTRATIVE PROJECTIONS TO 1980

I. Introduction

The Congressional Research Service was asked by the Subcommittee on Penitentiaries of the Senate Judiciary Committee to do a long-range projection of Federal and State prison population and costs based on both present and possible future sentencing policies. This report provides cost estimates of Federal prisons from 1973 to 1980 and State prisons from 1972 to 1980 on a year-by-year basis.¹

The report covers only the costs of Federal and State prisons. The costs of local jails and other correctional services, e.g. probation and parole programs, are not included. In addition, Federal and State prison costs are calculated separately, both for purposes of comparison and due to data differences for the Federal and State prison systems.

The report provides separate projections of Federal and State prison population, prices of providing correctional services, and various assumptions about the changes in the scope and quality of correctional services. These component projections from the base of a broader mathematical model used in making total cost projections. This model permits the projection of costs of correctional institutions under a variety of assumptions for crucial components of the system (e.g., average time served per offender, rate of change in scope and quality of services, price changes, etc.). Thus, in addition to testing the impact of using different assumptions, the model makes it possible to project potential future prison costs under various policy changes—e.g., altering average time served due to possible changes in sentencing policies.

In brief, using a reasonable range of assumptions, the results of this study indicate that:

The total prison population in both the Federal and State prison systems will fluctuate during the period from 1973 to 1980. Assuming no change in sentencing policy, it will reach a peak at approximately 26,300 for the Federal system, and exceed 252,000 for the State system in 1980, compared with 25,797 for the Federal system in 1972 and 180,361 for the State system in 1971.

If the average length of time served were to be doubled, the number of prisoners in 1980 would increase from 26,300 to an estimated 54,600 in the Federal system. Similarly, the State prison population would increase from 252,000 to over 608,000.

The total cost (operating cost plus capital cost) of serving the *Federal* prison population in 1980 will approximate:²

\$181.5 million, if sentencing policy is unchanged and there is no improvement in the scope and quality of services provided, compared with \$130.6 million in 1972;

¹ At the conclusion of this study in the early fall of 1973, the most current available data included statistics for fiscal year 1972 in the Federal prison system and for calendar year 1971 in the State system. At the writing of this report (spring 1974) no further data has yet become available.

² The projected cost estimates listed throughout the report are expressed with spurious precision to tenths of millions. The numbers are the raw values yielded directly by the model, and are more truly accurate rounded off to ten- or hundred-millions.

\$272.7 million, using the same assumptions but doubling the average length of time served;

\$530.3 million, using the same assumptions as above, but also doubling the rate of increase in the scope and quality of services provided.

Corresponding costs for the State prison system are as follows:

\$2715.7 million, with sentencing policy and scope and quality of services unchanged, compared with \$1194.0 million plus the cost of construction.³ In 1971;

\$5915.8 million, for doubling average length of time served;

\$19,916.8 million, same as above, with a doubled rate of change in scope and quality of services.

The cumulative cost of the Federal prison system over the 1973-1980 period would be in the neighborhood of \$1105.5 million if sentencing policy and scope and quality of services remain the same. However, if the average length of time served were doubled, this cumulative cost would be as high as \$3285.0 million—an increase of over \$2 billion over the 8-year period.

In the State prison system, the cumulative cost from 1972-1980 with the original assumptions would be \$18,467 million. If the average length of time served were doubled, the cumulative cost would rise to approximately \$48,207 million—a \$30 billion difference.

It must be emphasized that the results hinge entirely on the assumptions and are used here not as a prediction, but for purposes of illustration.

Finally, the report discusses an intriguingly close correspondence between the unemployment rate and the change in size of the prison population. The relationship was found to be direct—as unemployment rises, so does the number of new prison admissions each year; as it falls, the number of prison admissions drops, with a one year lag in the Federal prison system. In statistical terms the correlation between the unemployment rate and change in prison admissions for the Federal prison system was 0.91, meaning that over 80% of the variation in year-to-year changes in the number of prison admissions could be statistically related to changes in unemployment.⁴ In the State prison system, the correlation coefficient was 0.86, with unemployment statistically explaining over 73% of the changes in prison admissions. The results are statistically significant according to the Durbin-Watson statistic⁵ and a probability test⁶ which indicated that there is less than one possibility in 1,000 that these relationships are due entirely to chance.

We would emphasize that the report is carefully hedged about by assumptions. We cannot say that unemployment itself causes changes in prison admissions. Nor can we assume that it has any direct relationship to crime. We only indicate that our findings suggest that unemployment rates influence the prison population in several possible ways. High levels of unemployment could lead to social unrest and a lessening of support for social institutions, possibly affecting crime rates, sentencing policies, parole decisions, and other factors which in turn influence prison populations. Unemployment may also pose a stark choice in economic terms for those who are on the border line of acceptable social action and must find alternative means of support. Finally, once in the prison system, parole officials may gauge the likelihood of successful parole in part on existence of meaningful work.

These are all suggestions. We definitely do not pretend to possess a new knowledge—denied to most other analysts—that we have established a direct causal link between unemployment and prison life. Numerous sociological studies have shown evidence of a positive relationship between crime rates, prison population, and unemployment.⁷ Our findings, however, are tantalizing enough that we hope

³ Cost of construction in the State system was not available. Thus the \$1,194 million is only operating cost.

⁴ Though the coefficient of correlation is derived directly from the data, the coefficient of determination (which is the square of the correlation coefficient) is more readily understood. For example, in our case, it is this index of determination which describes the actual percentage relationship between unemployment rate and prison admissions; i.e. index of determination = $(0.91)^2 = 0.82 = 82\%$.

⁵ The Durbin-Watson statistic is a test of correlation to determine whether or not statistical results are simply reflecting common upward (or downward) trends, rather than some more fundamental relationship among the data.

⁶ A test of probability based upon the F-distribution.

⁷ In a study on the relationship between crime and unemployment, Glaser and Rice found that crime rates vary directly with unemployment. In particular, they found that property crimes—the bulk of crimes reported—increased sharply with unemployment and declined sharply with full employment (Daniel Glaser and Kent Rice, "Crime, Age, and Unemployment," *American Sociological Review*, October 1959, pp. 679-686). These findings were confirmed by a later, extensive study by Belton Fleisher, who reanalyzed some of the national data used by Glaser and Rice, making corrections for long-run trends in the

further research will be undertaken to add additional support—or eliminate a false hypothesis. The reader is encouraged to read our section on conclusions for additional discussion of this point.

The report is divided into five parts. The first section furnishes background information on the Federal and State prison systems. Included is a brief summary of the differences between the systems and a description of certain population and cost trends over the past ten years.

The second section is a discussion of the model used in making our projections. Included is both a general discussion of the reasons we chose to take the model approach and a more specific description of the model and methodology employed.

The third section outlines the results of our study for prison population and current operating costs.

The fourth and fifth sections assess the impact of taking capital costs into account, and the application of the model to State prisons.

The sixth contains results and discusses future research questions.

II. Background Information

A. Description of trends in systems

(1) *Size of Federal and State prison populations.* The size of the Federal and State prison populations stayed within a fairly constant range between 1960 and 1972, fluctuating between 20,000 and 30,000 Federal prisoners and 160,000 and 200,000 State prisoners.

(2) *Type of offender in State versus Federal institutions.* On the whole, offenses characteristic of the Federal prison population are of a less violent nature than those characteristic of the State prison population. For example, one-quarter of the more than 21,000 Federal prisoners in FY 1972 stood convicted of violating Federal drug laws; another quarter were convicted of robbery, primarily bank robbery; and still another quarter of larceny/theft involving auto theft across state lines (one-half of the larceny/theft offenses), postal theft, and other forms of interstate theft.

Less than 3% of Federal prisoners were in prison on homicide, assault, or sex-offense charges.⁸

On the other hand, 20% of the 37,415 State prisoners received from court in 1970 were convicted of such serious crimes . . . as follows: homicide (8.4%), assault (7.7%), and sex offenses (4%). Fewer than 10% were convicted of violating State drug laws, and fewer than 4% were convicted of auto theft.⁹

(3) *Costs of operating Federal and State prisons.* The costs of operating the two systems can be broken down into two major components—wages and salaries of prison employees, and goods and services provided to the prison population. The wage component has been responsible for the majority of the operating costs over the past ten years, with goods and services representing only a small percentage of these costs.

The annual increases in scope and quality of correctional services have been modest, averaging 3% between 1960 and 1972 for the Federal prisons and 6% for the State system.

According to the latest statistics, the total cost of operating Federal correctional institutions was \$109,018,000 in FY 1972; the cost of operating State prisons was \$1,194,000,000 in FY 1971.

(4) *Capital costs for the Federal and State prisons.* Statistics on the costs of construction and modernization of the prison systems are very scarce, and therefore, trends are difficult to determine. The limited statistics which are available indicate that modernization costs remain fairly constant over a period of time, but new construction costs are erratic.

(Continued)

variables studied (Belton M. Fleisher, "The Effect of Unemployment on Delinquent Behavior," *Journal of Political Economics*, LXXI, 1963, pp. 543-555; and Belton M. Fleisher, *The Economics of Delinquency*, Chicago, Quadrangle Books, 1966).

Numerous studies also have shown that unemployment is a major factor in parole and mandatory release violations and that steady employment is directly related to lower recidivism (Dean Babst and James E. Cowden, *Program Research in Correctional Effectiveness*, Report #1, Madison, Wis.: Department of Public Welfare Division of Research, 1967; and Daniel Glaser, *The Effectiveness of a Prison and Parole System*, New York: The Bobbs-Merrill Company, Inc., 1964, pp. 232-259).

⁸ Federal Bureau of Prisons Statistical Report, FY 1971-1972, p. 26.

⁹ National Prisoner Statistics, State Prisoners: Admissions and Releases—1970, p. 9.

In FY 1972, Federal prison modernization costs were estimated to be around \$15 million. Total obligations for buildings and facilities in the Federal prison system reached \$21.5 million.

Comparable cost estimates for the State prison system were not available within the sources used in this study.

B. Data Sources

In making our cost projections, we made use of the following sources of data:

- (1) U.S. Bureau of Prisons, Statistical report, FY 1959-1972.
- (2) U.S. Bureau of Prisons, National prisoner statistics, 1960-1971.
- (3) U.S. Department of Justice, Law Enforcement Assistance Administration, Expenditure and employment data for the criminal justice system, 1967-1971.
- (4) U.S. Congress, House, Committee on Appropriations, Departments of State, Justice, and Commerce, the Judiciary, and related agencies appropriations for FY 1960-1972.

III. Description of the Estimating Process

A. Why Use a Model?

Any projection is laden with risk. In addition to the anticipated problems of coping with uncertainty, the analyst must stand ready to defend his assumptions about what "really" influences activity in the area under study, as well as to test the sensitivity of his calculations to different assumptions and/or policies. To preclude the need to make arbitrary assumptions on the one hand, and to avoid the waste involved in duplicating the projection *de novo* under multiple assumptions on the other, it is sometimes useful to build a mathematical "model" of the study area which permits assumptions to be varied without having to duplicate all the subsequent calculations by hand. Such a model—designed for computer application—was constructed for this project.

B. General Methodology

There are at least three general approaches to making projections, with some overlap among the categories:

Intuition. ("My experience in this area leads me to feel that Goal 'X' would require at least twice as much money as the present program").

Extrapolation. ("Expenditures for health have grown 72% over the last 5 years. Therefore, let us assume they will grow 72% in the next 5.")

*Component Analysis.*¹⁰ ("Total education expenditures depend on how many students must be taught, the rising costs of providing those services, and any extensions in the scope or improvement in the quality of those services. Let's look at how each of these factors is likely to behave over the projection period.")

Component analysis is the most sensitive of the methods discussed and was chosen for use in this projection of prison population and costs. As implied in the example above, there are three factors commonly employed in using this technique. They are:

(1) *Workload*—usually measuring people needing services (e.g., the population in the age bracket 5-17 for elementary and secondary education).

(2) *Prices*—gauging the expected increase in the cost of providing a unit of service.

(3) *Scope and quality*—measuring the extension of the *scope* of a given service (e.g., increasing the participation rate in higher education services from 27% of the population aged 18-22 to 40% of the 18-22 group), and/or improvements in the *quality* of services provided (e.g. the costs of special tutoring).

The product of the first two factors is readily recognized as the dollar cost of providing the same real level of services per unit of need, after adjusting for any decline in the purchasing power of the dollar. The National Planning Association terms this "pre-empted" demand, meaning the projected cost of simply continuing present policies.¹¹ This concept is similar to the projection approach used in the

¹⁰ For examples see:

Selma Mushkin and Gabrielle Lupo, "Is There a Conservative Bias in State-Local Expenditure Projections?", *National Tax Journal*, September 1967, pp. 282-91.

Tax Foundation, Inc., *Fiscal Outlook for State and Local Government to 1975* (New York: TF), 1966, 128 pp.

Kegan, Lawrence R. and George P. Roniger, "The Outlook for State and Local Finance," in *Fiscal Issues in the Future of Federalism*, CED Supplementary Paper Number 23 (New York: CFD), 1968, pp. 231-83.

¹¹ Leonard Lecht, *Goals, Priorities and Dollars* (New York: The Free Press), 1966, p. 9.

U.S. Budget which terms the expenditure changes stemming from workload and price increases under present law and policies as "built-in."¹²

However, analyst and policy officials alike usually want to go beyond the simple projected level of spending likely to occur under present law and policy. Policies are variable and do, in fact, change. To achieve what might be a more realistic level of costs, some adjustment must be made for changes in policy and/or changes in the scope and quality of the services provided. One way to approach the problem of policy changes is to consult experts in the field to obtain their judgment as to what "should" be.

Panel of experts were used by the National Planning Association to suggest professional judgment levels for services provided in its projection in 1966.¹³ Subjectivity is the chief weakness of this approach. To overcome the need to make challengeable normative judgments, the scope-and-quality factor in component analysis can be used to build in some allowance for anticipated policy changes. One could, for example, assume that the scope and quality of services will increase at the same annual rate as in the preceding 5 years. Or, alternatively, one could double that rate to test the sensitivity of costs to improving services twice as fast as in the preceding period. An example here might be helpful.

How it works

Three elements of component analysis are usually stated in the following form (first in words, then in a simple formula):

Word formula: Expenditure change (E) is equal to change in workload (W), multiplied by change in prices (P), multiplied by change in scope and quality of services (SQ).

Short formula: $\Delta E = \Delta W \times \Delta P \times \Delta SQ$

where the Greek symbol "Delta" takes on its traditional mathematical meaning of "change in".

Let us assume, for hypothetical service "X", that in the immediate past period from 1963-1973:

Workload (as measured by change in total population) increased by 70%, going from 300 units to 510;

Price levels (as measured by the consumer price index) increased by 50%, going from an index value of 126 to 189;

Total expenditures for the services rose 232%, going from \$680.00 to \$2257.60.

Working backward, we can solve the equation above to see how much services were improved in scope and quality during the past decade (stating each factor as a ratio of its 1973 value compared with its 1963 value):

$$\frac{510}{300} \times \frac{189}{126} \times SQ = \frac{2257.6}{680.0}$$

$$1.70 \times 1.50 \times SQ = 3.32$$

$$SQ = \frac{3.32}{1.70 \times 1.50} = 1.3$$

The ratio of 1973 SQ to 1963 SQ is 1.3; or stated another way, scope and quality of services increased 30% in the past decade. Assuming that we had a population projection to 1983, and could anticipate some measure of price increases to the same year, we could then take these new values and project two levels of cost for the year 1983, as follows:

Pre-empted level. Assuming that population slows to a 30% increase over the next decade, and prices mount 40%, then 1983 expenditures will be 82% greater than their 1973 level. [1.30 (workload) \times 1.40 (prices) = 1.82 (expenditures)]

Same quality increase as in past. Using the same economic and demographic factors as in the pre-empted level, but adding the proviso that scope-quality increases will occur at the same rate as in the preceding ten-year period, then ex-

¹² 1974 Budget, p. 44.

¹³ See the Introduction by Gerhard Colm in Lecht, *op. cit.*

penditures will be 137% higher in 1983 than 1973. [1.30 (workload) × 1.40 (prices) × 1.30 (SQ) = 2.37 (expenditures)]

Moving from a general example, we are now ready to apply this approach to prison population and costs.

C. Description of Prison Model

Each of the factors for the prison projection model is described below along with the actual model relationships. Finally, there are additional points in the model where differing policy judgments can be inserted and their effects tested.

The prison projection model consists of four elements: prison population, correctional costs, variations in the scope and quality of services, and total expenditures. A multiplicative relationship of the first three elements yields a measure of total expenditures, as described above in the general example. Specifically, the relationship is as follows:

$$\Delta W X \Delta P X \Delta S Q = \Delta E,$$

where

W (workload) = measure of change in prison population over a given time span

P (prices) = measure of change in costs over a given time span

SQ (scope-quality) = measure of change in scope and quality of service over a given time span

E (expenditures) = measure of change in total operating expenses over a given time span

As we noted above, if each of the first three elements (W, P, SQ) is projected individually, a projection of total expenditures can be derived.

This was the technique used in this study to project operating expenses for both Federal and State prison systems to 1980. Because the data for Federal prisons were more easily obtainable and more complete, the model was built first for the Federal system and later modified to encompass State data. Data were used covering the period from 1960 to 1972 and all calculations were made with 1960 as a base year. The number of data sources was limited, and much of the data between the two systems were inconsistent. Because of differences in the existing data sources, the two projections (Federal and State) were made with different definitions of "year." All Federal prison data are on a fiscal year basis. State data for prison population are on a calendar year basis except prices and costs, which are fiscal year (or modified fiscal year) figures.

In order to make the model as flexible as possible, multipliers were built in to the model in order to be able to vary the rate of growth for each element. For instance, if one wanted to see the effect of doubling the average length of time served by Federal prisoners, he could introduce a multiplier of 2 into the appropriate portion of the model and produce a new cost projection based on this assumption. Similarly, if the analyst wanted to posit that some economic influence would have only half the impact on prison prices in the next ten years as it has in the past ten years, he could introduce a 0.5 multiplier in the price element, thus decreasing the projection accordingly.

Use of these multipliers will be explained section-by-section as they appear in the model. A description of each of the four individual elements (or variables) in the Federal system is included below.

WORKLOAD—FEDERAL PRISON POPULATION

The workload variable was the first and most difficult element to project—and is also the most important factor in the model. Fluctuations of the total prison population seemed to be erratic, bearing little relationship to expected determinants. Moreover, the many complex social, economic, and political forces influencing the prison population seem to have eluded the tools of social scientists thus far and proved far beyond the reach of our study. For this reason, we defined the total prison population at first with a simple formula:

$$P(2) = P(1) + A(2) - D(2)$$

This equation says that the prison population of any given year, P(2), can be determined by adding to the previous year's population, P(1), the new admissions during the given year, A(2), and then subtracting from that sum the discharges during the given year, D(2). For example, to obtain the total prison population for 1966, the formula would add the 1966 admissions to the 1965 total

population, and then subtract from the sum, the 1966 discharges. In short, prison population in the year under consideration is simply the sum of the previous year's population and the net change in population for the year at hand.

$$P(1966) = P(1965) + A(1966) - D(1966)$$

Using this formula, the projection of total prison population was both simplified and opened up the model to further policy variations. The variables which we needed to project, admissions and discharges, were less complex taken by themselves than total population as a whole and therefore—hopefully—easier to analyze. Another rationale for this projection technique was that it created a certain flexibility in the treatment which could be given the variables—analyzing admissions and discharges—separately. It permits the user to increase or decrease the rate of growth of either variable by using one of the multipliers mentioned earlier. (Thus, one could test the impact of both a more *stringent* sentencing policy and a *liberalized* policy on parole, or vice versa.)

Admissions: The term "admissions" includes all new arrivals to any of the Federal institutions during a given year. This category can be divided into three sub-categories: (1) those received from court and violators returned, (2) other admissions (including admissions from writs, furloughs, and escapees returned), and (3) transfers. The third-subcategory, transfers, includes only those prisoners being moved from one Federal institution to another. They are not new arrivals into the Federal systems, merely new arrivals at one *particular* Federal institution. Thus, for purposes of obtaining a valid, unduplicated count of the number of prisoners in the entire Federal system, the transfer number was deleted. The other two sub-categories make up the actual number of new admissions, and therefore the sum of the two will be referred to in the remainder of this report as "total admissions."

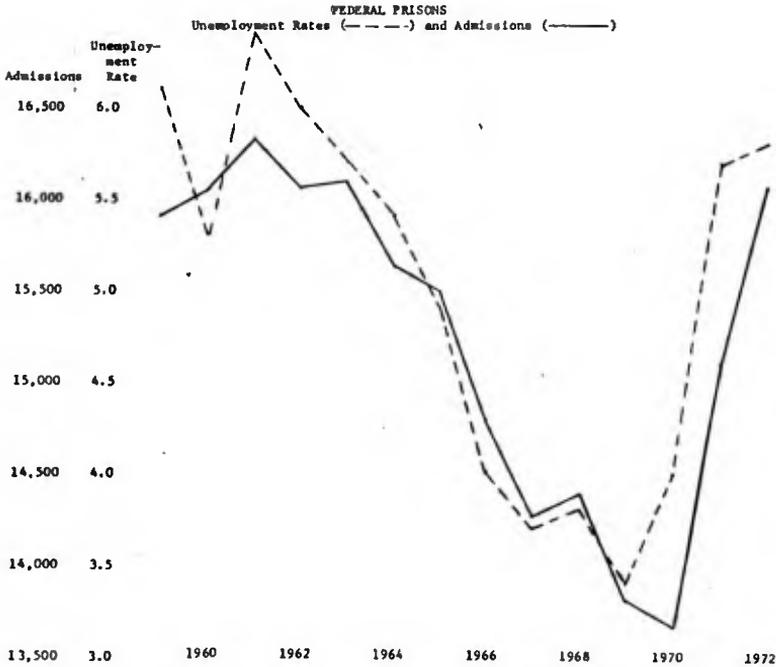
In the Federal system, total admissions were examined as a single element. The pattern of fluctuations of admissions from 1960 to 1972 was quite irregular. There was neither an increasing nor a decreasing trend (See Appendix for data). Thus, it was obvious that we could not make a straight-line projection based on our data; neither were we successful in correlating with our prison admissions any of the following: total U.S. population, (or some population subset); birth rate; crime rate; or any other measure which seemed to bear some *a priori* relationship to admissions. However, it was important to find some variable which would show a strong statistical correlation with our data for admissions from 1960 to 1972, as well as one which had been previously projected into the future by experts in the field—to keep the number arguable assumptions and *de novo* projections in this study to a minimum. Once a statistically valid correlation between the two elements is established, the reliable projected values of the second measure could be used to derive projections for admissions.

However, it was obviously not enough to find a purely statistical relationship; it was also our intent to find a variable which would in part plausibly explain the behavior of admissions.

After considerable searching (including crime rate, population, etc.), we found a close correlation between admissions and the yearly unemployment rate. The unemployment rate had a striking similarity to the pattern of admissions. The simple correlation between new admissions and the unemployment rate for the period 1960 to 1972 was 0.906—meaning that unemployment rates could describe 82% of the year-to-year variation in new admissions to prisons. According to the probability test,¹⁴ the results are significant, with less than one chance in 1,000 that the relationship is purely a result of chance. The relationship was found to have a one-year lag—particularly evident in the past few years—and might be masked if the proper form of the relationship were not stated. (This is discussed below, and may account for the lesser degree of success enjoyed by other analysts seeking such a correlation between prison admissions/discharges and socio-demographic variables.)¹⁵

¹⁴ See footnote (2), page 4.

¹⁵ Christensen, Ronald A. *Task Force Report: Corrections. Appendix B, "Population Projections for Correctional Subsystem."* 1967, U.S. Govt. Print. Off.



Statistical relationships can be satisfying only if there is some reasonable line of causation which can be hypothesized. It would be naive to say that unemployment "causes" admissions to the prison system. Rather, we believe that there are some plausible links that can be made between unemployment *per se* and the change in the prison population, as well as holding out the possibility that the unemployment rate may stand as a proxy for social malaise or disorders which do contribute in some way (unknown to us) to the prison admissions. Certainly, it is reasonable to assume that the economic pressures of unemployment on marginal workers (who are also "marginal" in terms of their ties to society) may culminate in criminal activity. The one-year lag also adds credibility to the relationship since there would be some delay between actions and sentencing. Finally, an offender would be more likely to be confined to prison in a time of high unemployment—when job opportunities and, therefore, rehabilitation prospects would appear low.

Further analysis of the relationship between unemployment rate and new admissions strengthened our hypothesis that unemployment rate could be used as a measure of admissions. Of the two sub-categories:

(1) received from court and violators returned, and (2) other admissions the "other admissions" category included primarily only administrative movement of prisoners returning from writs, furloughs, etc. There is little reason to believe that this type of movement is subject to the same social, economic, and political influences as the movement of prisoners who enter the prison system for the first time or who are recidivists. This assumption places the weight of the correlation with unemployment rate on the first sub-category (received from court and violators returned). In other words, if our assumption were correct, we should have found a very high correlation between sub-category (1) and unemployment rate. This is precisely what happened. The correlation was even slightly higher than the original correlation, giving substance to the argument that it was, in fact, the sub-category most likely to be responsive to the unemployment rate which influenced the correlation and which is affected by it.

Discharges: Discharges—or departures from prisons—like admissions, can be divided into sub-categories, one of which is transfers. For identical reasons

that we disregarded transfers under admissions, we also deleted that sub-category from the sum of total discharges.

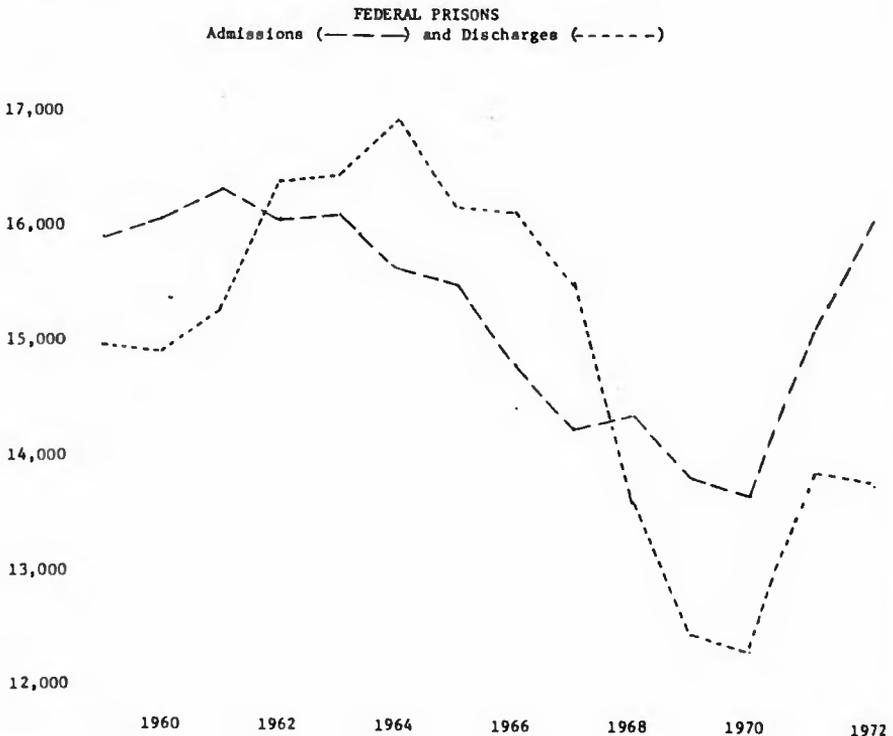
The approach taken to project discharges was quite similar to the one for admissions. We had hoped to find a measure of discharges which would yield a projection totally independent of admissions. This would have given us two independent variables, admissions and discharges, from which we could calculate total prison population. However, a visual comparison or diagram of total admissions and discharges revealed such a strong similarity that the interrelationship between the two could not be denied. They were not independent variables; rather the number of discharges depended directly on the number of admissions, again with a one year time lag.

Thus, we developed an equation to describe discharges based on admissions. Projections of admissions, calculated as described in the preceding section, were then used to project discharges.

There are several plausible explanations for such an interdependent relationship. First, the forces which influence judges in sentencing may also affect parole officials in their role in the prison system, though perhaps in different directions. Certainly the social setting in which decisions are made will also be felt by all the decisionmakers in the system. Second, there may be some feelings regarding the quality and quantity of available prison capacity, which would influence judges in sentencing and parole officers in paroling in similar directions. In a situation of overcrowding, judges may be reluctant to reply upon confinement and seek other alternatives; and parole officers may seek to release a relatively larger proportion of the low-risk prison population.

Total Workload Element: Calculation of the total prison population at this point involved merely simple combination of projected values of admissions and discharges with the previous year's population in our formula, $P(2) = P(1) + A(2) - D(2)$.

Variation in total prison population depends on variation of admissions and discharges, which in turn vary with unemployment rate. Therefore, the model offers to the user the option of introducing at this time whatever unemployment rate projection he wishes. This is the only external set of data which is not already built into the model.



For purposes of illustration in this report, we used in our model unemployment rate projections from an econometric model by Data Resources, Inc. (DRI). The DRI forecasting system is a reliable econometric projection model used for economic analysis by many government agencies (including the Council of Economic Advisors, the Office of Management and Budget, and the Social Security Administration), as well as numerous private corporations. The data base on which this model relies was built and is updated continuously from sources such as the Bureau of the Census, the Bureau of Labor Statistics, the Office of Business Economics, and the Federal Reserve System. While the DRI model projections fall well within the normal range of other econometric projections, major innovative techniques were used in derivation of the model equations in an effort to encompass the most recent economic developments. The unemployment rate is projected by the DRI model to be 5.4% in fiscal year 1975 (compared to 5.8 in FY 1972), and is assumed to gradually fall to 4.0 and level off at that point.¹⁶ This is a standard pattern for so-called full-employment-path projections.

There are other econometric forecasting models which project that unemployment rates will be as much as 0.5 higher than the DRI projection. If such an unemployment rate were used in our prison cost projection model, the cumulative cost from 1973 to 1980 for the Federal prison system—assuming no variation in the model factors—would be within 3% of the estimated value using the DRI unemployment rate projections.

PRICES—FEDERAL PRISONS

A surface examination of the total operating cost for Federal prisons on a yearly basis reveals that prison employee salaries account for over 60% of the total cost. The other 40% covers the cost of goods and services, primarily custody, care, and treatment of prisoners. Comparable measures of these two variables (which we will call wages and commodities) could be projected by the same technique which we used in projecting elements of prison population. The sum of the two would then be a measure of the change in the cost of operating the prison system.

It is necessary at this point to distinguish the difference between the price element and the total operating cost—which is our final product from the model. The price element is an index value used to measure absolute change in prices. Actual dollar figures show not only these price changes, but also changes in workload and scope and quality of services. In this model, price changes resulting from changes in workload and scope and quality of services will be accounted for in other factors of the formula. This leaves the definition of the price as a pure indicator of price trends.

Wages: The most apparent measure of wage increases for prison employees is average annual wage per prison employee. The recent past trends of average annual wage have shown a consistent and steady increase. Assuming that the future trends will behave as these past trends have, we can project wages at the same rate of increase in the future as in the past—simply a straight-line projection. These values are then converted to index numbers (with 1960 index=100.00) to indicate year-by-year percentage changes.

However, in the event that the user of the model feels that there would be a more or less rapid increase in wages, he may introduce a multiplier into the wage element, thereby adjusting that variable as he desires.

Commodities: The commodity variable was treated as a measure of the cost trends of goods and services (beyond wage cost).

Assuming this variable followed the normal trends of commodity costs in the economy generally, its pattern would resemble that of non-durable goods for the GNP deflator. Therefore, this GNP index was used as our commodity variable, also with the 1960 index=100.00.

Here again, however, we have left this prediction as an option for change. If one wishes to specify a larger or smaller GNP deflator growth rate, he has an opportunity to do so.

Total Price Element: With projection techniques for wages and for commodities already established, calculation of the total price element involved summing

¹⁶ All of the projections used as illustrations in this report are based on model runs made in October 1973, using the latest unemployment rate projections available at that time. Since then, a new DRI projection estimates the unemployment rates at as much as 0.4 higher than it did in the fall of 1973. However, since the unemployment rate is a major variable in the model, it can be changed and updated each time the model is run.

the two indices after weighting them at 63.7% for wages and 36.3% for commodities (the average percentages calculated from the composition of total expenditures). The result is a measure of change in absolute cost increases and decreases of the Federal prison system. The index in itself shows us little about the amount of funds needed for prison operation, but in the aggregate, the figures give us the information about trends and differences in costs that we need for completing our projection model.

SCOPE AND QUALITY—FEDERAL PRISONS

Scope and quality of services refers to the extent to which services are actually provided to the target populations and the quality of those services. For instance, the scope and quality of services will increase as the ratio of employees to prisoners rises. Changes in the quality of food, medical care, and security also affect the SQ component, to mention only a few. The changes in the scope and quality of services is not directly measurable in the same way we gauged the trends of workload and prices. This is not a unique problem, since the nationwide Consumer Price Index has always been subject to the qualification that it could not measure price increases due to quality changes. However, we were able to derive a set of numbers for scope-quality from 1960-1972 *indirectly*, simply because we had data for all other elements of our formula ($W \times P \times SQ = E$), leaving SQ as the only unknown. [Workload (W) was our total prison population; prices (P) were the sums of wage and commodity elements; and expenditures (E) were the values of yearly total operating costs for the Federal prison system.]

Over the twelve-year period, 1960-1972, percentage differences were calculated year-by-year in each of the three known variables. Substituting these percentages (in the form of a ratio of the two variable value)¹⁷ in the equation gave us a value for scope-quality year-by-year. For example, given that the known data are as follows:

W(1966) = 21,009
P(1966) = 127.19
E(1966) = 57,573

W(1965) = 22,345
P(1965) = 121.63
E(1965) = 55,998

then the formula would indicate:

$$\frac{21,009}{22,345} \times \frac{127.19}{121.63} \times SQ = \frac{57,573}{55,998}$$

or

$$0.94 \times 1.05 \times SQ = 1.03$$

or

$$SQ = \frac{1.03}{0.94 \times 1.05} = 1.04.$$

Once the actual values for scope and quality changes over a previous period are determined, *projection* of the changes in scope and quality (SQ) of services into the future is left to the discretion of the user. He may leave SQ changes out of the project entirely by using a 1.00 value for SQ in the projected formula. This would show the pre-empted or built-in demand for spending. Or he may increase it at the same rate as it has increased over the last ten years by using the average value of SQ derived for past years as the projected SQ for future years. He may also double the current level or double the rate of increase. Almost any value of this variable may be inserted into the model to accommodate the interests of the user.

EXPENDITURES—FEDERAL PRISONS

The value of expenditures or total operating costs is the ultimate product of our model. It is now obvious that the combination of the three preliminary projections (workload, prices and scope-quality) into the model formula will produce

¹⁷ Using this ratio in the formula is similar to using a deflator such as the familiar GNP implicit price deflator in economic analysis. The result of deflator multiplication results in another deflator which can be transposed to a percentage change and subsequently to an actual amount of change.

the end-product for expenditures. The formula is used exactly as it was in determining the scope-quality values for past years. Now the base year becomes 1972 (the last year of existing data), and the year of projection is any year between 1973-1980, depending upon the choice of the user. The value which the formula assigns to expenditures is in the form of a percentage change from 1972 to the year of projection. From this value of percentage change, we can easily calculate the absolute amount of change and add it to our known expenditures for 1972, thereby providing us with a dollar amount representing the expenditures of the Federal prison system with the user-designated assumptions for the projection year.

IV. Capital Costs—Federal Prisons

The model presented in this report calculates total operating cost projections for the prison system. However, it does not provide the means for including capital (or construction) costs. Over the projection period from 1960 to 1972, capital costs in the Federal prison system have accounted for less than 10% of the total prison expenditures. Therefore, the projection of operating costs constitutes the lion's share of the task—and for some purposes may be sufficient. Nevertheless, to make ours a more accurate projection, an adjustment was made to the final model-projected cost to include capital cost.

Background materials and data on capital costs were scarce, and as a result, our projection relied primarily on information received directly from the Bureau of Prisons and the National Clearinghouse for Criminal Justice. This information provided us with an average cost per year for five years to cover modernization of existing facilities, and a current average cost per bed for construction of a new facility for the Federal prison system. We extended the average modernization cost (\$15 million per year) over our entire projection period, and added to that a new construction cost for each individual year. The new construction cost was calculated as follows:

$$(\$36,000 \times CI) \times B = \text{Cost}$$

Where: \$36,000 is the current average construction cost per bed,

CI is a construction price index indicating the change in cost of construction due to inflationary factors, and

B is the number of new beds per year.

The number of new beds for a given year was determined by the total increase (if any) in the prison population over the previous year.

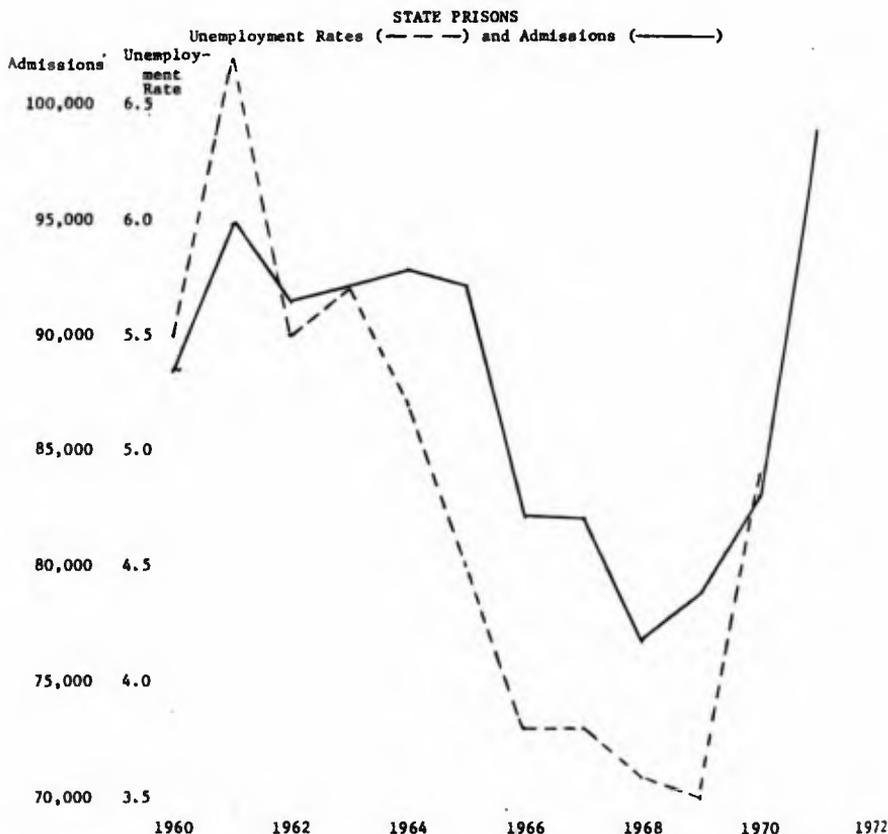
This simply-derived capital cost adjustment may or may not be accurate year-by-year. There is no way to determine in which year the facilities will actually be built; though, theoretically at least, they must be built to accommodate the population. Thus, over a period of time the costs of this construction will exist, either as a one-year expenditure or distributed throughout the period. This model distributes them as the projected population either increases or decreases.

V. State prison projections

In general, it was found that the State prison data followed the same patterns as Federal data. Therefore, the procedure used to project State costs was almost identical to the Federal model with a few minor modifications.

State prison admissions data—i.e., those "received from court and violators returned"—also showed a strong correlation with unemployment rate.¹⁸ The correlation coefficient was 0.859 with only one possibility in 1,000 that the relationship is due purely to chance. In other words, the unemployment rate describes about 79% of the behavior of the admissions data. However, when the "other admissions" category (including admissions from writs, furloughs, etc.), was added to the total admissions, the correlation was distorted. This problem was alleviated by projecting the two admissions categories separately. The first category (received from court and violators returned) was projected from the correlation with unemployment rate. The "other admissions" have been increasing at a constant rate since 1960 and thus were easily predicted with a straight-line projection. The sum of the two projections was used as the total admissions, as they were in the Federal system.

¹⁸ In the State system the one-year lag in correlation disappeared. This occurrence may be attributed to a number of influences. However, they are all relatively minor in relationship to our model, and therefore, were not pursued in the course of our study.

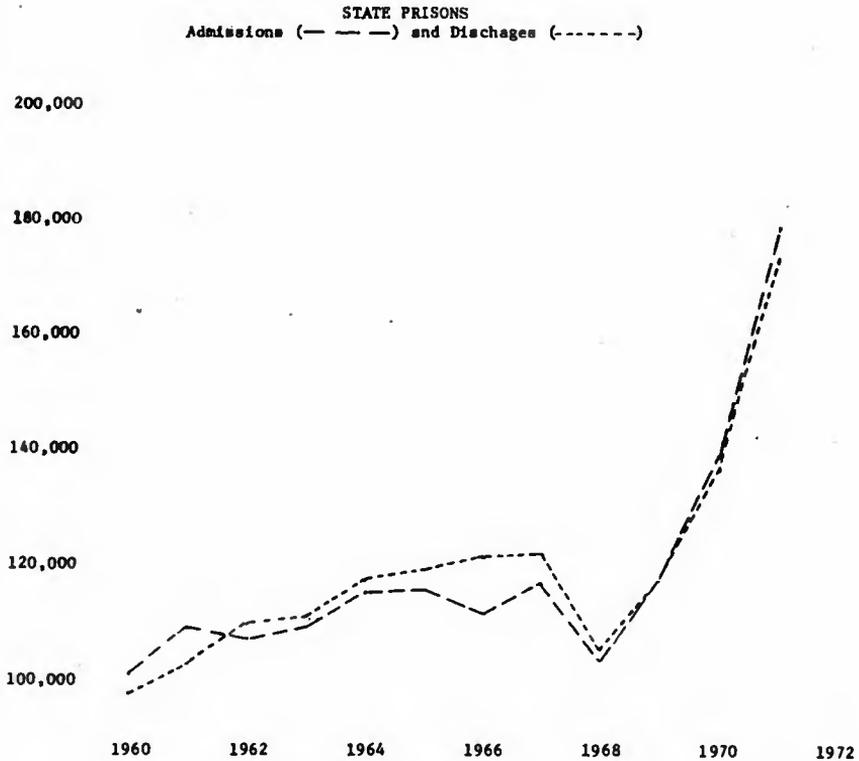


Wages and commodities were calculated for the State system as they were for the Federal, but the determination of the weighted values varied somewhat. The Federal system has maintained a constant ratio between the wage and commodity elements. They have both been increasing at constant rates. Thus the weight given to each factor has also been constant (around 60% for wages and 40% for commodities). However, in the State system, wages have become an increasingly larger percentage of the total operating cost over the past years. Thus, the wages have been growing more rapidly than the commodity prices. Assuming this trend will continue, we varied the weight percentages of the two factors year-by-year.

Capital costs for the State system were calculated as they were for the Federal prisons using an average cost per bed of \$30,000 for the State system compared with \$36,000 for the Federal prisons.¹⁹ Modernization costs were not available from any source; so in order to take this cost element into account (regardless of the fact that it is a minute segment of the total cost estimate) we used \$15 million (the same as the Federal cost) as an arbitrary figure, assuming that State prison modernization costs will be in the same neighborhood as Federal modernization costs.

All other State projections were performed identically to the Federal projections.

¹⁹ Cost estimates obtained from the National Clearinghouse for Criminal Justice, Planning and Architecture.



VI. Results and Research Questions

RESULTS

The projection model described in this report lends itself to infinitely varied results. These results depend upon the variety of optional features selected by the user of the model. This built-in flexibility establishes the model as a usable tool to accommodate nearly any set of assumptions for the principal variables.

Included below are several examples of cost projections obtained from the Federal prison system.

(1) Assumptions:

a. Admissions, releases, wages, and commodities remain as projected directly from the model.

b. Average length of time served remains the same as current length of time served (2 years).²⁰

c. Unemployment rates are as projected by the DRI model.

d. Average yearly increase in the commodity price index is 3.5% and in the construction price index is 9%.

e. Rate of increase in scope and quality of services is the same as the 1960-1972 rate.

Total operating costs 1980=\$124.2 million

Total capital costs 1980=57.2 million

Total expenditures 1980=181.4 million

Cumulative expenditures 1973-1980=\$1105.5 million

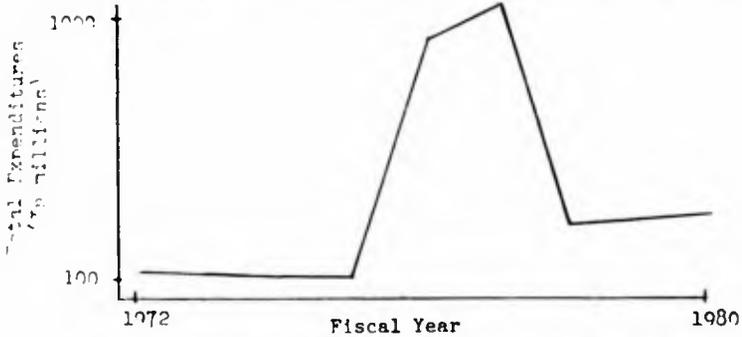
²⁰ Based on data from U.S. Bureau of Prisons. Statistical Report: Fiscal years 1971 and 1972. Washington, D.C. 1973 and rounded to the nearest year.

(2) Assumptions:

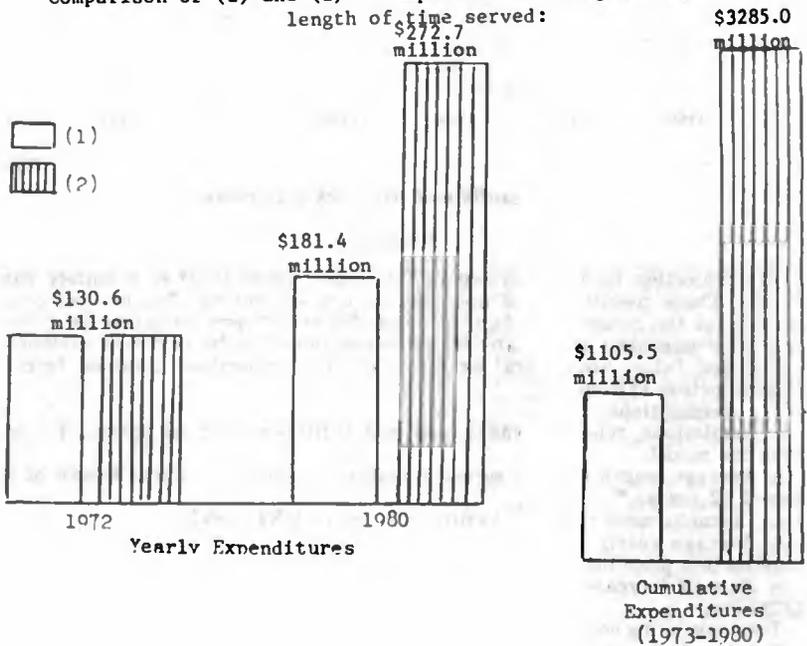
- a. Double average length of time served.
- b. All else the same as (1).

Total operating costs 1980 = \$257.7 million
 Total capital costs 1980 = 15.0 million
 Total expenditures 1980 = 272.7 million

Cumulative expenditures 1973-1980 = \$3285.0 million



Comparison of (1) and (2) -- Impact of doubling average length of time served:



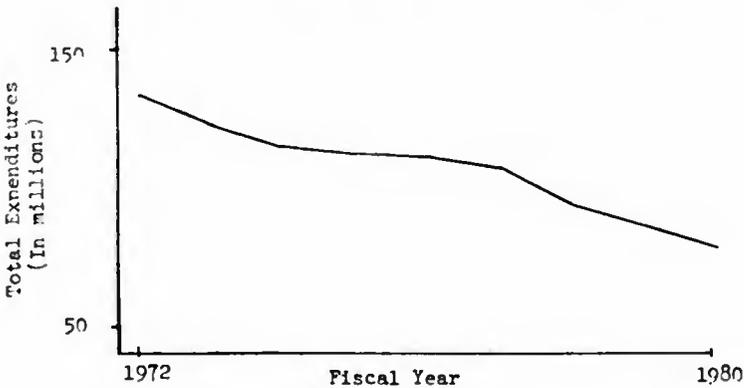
-35-

(3) Assumptions:

- a. Discharge rate is 10% higher than projected.
- b. All else the same as (1).

Total operating cost 1980 = \$67.2 million
 Total capital costs 1980 = 15.0 million
 Total expenditures 1980 = 82.2 million

Cumulative expenditures 1973-1980 = \$772.8 million

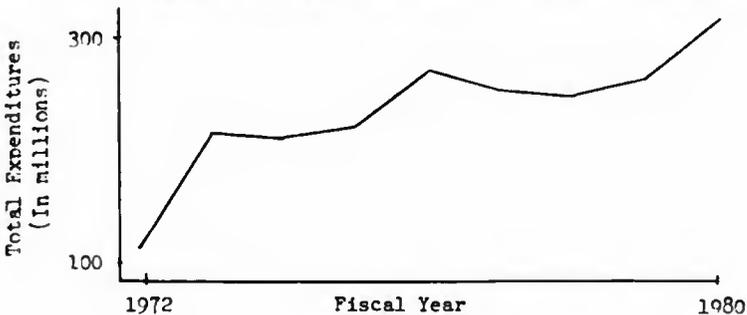


(4) Assumptions:

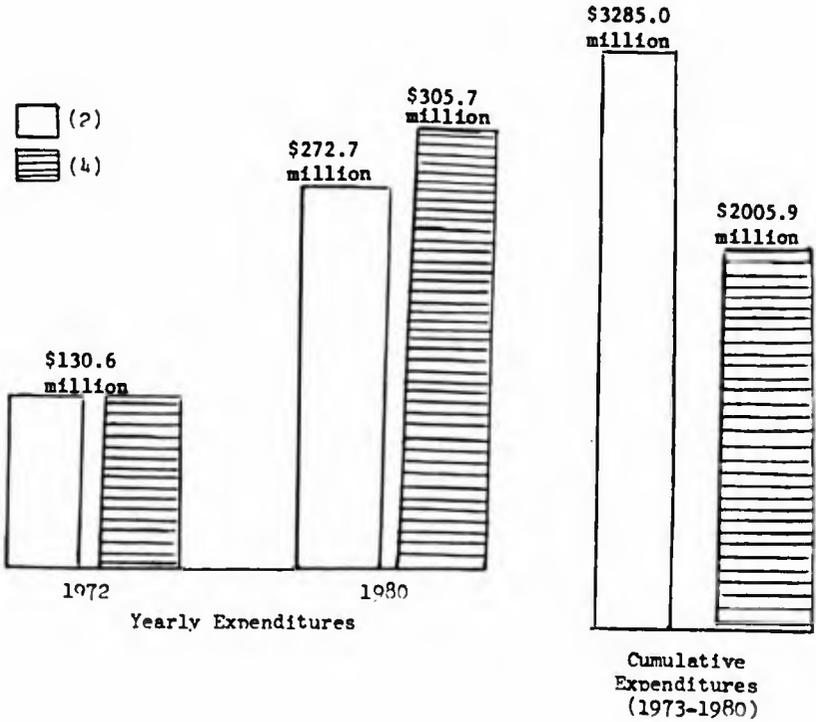
- a. Scope-quality increases twice as rapidly as it did from 1960-1972.
- b. All else the same as (1).

Total operating costs 1980 = \$248.5 million
 Total capital costs 1980 = 57.2 million
 Total expenditures 1980 = 305.7 million

Cumulative expenditures 1973-1980 = \$2005.9 million



Comparison of (2) and (4) -- Impact of doubling average length of time served vs. doubling scope-quality:



Below are several similar results from the State Prison model.

(1) Assumptions:

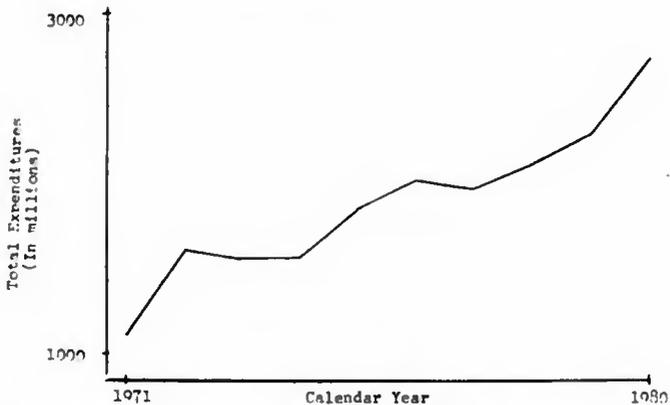
- a. Admissions, releases, wages, and commodities remain as projected directly from the model.
- b. Average length of time served remains the same as current length of time served (2 years). *2 1/2*
- c. Unemployment rates are as projected by the DRI model.
- d. Average years increase in the commodity price index is 3.5% and in the construction price index is 9%.
- e. Rate of increase in scope and quality of services is the same as the 1960-1971 rate.

Total operating costs 1980 = \$2072.6 million

Total capital costs 1980 = 643.1 million

Total expenditures 1980 = 2715.7 million

Cumulative expenditures 1972-1980 = \$18,467.4 million



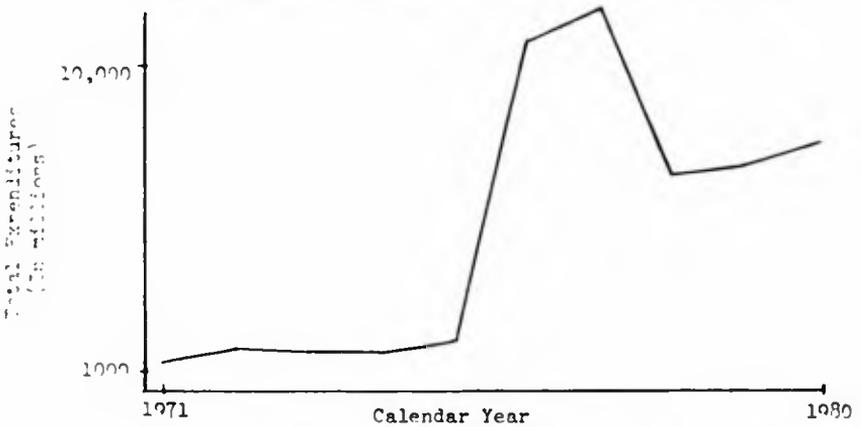
1/2 Based on data from the President's Commission on Law Enforcement and Administration of Justice. Task Force Report: Corrections. Washington, D.C., U.S. Gov't. Print. Off., 1967...and rounded to the nearest year.

(2) Assumptions:

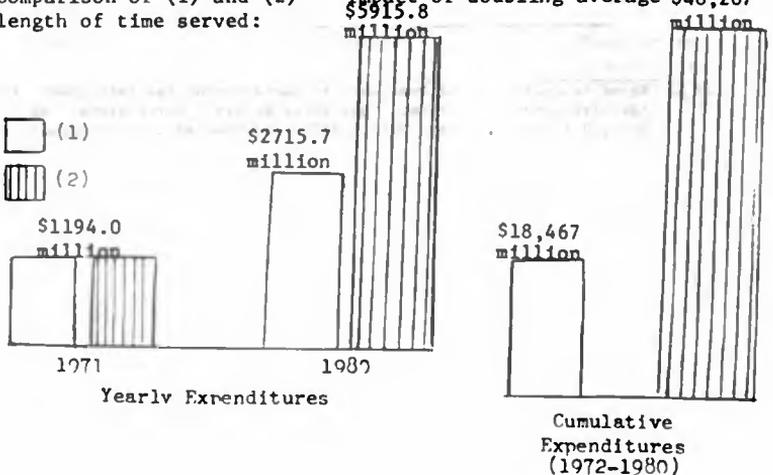
- a. Double average length of time served.
- b. All else the same as (1).

Total operating costs 1980 = \$5001.0 million
 Total capital costs 1980 = 914.8 million
 Total expenditures 1980 = 5915.8 million

Cumulative expenditures 1972-1980 = \$48,207.4 million



Comparison of (1) and (2) -- Impact of doubling average length of time served: \$48,207 million



(3) Assumptions:

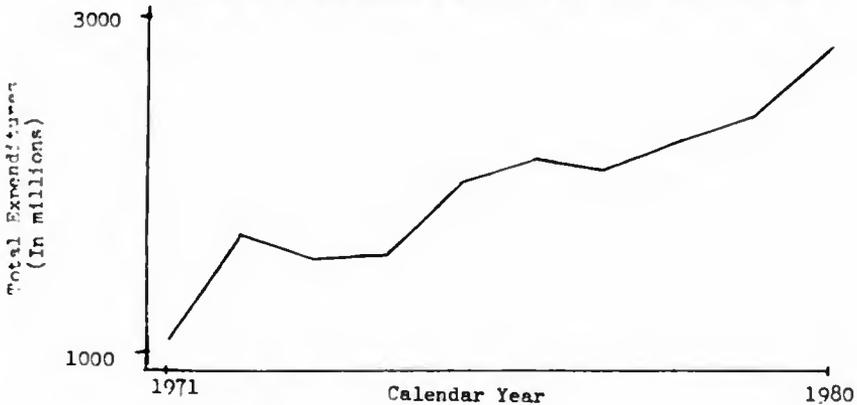
- a. Commodity costs 20% higher than projected.
- b. All else the same as (1).

Total operating costs 1980 = \$2120.3 million

Total capital costs 1980 = 643.1 million

Total expenditures 1980 = 2763.4 million

Cumulative expenditures 1972-1980 = \$18,940.2 million



(4) Assumptions:

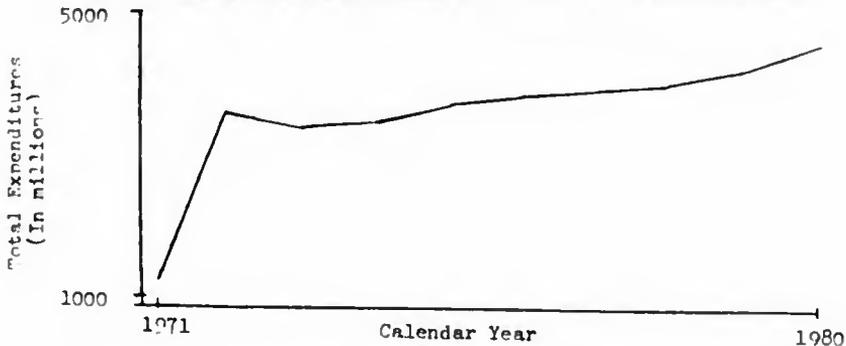
- a. Scope-quality increases twice as rapidly as it did from 1960-1971.
- b. All else the same as (1).

Total operating costs 1980 = \$4145.3 million

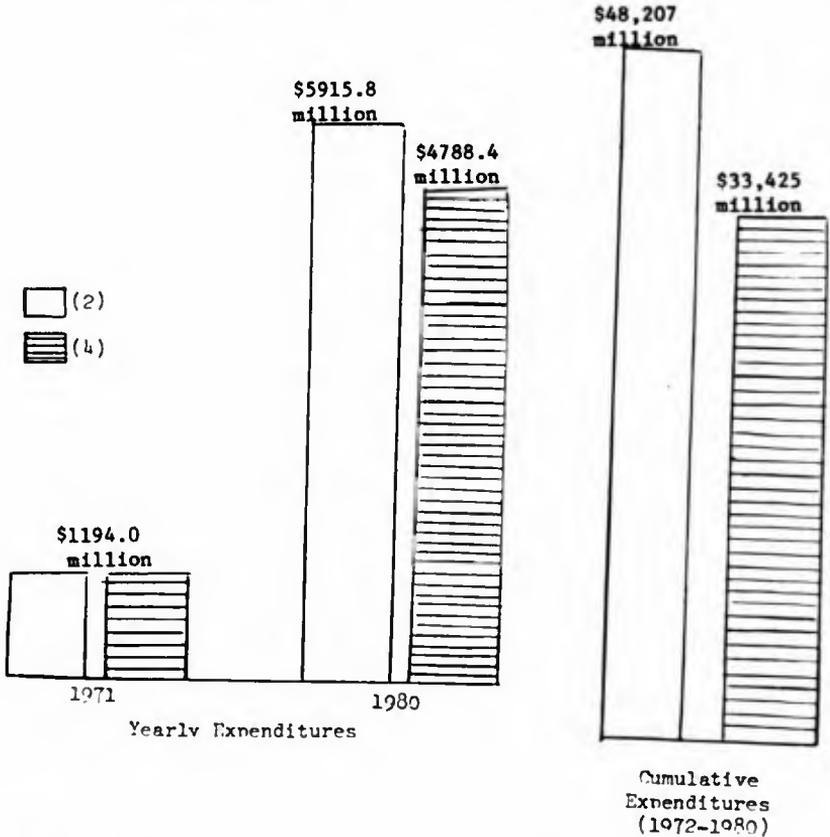
Total capital costs 1980 = 643.1 million

Total expenditures 1980 = 4788.4 million

Cumulative expenditures 1972-1980 = \$33,425.3 million



Comparison of (2) and (4) -- Impact of doubling average length of time served and doubling scope-quality.



Research Questions

In examining the intermediate and the final results of this study, several interesting questions were raised, each of which would constitute an entire research project in itself. As this point, we mention only a few of these areas where further research might prove enlightening.

(1) The first and most striking question which was revealed in the study dealt with the *correlation found between prison admissions and the unemployment rate*. As we noted, the unemployment rate can statistically describe over 80% of the year-to-year variation in prison admissions at the Federal level, and 79% at the State level. It was not our purpose to establish this particular relationship, and we are at a loss to explain *why* such a relationship might exist aside from our few "plausible hypotheses" on pages 4, 5, and 18-20. Simple-minded statistical projections are intriguing, but the research that explains "why" something happens is far more useful in the world of policy. It is our ardent hope that others will pursue this question and establish the "why" of things here. The question is too important to be left in so tantalizing a state.

(2) Another interesting question raised by these data concerns the *scope and quality of correctional services in State versus Federal institutions*. The data indicate that over the past decade, the commodities component of the price factor in Federal institutions (which includes such services as food and medical pro-

grams for inmates) increased steadily, as did the wages component. In the State institutions, however, the commodities factor of the price components has not increased, but has remained almost constant, while the CPI, GNP, and wages all increased.

For example, in 1960, the amount of wages paid in Federal institutions was \$25,614,000—60.5% of the Federal prisons' total operating cost. In 1970, the amount of wages paid increased to \$51,646,000—but remained at roughly the same percent (65.5) of total expenditures. Thus, the price of commodities has accounted for 35–40% of total expenditures throughout the period.

In State institutions, however, the relative share of total costs accounted for by commodities has dropped from 42% of the total expenditures in 1960 to 28% in 1971. Wages, nevertheless, have grown at a normal inflationary rate. This indicates that actual yearly commodity purchases have declined in volume or that prices have either remained constant or have grown at a rate far below the rate of inflation.

At the same time, the data indicate that scope and quality of services has grown *twice* as rapidly in State prisons as in Federal institutions. This evidence leads us to the conclusion that most—or perhaps all—of the scope-quality increase in State prisons comes from the wage component rather than the goods and services covered by the commodity component. For example, it is possible that the State prisons have been hiring an increasing number of employees so that the employee-to-prisoner ratio has been growing—thereby causing the increase in scope and quality of services. At the same time, the scope and quality of commodities may have remained at a constant level or even decreased. This, in fact, is the situation which exists. From 1960–1972 the employee to prisoner ratio in the Federal system has fluctuated within a range of 0.18 to 0.25, indicating that the number of prisoners to each employee has stayed between 3.9 and 5.3. In the State system the ratio has risen from 0.28 in 1960 to 0.53 in 1971 (significantly higher than the Federal numbers). The number of prisoners to each employee in State prisons has dropped from 3.6 in 1960 to 1.9 in 1971.

This raises the question of the priority State institutions have given to the kind of scope and quality increases provided the inmate over the past ten years, or the possible greater substitutability of people for goods at the State level. Whether a higher ratio of employees to prisoners in the State system is significant may in part depend upon the level of services provided by the additional employees. Again, it is not the task of this paper to explore the relationship between Federal and State trends, but we hope others will do so.

FEDERAL PRISONS, WORKLOAD DATA— $P(X) = P(X-1) + A(X) - D(X)$

Fiscal year	Unemployment rates ¹	Admissions ²	Discharges ²	Total population (workload)
1959.....	6.1	15,900	14,972	22,838
1960.....	5.3	16,042	14,900	23,980
1961.....	6.4	16,331	15,279	25,032
1962.....	6.0	16,054	16,401	24,685
1963.....	5.7	16,100	16,467	24,318
1964.....	5.4	15,638	16,908	23,048
1965.....	4.9	15,491	16,194	22,345
1966.....	4.0	14,781	16,117	21,009
1967.....	3.7	14,265	15,491	19,783
1968.....	3.8	14,370	13,601	19,552
1969.....	3.4	13,802	12,472	20,882
1970.....	4.0	13,662	12,302	22,242
1971.....	5.7	15,115	13,875	23,482
1972.....	5.8	16,064	13,749	25,797

¹ Source: U.S. Bureau of Labor Statistics.

² Source: Federal Bureau of Prisons Statistical Reports 1959–72.

FEDERAL PRISONS, PRICE DATA (WAGES PLUS COMMODITIES)

Fiscal year	Average annual wage per employee ¹	Wage Index	Commodity index GNP deflator nondurable goods ²	Total price factor (0.637) wages plus (0.363) commodities
1960.....	\$5,362	100.00	100.00	100.00
1961.....	6,042	112.68	100.69	108.33
1962.....	6,028	112.44	101.58	108.49
1963.....	6,302	116.98	102.76	111.82
1964.....	6,680	122.97	103.64	115.95
1965.....	7,201	130.76	105.61	121.63
1966.....	7,675	137.34	109.34	127.19
1967.....	7,972	141.20	111.62	130.46
1968.....	8,390	146.44	115.66	135.26
1969.....	8,815	151.50	120.69	140.32
1970.....	10,235	167.60	126.12	152.54
1971.....	10,903	174.12	130.04	158.11
1972.....	11,521	179.78	134.11	163.20

¹ Source: U.S. budget appendices, fiscal year 1962-74.² Source: U.S. Department of Commerce, Bureau of Economic Analysis.FEDERAL PRISONS TOTAL OPERATING COST DATA—($\Delta W \times \Delta P \times \Delta S Q = \Delta E$)

Fiscal year	Workload index ¹	Price index ¹	Scope-quality index ^{1,2}	Total cost index ¹	Total cost ³ (thousands)
1960.....	1.05	1.02	1.06	1.14	\$42,346
1961.....	1.04	1.08	.96	1.07	45,192
1962.....	.99	1.00	1.05	1.04	46,782
1963.....	.99	1.03	1.05	1.07	50,119
1964.....	.95	1.04	1.07	1.06	53,127
1965.....	.97	1.05	1.03	1.05	55,998
1966.....	.94	1.05	1.04	1.03	57,573
1967.....	.94	1.03	1.08	1.05	60,698
1968.....	.99	1.04	1.01	1.04	62,991
1969.....	1.07	1.04	.96	1.07	67,612
1970.....	1.07	1.09	1.00	1.17	78,872
1971.....	1.06	1.04	1.04	1.15	90,398
1972.....	1.10	1.03	1.07	1.21	109,018

¹ Measure of change from previous year.² As obtained from the formula.³ Source: U.S. budget appendices, fiscal year 1962-74.

FEDERAL PRISONS—PROJECTION DATA AND EQUATIONS

Admissions (*A*) and Unemployment Rates (*R*), with one-year lag:

$$A = 11,164.0 + 816.4971 \times R$$

Coefficient of Correlation = 0.906.²²

Coefficient of Determination = 0.821.

Admissions (*A*) and Discharges (*D*), with 1-year lag:

$$D = -6177.3819 + 1.3873 \times A$$

Coefficient of Correlation = 0.828.²²

Coefficient of Determination = 0.685.

Average Annual Wage (*W*)—straight-line projection, *Y* = yearly trend indicator with values 1 to 13.

$$W = 4478.26 + 493.4998 \times Y$$

Coefficient of Correlation = 0.975.²²

Coefficient of Determination = 0.951.

Projected Unemployment Rates:²³

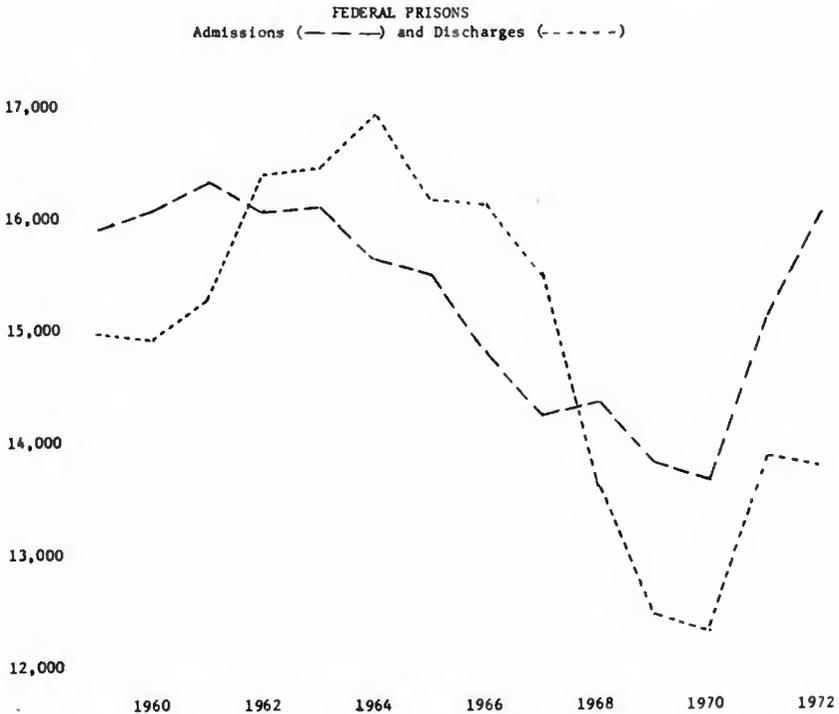
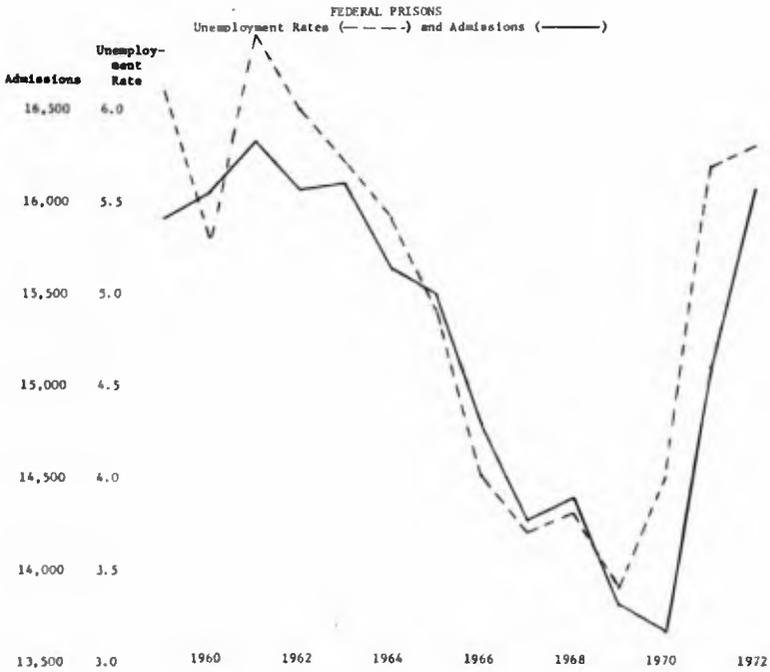
Fiscal years:

1973.....	5.2
1974.....	5.0
1975.....	5.4
1976.....	5.3

Fiscal years:

1977.....	4.5
1978.....	4.0
1979.....	4.0
1980.....	4.0

²² All correlations, according to the F-distribution probability statistic, are significant, and there is less than a 0.1% probability that they are due entirely to chance.²³ As projected on a quarterly basis by Data Resources, Inc. through 1975. After 1975, the unemployment rates are assumed to level off to 4.0.



STATE PRISONS, WORKLOAD DATA— $P(X) - P(X-1) = A(X) - D(X)$

Calendar year	Unemployment rates ¹	Admissions ^{2,3}	Other admissions ^{2,4}	Total admissions ²	Discharges ²	Total population (workload)
1960.....	5.5	88,538	12,287	100,825	96,590	189,924
1961.....	6.7	94,895	13,698	108,593	102,122	196,395
1962.....	5.5	91,492	15,656	107,148	109,095	194,448
1963.....	5.7	92,201	17,721	109,922	111,234	193,136
1964.....	5.2	92,963	21,457	114,420	116,367	191,189
1965.....	4.5	92,294	23,704	115,998	119,016	188,171
1966.....	3.8	82,265	29,601	111,866	120,946	179,091
1967.....	3.8	82,212	34,211	116,423	122,248	173,266
1968.....	3.6	76,863	27,071	103,934	104,070	173,130
1969.....	3.5	78,925	42,726	117,528	117,528	173,130
1970.....	4.9	83,068	53,625	137,693	137,214	173,609
1971.....	5.9	98,920	79,712	178,632	171,880	180,361

¹ Source: U.S. Bureau of Labor Statistics.² Sources: National Prisoner Statistics, 1960-71."³ Includes admissions received from court and violators returned.⁴ Includes admissions from writs, furloughs, etc.

STATE PRISONS, PRICE DATA (WAGES+COMMODITIES)

Calendar year:	Average annual wage per employee ¹	Wage index	Commodity Index GNP deflator nondurable goods ²	Total price factor
1960.....	\$4,618	100.00	100.00	(0.576)W+(0.424)C=100.00
1961.....	4,613	99.89	100.69	(0.559)W+(0.441)C=100.24
1962.....	5,060	109.58	101.58	(0.598)W+(0.402)C=106.37
1963.....	5,118	110.72	102.76	(0.611)W+(0.389)C=107.62
1964.....	5,480	117.79	103.64	(0.627)W+(0.373)C=112.51
1965.....	5,657	121.11	105.61	(0.627)W+(0.373)C=115.33
1966.....	6,230	131.23	109.36	(0.685)W+(0.315)C=124.34
1967.....	6,742	139.44	111.62	(0.686)W+(0.314)C=130.71
1968.....	7,200	146.23	115.66	(0.679)W+(0.321)C=136.42
1969.....	7,842	155.14	120.69	(0.721)W+(0.279)C=145.53
1970.....	8,360	161.74	126.12	(0.716)W+(0.284)C=151.63
1971.....	8,900	168.19	130.04	(0.716)W+(0.284)C=157.35

¹ Source: U.S. Census Bureau, Public Employment 1960-71.² Source: U.S. Department of Commerce, Bureau of Economic Analysis.

STATE PRISONS, TOTAL OPERATING COST DATA

$$(\Delta W \times \Delta P \times \Delta S Q = \Delta E)$$

Fiscal year	Workload index ¹	Price index ¹	Scope-quality index ^{1,2}	Total cost index ¹	Total cost ³ (in millions)
1960.....					\$425
1961.....	1.03	1.00	1.10	1.13	479
1962.....	.99	1.06	1.01	1.06	508
1963.....	.99	1.01	1.06	1.06	536
1964.....	.99	1.05	1.05	1.09	586
1965.....	.98	1.03	1.07	1.08	632
1966.....	.95	1.08	1.02	1.05	664
1967.....	.97	1.05	1.11	1.13	747
1968.....	1.00	1.04	1.08	1.12	838
1969.....	1.00	1.07	1.02	1.09	914
1970.....	1.00	1.04	1.11	1.15	1,051
1971.....	1.04	1.04	1.05	1.14	1,194

¹ Measure of change from previous year.² As obtained from the formula.³ Source: U.S. Census Bureau, U.S. summary, "Direct General Expenditure by Function, by Level of Government, 1960-71."

STATE PRISONS PROJECTION DATA AND EQUATIONS

Admissions—received from court and violators returned—(A) and Unemployment Rates (R):

$$A = 59,726.8 + 5766.437 \times R$$

Coefficient of Correlation=0.859.²⁴

Coefficient of Determination=0.738.

Other Admissions (OA)—writs, furloughs, et cetera—straight-line projection, $Y=1-12$:

$$OA = -561.273 + 4861.594 \times Y$$

Coefficient of Correlation=0.886.²⁴

Coefficient of Determination=0.786.

Total Admissions (TA) and Discharges (D):

$$D = 9974.56 + 0.919966 \times (TA)$$

Coefficient of Correlation=0.976.²⁴

Coefficient of Determination=0.952.

Average Annual Wage (W)—straight-line projection, Y =yearly trend indicator with values 1 to 12.

$$W = 3703.15 + 402.3354 \times Y$$

Coefficient of Correlation=0.980.²⁴

Coefficient of Determination=0.961.

Projected Unemployment Rates:²⁵

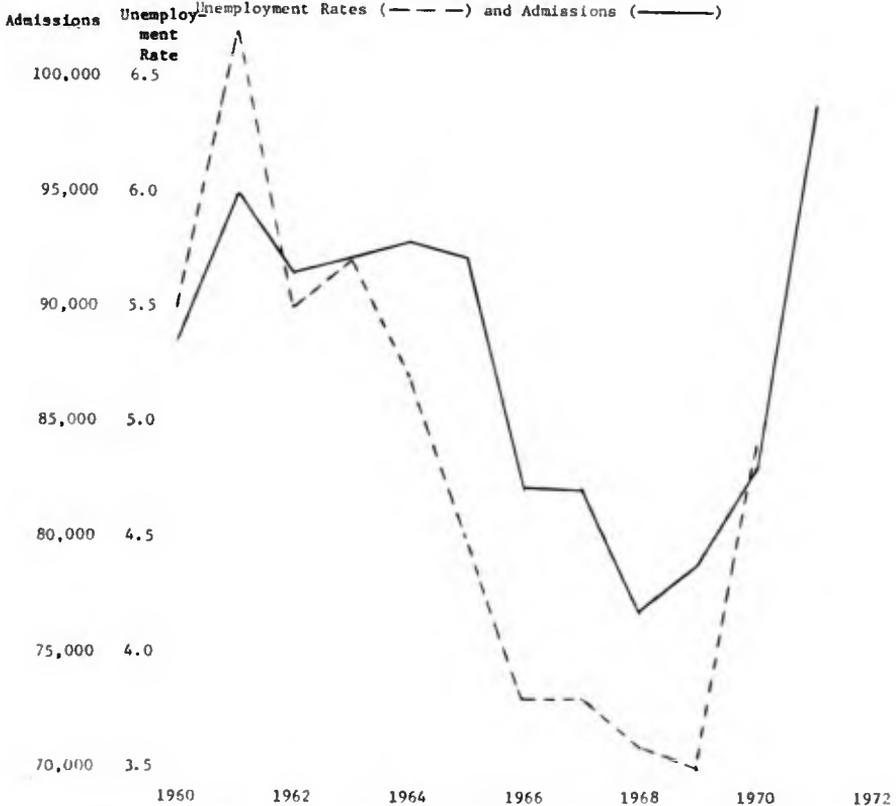
Calendar years:

1973 -----	4.9
1974 -----	5.2
1975 -----	5.4
1976 -----	4.9

Calendar years:

1977 -----	4.3
1978 -----	4.0
1979 -----	4.0
1980 -----	4.0

STATE PRISONS



²⁴ All correlations, according to the F-distribution probability statistic, are significant, and there is no more than a 0.1% probability that they are due entirely to chance.

²⁵ As projected on a quarterly basis by Data Resources, Inc. through 1975. After 1975, the unemployment rates are assumed to level off to 4.0.

STATE PRISONS
Admissions (— — —) and Discharges (-----)



REFORM OF THE FEDERAL CORRECTIONS SYSTEM

(Statement by the President Outlining a 13-Point Program, November 13, 1969)

Nineteen out of every twenty persons who are sent to prison eventually return to society. What happens to them while they are in confinement is a tremendously important question for our country.

Are they effectively rehabilitated? In some instances, the answer is yes. But in an appalling number of cases, our correctional institutions are failing.

According to recent studies, some 40 percent of those who are released from confinement later return to prison. Or, to put it another way, a sizable proportion of serious crimes are committed by persons who have already served a jail sentence. Eight out of every ten offenders sampled in a recent FBI study had at least one prior arrest and seven out of ten had a prior conviction. Of those charged with burglary, auto theft or armed robbery, between 60 and 70 percent had been arrested two or more times in the preceding 7 years.

For youthful offenders, the picture is even darker. The repeater rates are greater among persons under 20 than over and there is evidence that our institutions actually compound crime problems by bringing young delinquents into contact with experienced criminals.

A nation as resourceful as ours should not tolerate a record of such futility in its correctional institutions. Clearly, our rehabilitative programs require immediate and dramatic reform. As a first step in that reform, I have today issued a broad directive to the Attorney General, asking him to take action to improve our correctional efforts in 13 specific ways. He will report to me on his progress after 6 months and will at that time make such further recommendations as he believes are necessary.

The primary purpose of my directive is to improve the Federal corrections system. If this goal can be speedily accomplished, then the Federal system can

serve as a model for State and local reforms. The Federal Government will make every effort to help the States and localities make needed improvements, providing them with information, technical aid, and funds. We will also encourage greater cooperation and coordination between government and the private sector and among all the various units of government. I have specifically asked that our rehabilitative programs give greater attention to the special problems of distinct categories of offenders, such as juveniles, women, narcotics and alcoholic addicts, the mentally ill, and hard-core criminals. Closely supervised parole, work-release, and probationary projects should be accelerated, as should our basic research into rehabilitative methods.

THIRTEEN-POINT PROGRAM

The thirteen specific concerns of my directive are as follows:

1. To end the crisis-oriented, stopgap nature of most reform efforts, I have asked the Attorney General to develop a 10-year plan for reforming our correctional activities.
2. I have directed that explorations begin on the feasibility of pooling the limited resources of several governmental units in order to set up specialized treatment facilities. Several counties within a State or several States can often accomplish together what none of them could accomplish alone. Regional cooperation could be especially helpful in dealing with women offenders who are so few in number that their treatment in local institutions is often inefficient and inadequate, with hard-core criminals who require close supervision and particularly secure quarters, and with the mentally ill and narcotics and alcoholic addicts who need extensive medical treatment.
3. It is a tragic fact that juveniles comprise nearly a third of all offenders who are presently receiving correctional treatment and that persons under the age of 25 comprise half of that total. Yet our treatment facilities are least adequate for these same age groups. This is the reason that so many young offenders are thrown in with older criminals. I have asked the Attorney General to give special emphasis to programs for juvenile offenders—including group homes, modern diagnostic and treatment centers, and new probation mechanisms. This effort should be closely coordinated with the Department of Health, Education, and Welfare.
4. We must expedite the design and construction of the long-planned Federal psychiatric study and treatment facility for mentally disturbed and violent offenders. Since the late 1950's, this project has been delayed by a series of administrative problems. It should be delayed no longer, for our understanding of mentally disturbed offenders is distressingly inadequate.
5. Federal law, like many State laws, has never been adequately concerned with the problem of the mental incompetent who is accused of a crime, sentenced for a crime, or found innocent because of his mental condition. I do not believe for example, that present law adequately protects the civil rights of the accused mental incompetent. Nor does the disposition of such cases always give adequate protection to society. We need a comprehensive study of this matter, one which takes up both the constitutional and the medical problems involved. A new law should be drafted which could not only serve the Federal jurisdiction but which might aid State authorities who have similar problems.
6. A great number of existing city and county jails are antiquated and overcrowded. Correctional experts believe that the local jail concept should be replaced with a comprehensive, community-oriented facility which would bring together a variety of detention efforts, adult and juvenile court diagnostic services, treatment programs both for those who are incarcerated and for those on supervisory release, and the halfway house concept. Pilot projects along these lines have already been designed for New York City and Chicago. They should be given the highest priority and available funds should, wherever possible, be used to encourage other centers of this sort.
7. Ninety percent of convicted criminals and accused persons held in custody are housed in State or local institutions. The Federal Government should do all it can to help the States and localities carry this burden through programs of technical and financial aid. This Federal assistance should be especially directed toward the development of parole and probation programs and other alternatives to incarceration.
8. The lack of adequate public money for Federal and State prisons suggests that we should look to the private sector for supplementary assistance. Private

Industry can help rehabilitate criminals in many ways, such as retraining and hiring those who have served time. Voluntary agencies and professional organizations can also help those who are released from jail, tutoring them in new skills, helping them locate jobs, advising them as they readjust to civilian society, and cooperating with the courts in their probationary programs. A number of industries and volunteer organizations have already started successful programs of this sort; their example should be used to stimulate broader private efforts.

9. An adequate corrections system is only as effective as those who run it. Unfortunately too many rehabilitative programs are staffed with untrained personnel. I am therefore asking the Department of Justice to significantly expand its existing training programs for those who work in correctional institutions, both newcomers and experienced employees. The Justice Department's informal efforts to disseminate information should also be expanded.

10. I have asked the Attorney General to establish a task force which will make recommendations concerning a unified Federal corrections system. The various stages of rehabilitation are often poorly coordinated at present. The offender cannot proceed in an orderly manner from confinement to work-release to release under supervision and finally to an unsupervised release. The unification of the various programs involved could bring to this process the coordination and sense of progression it badly needs.

11. Our experience with so-called "half-way houses," institutions which offer a mediating experience between prison and complete return to society, has been most successful to this point. The per capita cost of operating half-way houses are not significantly higher than that of maintaining a man in prison, and the rate of recidivism among those who leave half-way houses is lower than among those who return directly to society—after confinement. I am asking the Attorney General to prepare legislation which would expand the half-way house program to include a greater number of convicted offenders, specifically, those on parole and probation who cannot participate in the program at present. The Department of Justice will also assist States and localities in establishing and expanding half-way house projects.

12. Many correctional programs are based more on tradition and assumption than on theories which have been scientifically tested. Few of our programs have been closely studied to see just what results they bring. Clearly the poor record of our rehabilitative efforts indicates that we are doing something wrong and that we need extended research both on existing programs and on suggested new methods. I have asked the Attorney General to marshal the combined resources of the Department of Justice in a major new research effort.

13. Correctional programs have proliferated in recent years with little or no effort at consolidation or coordination. Among the Federal agencies presently involved in correctional activities are the Bureau of Prisons, the Board of Parole, the Office of the Pardon Attorney, and the Law Enforcement Assistance Administration—all at the Department of Justice. Also involved are the Social and Rehabilitation Service, the Office of Education and the Public Health Service of the Department of Health, Education, and Welfare. The Manpower Administration of the Department of Labor and the Office of Economic Opportunity also play major roles.

If all of these efforts are to be effectively coordinated then some one authority must do the coordinating. I have asked the Attorney General to take on that assignment.

A WORD TO THE CONCERNED CITIZEN

Many millions of words have been written about the crime crisis in our country. Surely it is among the most severe domestic crises of our times. Its successful solution will require the best efforts of the government at every level and the full cooperation of our citizens in every community.

One of the areas where citizen cooperation is most needed is in the rehabilitation of the convicted criminal. Men and women who are released from prison must be given a fair opportunity to prove themselves as they return to society. We will not insure our domestic tranquility by keeping them at arm's length. If we turn our back on the ex-convict, then we should not be surprised if he again turns his back on us.

None of our vocational education programs, our work-release efforts, our half-way houses, or our probation and parole systems will succeed if the community to which an offender returns is unwilling to extend a new opportunity. Unions, civic groups, service clubs, labor organizations, churches, and employers in all fields can do a great deal to fight crime by extending a fair chance to those who want

to leave their criminal records behind them and become full and productive members of society.

NOTE: For the President's memorandum to the Attorney General on the 13-point program, see the following item.

REFORM OF THE FEDERAL CORRECTIONS SYSTEM

(Text of the President's Memorandum to Attorney General John P. Mitchell, November 13, 1969)

The American system for correcting and rehabilitating criminals presents a convincing case of failure. No realistic program to substantially reduce crime can ignore the appalling deficiencies of our prisons and rehabilitation efforts.

Today, at least 40 percent of all offenders released from custody eventually return to prison. The FBI Uniform Crime Reports for 1968 show that 82 percent of a sample of offenders arrested in 1967-1968 had been arrested previously. Seventy percent had a prior conviction and 46 percent had been imprisoned on a prior sentence.

The FBI report also shows that 67 percent of persons charged with burglary, 71 percent charged with auto theft and 60 percent charged with armed robbery, had been arrested at least twice in the preceding seven years. For those under 20 years of age the repeater rates are even higher.

We must remember that crime control does not end with conviction and imprisonment: 19 out of every 20 men who enter prison one day return to society.

The purpose of this directive is to make the Federal corrections system a prototype for the much needed overhaul of our generally archaic State and local corrections institutions. The Federal government should make every possible resource available to help states and local systems in similar reform efforts.

There has been some improvement in certain correctional programs in recent years, but it has not been enough. The problems of crime continue to outpace the solutions.

We must immediately begin to make greater progress in dealing with these problems. The processes for returning both criminal and juvenile offenders to a useful life in our society must be rapidly improved. It is most important that we improve not only the Federal system, however, but also the State and local systems which handle the majority of offenders.

Unsuccessful correctional programs must be abandoned. Those which have proved successful must be accelerated and expanded. And new, bold and imaginative programs must be developed and implemented if we are to succeed where past efforts have failed.

I am therefore requesting you to take the following actions:

1. Prepare a ten-year program for complete modernization of the physical plants and correctional programs in the Federal prison system, with emphasis on developing model facilities and programs which State and local systems can follow.

2. Initiate discussions with State and local officials to explore the advisability and feasibility of constructing regional institutions to house State, local and Federal female offenders.

3. Give particular priority in the Federal corrections effort to the special problems presented by special categories of offenders, such as juveniles, women, and the mentally disturbed, with special emphasis on the use of alternatives to traditional institutionalization. These efforts should be consistent with the objectives of the Juvenile Delinquency Prevention and Control Act of 1968.

4. Expedite the planning and construction of a new Federal psychiatric study and treatment facility for mentally disturbed and violent offenders, and assist in the development of appropriate regional and State facilities for this largely neglected class of offender.

5. Develop recommendations for revising the Federal laws relating to the handling of the mentally incompetent charged with a Federal crime, serving a sentence for a Federal crime, or found not guilty solely because of a mental condition.

6. Expedite the planning and construction of Federal demonstration centers for urban areas. Consideration should be given to community-oriented facilities which combine detention efforts, adult and juvenile court diagnostic services, treatment programs for those incarcerated and for those on supervisory release and the half-way house concept.

7. Expand the Federal program of technical assistance to State and local governments that need help in improving correctional facilities and the quality of parole, probation and other alternatives to imprisonment.

8. Work to provide new vocational, educational and employment opportunities for persons on probation, in prison, and on parole, seeking out the cooperation and resources of private industry, and developing a government-wide system of coordination of this effort.

9. Expand training programs for correctional personnel at the Federal, State and local level.

10. Conduct a study to determine if the Federal corrections system can be made more effective by consolidating existing programs in a Unified Corrections Service.

11. Expand the use of "Half-Way House" Community Treatment Centers to include offenders on probation and parole as well as inmates preparing to return to society. Assist in the development of similar programs at the State and local level.

12. Institute a program of research, experimentation and evaluation of correctional methods and practices so that successful techniques may be identified quickly and applied broadly in all correctional systems.

13. In cooperation with other Departments and agencies, coordinate all Federal corrections programs, particularly those programs which assist State and local corrections activities.

I am asking that you report to me on your progress in six months and that you make any recommendations you may have for further action at that time.

NOTE: For a statement by the President outlining his 13-point program, see the preceding item.

DEPARTMENT OF JUSTICE, BUREAU OF PRISONS—BUILDINGS AND FACILITIES BUDGET ESTIMATES, FISCAL YEAR 1976

PURPOSE STATEMENT

Funds for the construction of new institutions and facilities and improvement and rehabilitation of existing institutions and facilities are provided by the appropriation "Buildings and Facilities." Funds in this appropriation are available until expended.

1. *Construction.*—The Bureau of Prisons undertakes the planning, design, and construction of new institutions and facilities including site acquisition.

2. *Improving existing facilities.*—This activity includes the rehabilitation, renovation, and major or minor replacement projects at existing institutions. Representative projects are electric, heating, and water distribution systems, communications systems, road paving, roof repair, ventilating systems and repairs to inmate quarters. Inmate labor is used on some of these projects.

JUSTIFICATION OF PROPOSED LANGUAGE CHANGES

The 1976 budget estimates include proposed changes in appropriation language listed and explained below. New language is italicized and deleted matter is enclosed in brackets.

1976 Request—Buildings and Facilities

For planning, acquisition of sites and construction of new facilities and constructing, remodeling and equipping necessary buildings and facilities at existing penal and correctional institutions, *including all necessary expenses incident thereto, by contract or force account, [\$27,690,000]* \$35,760,000 to remain available until expended: *Provided*; That labor of United States prisoners may be used for work performed under this appropriation.

No substantive changes proposed.

Transition Request

For "Buildings and facilities" for the period July 1, 1976 through September 30, 1976, \$4,395,000 to remain available until expended.

BUREAU OF PRISONS—BUILDINGS AND FACILITIES, SUMMARY OF REQUIREMENTS

[Dollars in thousands]

Adjustments to base and built-in changes	Permanent positions	Amount
1975 as enacted.....	37	\$27,690
Rescission of enacted appropriation now pending.....		-1,750
1975 appropriation available.....	37	25,940
Decreases:		
Nonrecurring projects for planning and site acquisition.....		-800
Nonrecurring projects for new construction.....		-11,290
Nonrecurring projects for rehabilitation of utility systems and renovation of existing facilities.....		-8,850
Base for 1976.....	37	5,000

1976 estimates by budget activity	1975 appropriation available		Base for 1976		1976 estimates		Increase	
	Permanent positions	Amount	Permanent positions	Amount	Permanent positions	Amount	Permanent positions	Amount
1. Planning and site acquisition.....		\$800				\$1,500		\$1,500
2. New construction.....		11,290				21,700		21,700
3. Improving existing facilities.....	37	13,850	37	\$5,000	37	12,560		7,560
Total.....	37	25,940	37	5,000	37	35,760		30,760

ITEMS OF INCREASE BY BUDGET ACTIVITY

[Dollars in thousands]

Items of increase	Planning and site acquisition		New construction		Improving existing facilities		Total	
	Permanent positions	Amount	Permanent positions	Amount	Permanent positions	Amount	Permanent positions	Amount
1. Planning and site acquisition for a South Central adult maximum facility.....		\$1,500						\$1,500
2. Construction of a Northeast adult facility.....				\$21,700				21,700
3. Rehabilitation of utilities systems.....						\$855		855
4. Rehabilitation of existing structures.....						6,705		6,705
Total.....		1,500		21,700		7,560		30,760

Priority and Institution	Type of project	Amount
1. Tallahassee	Renovate telephone system	\$130,000
2. Terre Haute	Rehabilitate control center	200,000
3. Petersburg	Construct lift station and sewer line	250,000
4. Alderson	Renovate water treatment plant	125,000
5. Sandstone	Rehabilitate secondary electric system	150,000
Total		855,000

6,705

(b) Rehabilitation of existing structures.....
 An amount of \$6,705,000 is necessary to continue the program for rehabilitation of existing structures. The age of institutions requires a program of replacement and major rehabilitation of many obsolete or unrepairable structures and plant facilities. Additionally, projects are required to respond to the change in population and programs and to allow increased capacity at institutions where current capacity is minimal.

Priority and Institution	Type of project	Amount
1. La Tuna	Minimum custody camp	\$825,000
2. Ashland	Replace roofs	270,000
3. Danbury	Renovate housing	200,000
4. Leavenworth	Activities building	400,000
5. Ashland	Air-condition education building	160,000
6. Pleasanton	New housing unit	2,860,000
7. Tallahassee	Cubicles for housing units	100,000
8. Lewisburg	Replace roofs	125,000
9. Terre Haute	Camp activities building	200,000
10. Fort Worth	Renovate food service	200,000
11. Englewood	do	400,000
12. El Reno	do	150,000
13. Springfield	Replace roofs	140,000
14. La Tuna/TexasKana	do	180,000
15. Terminal Island	Renovate food service	150,000
16. Atlanta	Renovate drug abuse program facility	145,000
17. Tallahassee	Renovate kitchen	250,000
Total		6,705,000

FINANCIAL ANALYSIS—PROGRAM INCREASES

[Dollars in thousands]

Item	Planning and site acquisition		New construction		Improving existing facilities		Total	
	Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount
Supplies and materials.....						\$855		\$855
Land and structures.....		\$1,500		\$21,700		6,705		29,905
Total increases, 1976.....		1,500		21,700		7,560		30,760

DETAIL OF PERMANENT POSITIONS BY CATEGORY—FISCAL YEARS 1974-76

Category	1974 authorized	1975 authorized	1976	
			Increase	Total
Total appropriated positions.....	37	37		37
Architects.....	9	9		9
Engineers and technicians.....	4	4		4
Construction project foremen.....	20	20		20
Clerical.....	4	4		4
Total.....	37	37		37
Washington.....	17	12		12
Field.....	20	25		25
Total.....	37	37		37

WORKLOAD DATA
[Dollar amounts in thousands]

Item	Actual				Estimated			
	1972	1973	1974	1975	1976	1977	1978	1979
	Number ¹	Amount	Number ¹	Amount	Number ¹	Amount	Number ¹	Amount
Planning of new facilities and site acquisition...	3	\$72	3	\$403	12	\$2,365	10	\$2,610
Construction of new facilities.....	5	15,143	6	34,382	11	17,435	7	35,110
Major plant renovation or rehabilitation projects.....	20	1,417	36	3,271	55	3,527	71	9,370
Boiler plant rehabilitation or replacement projects.....	5	98	7	578	6	759	4	390
Electric systems rehabilitation projects.....	5	535	7	662	9	1,833	5	1,762
Air and water pollution control projects.....	24	432	2	1,280	32	891	25	0
Other utilities systems replacement or rehabilitation projects.....	9	605	16	1,155	15	836	13	1,658
Minor repairs and improvement projects.....		3,237		1,712		3,281		6,200
Total obligations.....		21,539		43,190		21,549		39,300
								57,100

¹ Denote number of active projects and may carry over 2 or more years.

STATUS OF BASE PROGRAM

The Bureau of Prisons maintains 31 major institutions, camps and detention centers. The replacement value of the physical plant is in excess of \$350 million. The newest institution in the Federal Prison System is the Federal Youth Center, Pleasanton, California which was dedicated on July 19, 1974; the oldest is the McNeil Island Penitentiary established as a territorial jail in 1865. With exception of the Robert F. Kennedy Youth Center (1968) and the penitentiaries at Leavenworth (1895), Atlanta (1902) and Marion (1963), the balance of the major institutions were designed and built and opened during the 1920's, the 1930's or the early 1940's. With the addition of the Pleasanton Youth Center, the number of inmates that can be confined under acceptable conditions in Federal penal facilities is about 20,500. The population of June 30, 1974 was 23,691.

NEW FACILITIES CONSTRUCTION

Fiscal year 1974 marked the continuation of major efforts to make the Federal Correctional System a prototype for State and local correctional development. One of the central features of that effort is the development of modern facilities which will provide a wide range of alternatives for custody and treatment. Funds have been authorized through fiscal year 1974 for the construction of a center for correctional research; metropolitan correctional centers in New York, Chicago, San Diego, San Francisco and Philadelphia; the Miami Youth Center and a western youth complex. Through fiscal year 1974, site and planning funds have been authorized for a northeast youth complex, a southeast youth complex and a south central youth facility.

New York Metropolitan Correctional Center

This 450 bed facility is being constructed in conjunction with a federal office building on a site acquired from New York City at Foley Square. Construction has progressed to the point that a March, 1975 completion date is projected.

Chicago Metropolitan Correctional Center

The General Services Administration acquired this site in March of 1971. This 400 bed correctional center is under construction sharing a federal parking facility site. Construction progress has been slowed due to materials shortages and strikes, however the structure is in place to the twenty-fourth level and completion is projected for June 1975.

San Diego Metropolitan Correctional Center

This metropolitan correctional center of 500 beds is located near the new Federal Courthouse. Center was opened November, 1974.

San Francisco Metropolitan Correctional Center

Planning on this project was deferred following strong local opposition even though the city had designated the site to be developed. Reprogramming authority will be requested to provide funds for the completion of the Butner FCCR and to partially fund construction of the South Central Youth Center at Bastrop, Texas.

Philadelphia Metropolitan Correctional Center

Population studies indicate that this type of institution no longer remains the appropriate response to the area's correctional facility needs. In the northeastern United States, site and planning funds have been appropriated for an adult facility and a complex of three youth centers. Authority will be requested to reprogram the Philadelphia MCC funds to re-activate the Camarillo Youth Center project and in conjunction with the to be requested reprogrammed funds from the San Francisco MCC, to allow construction of the South Central Youth Center at Bastrop, Texas.

West Coast Youth Complex

Pleasanton—This 250 bed youth center was dedicated July 19, 1974 and is in operation.

Camarillo—Construction of this 400 bed youth center was deferred pending outcome of further study and review of availability of state capacity. Authority was granted to reprogram available funds to construct a 250 bed youth center in Miami. The continued severe overcrowding in the west necessitates re-activation of the project. The property is currently being transferred to the Bureau by

GSA. An Environmental Impact Statement draft has been started. Authority to reprogram existing funds for additional planning will be requested.

San Diego—Design is complete on this 250 bed youth center. Construction was delayed until completion of an Environmental Impact Study directed by the court. Court injunction lifted, and construction activity will resume in March, 1975.

Southeast Youth Complex

Miami—The housing units of this 246 bed youth center are under construction. Bids for the construction of the remainder of the buildings were received and construction is underway.

Memphis—A site has been acquired and the design for this 350 bed youth center is in progress.

Georgia/Alabama—Efforts are continuing to identify a suitable site.

Northeast Youth Complex

Site and planning funds were placed in reserve during FY 1973 for use at a later date. Intensive efforts to identify potential sites continue. The Bureau has acquired a portion of the Ft. Dix military reservation. However, significant local opposition exists. Design will move forward if local support can be developed. Low public receptivity in the northeast has seriously hampered the acquisition of suitable sites.

South Central Youth Center

Authority has been obtained to reprogram site and planning funds appropriated for a Central Women's facility. A site has been selected at Bastrop, Texas on government property. The Bureau anticipates receiving title to this property in the near future. GSA is preparing an Environmental Impact Statement. Authority to reprogram existing funds will be requested for construction of the center.

Butner Federal Center for Correctional Research

The construction contract was awarded in June 1972 for this 388 bed facility located near the research triangle at Butner, North Carolina. The contract was terminated for default in August 1974 due to inadequate contractor performance which delayed the completion of this vitally needed Center for Correctional Research. Negotiations are underway with another contractor to complete this project.

IMPROVING EXISTING INSTITUTIONS

The construction program has been designed to meet two objectives: (1) to maintain existing structures and plant facilities and (2) to remodel and renovate structures and where necessary build new structures as required for a changing population and more intensive treatment programs. Due to the age of most of the institutions, a continuing program to replace or undertake major rehabilitation of old, obsolete and unrepairable plant service facilities has received major emphasis. As of June 30, 1974, there were 85 active rehabilitation and renovation projects with obligations of \$14,987,000. (There were 5 additional active rehabilitation and renovation projects with obligations of \$324,000 which are being funded by HEW.) During FY 1974, 4 completed projects with expenditures of \$764,000 were closed-out. As of June 30, 1974 there were 25 active pollution projects with obligations of \$721,500. During FY 1974, 7 completed pollution projects with expenditures of \$101,000 were closed-out.

REPAIR AND IMPROVEMENTS

The Bureau has a continuing program to make minor repairs and improvements to existing structures and plants. Representative projects are repairs and improvements to systems for heating, ventilating, electrical distribution, water and sewage; repairs to inmate quarters, roofs, floors, walks and roads and institution residences. No single project in this category exceeds \$100,000 in cost. Funds are allocated project by project on a priority basis. As of June 30, 1974, there were 317 active projects in this area with obligations of \$3,929,000. (There were 2 additional active R&I projects with obligations of \$6,000 which are being funded by HEW.) During FY 1974, 126 completed projects with expenditures of \$1,896,800, or an average cost of \$15,100 each, were closed-out.

SUMMARY OF REQUIREMENTS BY OBJECT CLASS—APPROPRIATION: BUILDINGS AND FACILITIES, ALLOCATION TO GENERAL SERVICES ADMINISTRATION

[Dollar amounts in thousands]

Object class	1975 estimate			1976 estimate			Increase or decrease		
	Positions	Man-years	Amount	Positions	Man-years	Amount	Positions	Man-years	Amount
Lands end structures			\$17,965			\$36,985			\$19,020
Total obligations, GSA allocation			17,965			36,985			19,020
Total obligations, buildings and facilities			39,300			57,100			17,800
Unobligated balance available, start of year			-52,016			-38,656			
Unobligated balance available, end of year			38,656			17,316			
Budget authority (appropriation)			25,940			35,760			

DETAIL OF PERSONNEL COMPENSATION—APPROPRIATION: BUILDINGS AND FACILITIES

[Dollar amounts in thousands]

Grades end salary ranges	1975 estimate		1976 estimate		Increase or decrease	
	Positions and man-years	Amount	Positions and man-years	Amount	Positions and man-years	Amount
GS-15, \$29,818 to \$36,000	1		1			
GS-14, \$25,581 to \$33,258	4		4			
GS-13, \$21,816 to \$28,359	1		1			
GS-12, \$18,463 to \$23,998	3		3			
GS-11, \$15,481 to \$20,125	9		9			
GS-10, \$14,117 to \$18,356	1		1			
GS-5, \$8,500 to \$11,047	2		2			
Ungraded positions	16		16			
Total, appropriated positions	37	\$611	37	\$616		\$5
Pay above stated annual rate		2		5		3
Lapses	-5	-80	-5	-83		-3
Net savings due to lower pay scales for part of year		-2				+2
Net permanent	32	531	32	538		7
Other personnel compensation:						
Overtime		3		4		1
Holiday		1		1		
Special personal services payments		4		4		
Total, man-years personnel compensation	32	539	32	547		8

BUILDINGS AND FACILITIES—BUDGET REQUEST FOR JULY 1 TO SEPT. 30, 1976

[Appropriation estimate fiscal year 1976, \$35,760,000; budget request for the period July 1 to Sept. 30, 1976, \$4,395,000]

	1976 budget request (thousands)	July 1 to Sept. 30, 1976 request (thousands)
Base for 1976	\$5,000	\$1,250
Program increases:		
Planning and site acquisition for a south-central adult maximum security facility	1,500	
Construction of a northeast adult facility	21,700	
Rehabilitation of utilities systems	855	356
Rehabilitation of existing structures	6,705	2,789
Total program increases	30,760	3,145
1976 estimate end transition period estimate	35,760	4,395

Note: The budget request for the period July 1 to Sept. 30, 1976 provides for continuation of the program proposed for fiscal year 1976. The amount requested for the transition period will permit the Bureau to upgrade existing facilities, provide day to day maintenance as required, and finance the Oxford lease/purchase amount to be paid to the State of Wisconsin.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS

Reform of the Federal Corrections System

STATEMENT BY THE PRESIDENT OUTLINING A 13-POINT PROGRAM. NOVEMBER 13, 1969

Nineteen out of every twenty persons who are sent to prison eventually return to society. What happens to them while they are in confinement is a tremendously important question for our country.

Are they effectively rehabilitated? In some instances, the answer is yes. But in an appalling number of cases, our correctional institutions are failing.

According to recent studies, some 40 percent of those who are released from confinement later return to prison. Or, to put it another way, a sizable proportion of serious crimes are committed by persons who have already served a jail sentence. Eight out of every ten offenders sampled in a recent FBI study had at least one prior arrest and seven out of ten had a prior conviction. Of those charged with burglary, auto theft or armed robbery, between 60 and 70 percent had been arrested two or more times in the preceding 7 years.

For youthful offenders, the picture is even darker. The repeater rates are greater among persons under 20 than over and there is evidence that our institutions actually compound crime problems by bringing young delinquents into contact with experienced criminals.

A nation as resourceful as ours should not tolerate a record of such futility in its correctional institutions. Clearly, our rehabilitative programs require immediate and dramatic reform. As a first step in that reform, I have today issued a broad directive to the Attorney General, asking him to take action to improve our correctional efforts in 13 specific ways. He will report to me on his progress after 6 months and will at that time make such further recommendations as he believes are necessary.

The primary purpose of my directive is to improve the Federal corrections system. If this goal can be speedily accomplished, then the Federal system can serve as a model for State and local reforms. The Federal Government will make every effort to help the States and localities make needed improvements, providing them with information, technical aid, and funds. We will also encourage greater cooperation and coordination between government and the private sector and among all the various units of government. I have specifically asked that our rehabilitative programs give greater attention to the special problems of distinct categories of offenders, such as juveniles, women, narcotics and alcoholic addicts, the mentally ill, and hard-core criminals. Closely supervised parole, work-release, and probationary projects should be accelerated, as should our basic research into rehabilitative methods.

Thirteen-point program

The thirteen specific concerns of my directive are as follows:

1. To end the crisis-oriented, stopgap nature of most reform efforts, I have asked the Attorney General to develop a 10-year plan for reforming our correctional activities.

2. I have directed that explorations begin on the feasibility of pooling the limited resources of several governmental units in order to set up specialized treatment facilities. Several counties within a State or several States can often accomplish together what none of them could accomplish alone. Regional cooperation could be especially helpful in dealing with women offenders who are so few in number that their treatment in local institutions is often inefficient and inadequate, with hard-core criminals who require close supervision and particularly secure quarters, and with the mentally ill and narcotics and alcoholic addicts who need extensive medical treatment.

3. It is a tragic fact that juveniles comprise nearly a third of all offenders who are presently receiving correctional treatment and that persons under the age of 25 comprise half of that total. Yet our treatment facilities are least adequate for these same age groups. This is the reason that so many young offenders are thrown in with older criminals. I have asked the Attorney General to give special emphasis to programs for juvenile offenders—including group homes, modern diagnostic and treatment centers, and new probation mechanisms. This effort should be closely coordinated with the Department of Health, Education, and Welfare.

4. We must expedite the design and construction of the long-planned Federal psychiatric study and treatment facility for mentally disturbed and violent

offenders. Since the late 1950's, this project has been delayed by a series of administrative problems. It should be delayed no longer, for our understanding of mentally disturbed offenders is distressingly inadequate.

5. Federal law, like many State laws, has never been adequately concerned with the problem of the mental incompetent who is accused of a crime, sentenced for a crime, or found innocent because of his mental condition. I do not believe, for example, that present law adequately protects the civil rights of the accused mental incompetent. Nor does the disposition of such cases always give adequate protection to society. We need a comprehensive study of this matter, one which takes up both the constitutional and the medical problems involved. A new law should be drafted which could not only serve the Federal jurisdiction but which might aid State authorities who have similar problems.

6. A great number of existing city and county jails are antiquated and overcrowded. Correctional experts believe that the local jail concept should be replaced with a comprehensive, community-oriented facility which would bring together a variety of detention efforts, adult and juvenile court diagnostic services, treatment programs both for those who are incarcerated and for those on supervisory release, and the halfway house concept. Pilot projects along these lines have already been designed for New York City and Chicago. They should be given the highest priority and available funds should, wherever possible, be used to encourage other centers of this sort.

7. Ninety percent of convicted criminals and accused persons held in custody are housed in State or local institutions. The Federal Government should do all it can to help the States and localities carry this burden through programs of technical and financial aid. This Federal assistance should be especially directed toward the development of parole and probation programs and other alternatives to incarceration.

8. The lack of adequate public money for Federal and State prisons suggests that we should look to the private sector for supplementary assistance. Private industry can help rehabilitate criminals in many ways, such as retraining and hiring those who have served time. Voluntary agencies and professional organizations can also help those who are released from jail, tutoring them in new skills, helping them locate jobs, advising them as they readjust to civilian society, and cooperating with the courts in their probationary programs. A number of industries and volunteer organizations have already started successful programs of this sort; their example should be used to stimulate broader private efforts.

9. An adequate corrections system is only as effective as those who run it. Unfortunately too many rehabilitative programs are staffed with untrained personnel. I am therefore asking the Department of Justice to significantly expand its existing training programs for those who work in correctional institutions, both newcomers and experienced employees. The Justice Department's informal efforts to disseminate information should also be expanded.

10. I have asked the Attorney General to establish a task force which will make recommendations concerning a unified Federal corrections system. The various stages of rehabilitation are often poorly coordinated at present. The offender cannot proceed in an orderly manner from confinement to work-release to release under supervision and finally to an unsupervised release. The unification of the various programs involved could bring to this process the coordination and sense of progression it badly needs.

11. Our experience with so-called "half-way houses," institutions which offer a mediating experience between prison and complete return to society, has been most successful to this point. The per capita cost of operating half-way houses are not significantly higher than that of maintaining a man in prison, and the rate of recidivism among those who leave half-way houses is lower than among those who return directly to society—after confinement. I am asking the Attorney General to prepare legislation which would expand the half-way house program to include a greater number of convicted offenders, specifically, those on parole and probation who cannot participate in the program at present. The Department of Justice will also assist States and localities in establishing and expanding half-way house projects.

12. Many correctional programs are based more on tradition and assumption than on theories which have been scientifically tested. Few of our programs have been closely studied to see just what results they bring. Clearly the poor record of our rehabilitative efforts indicates that we are doing something wrong and that we need extended research both on existing programs and on suggested new

methods. I have asked the Attorney General to marshal the combined resources of the Department of Justice in a major new research effort.

13. Correctional programs have proliferated in recent years with little or no effort at consolidation or coordination. Among the Federal agencies presently involved in correctional activities are the Bureau of Prisons, the Board of Parole, the Office of the Pardon Attorney, and the Law Enforcement Assistance Administration—all at the Department of Justice. Also involved are the Social and Rehabilitation Service, the Office of Education and the Public Health Service of the Department of Health, Education, and Welfare. The Manpower Administration of the Department of Labor and the Office of Economic Opportunity also play major roles.

If all of these efforts are to be effectively coordinated then some one authority must do the coordinating. I have asked the Attorney General to take on that assignment.

A word to the concerned citizen

Many millions of words have been written about the crime crisis in our country. Surely it is among the most severe domestic crises of our times. Its successful solution will require the best efforts of the government at every level and the full cooperation of our citizens in every community.

One of the areas where citizen cooperation is most needed is in the rehabilitation of the convicted criminal. Men and women who are released from prison must be given a fair opportunity to prove themselves as they return to society. We will not insure our domestic tranquility by keeping them at arm's length. If we turn our back on the ex-convict, then we should not be surprised if he again turns his back on us.

None of our vocational education programs, our work-release efforts, our half-way houses, or our probation and parole systems will succeed if the community to which an offender returns is unwilling to extend a new opportunity. Unions, civic groups, service clubs, labor organizations, churches, and employers in all fields can do a great deal to fight crime by extending a fair chance to those who want to leave their criminal records behind them and become full and productive members of society.

NOTE.—For the President's memorandum to the Attorney General on the 13-point program, see the following item.

TEXT OF THE PRESIDENT'S MEMORANDUM TO ATTORNEY GENERAL JOHN P. MITCHELL, NOVEMBER 13, 1969

The American system for correcting and rehabilitating criminals presents a convincing case of failure. No realistic program to substantially reduce crime can ignore the appalling deficiencies of our prisons and rehabilitation efforts.

Today, at least 40 percent of all offenders released from custody eventually return to prison. The FBI Uniform Crime Reports for 1968 show that 82 percent of a sample of offenders arrested in 1967-1968 had been arrested previously. Seventy percent had a prior conviction and 46 percent had been imprisoned on a prior sentence.

The FBI report also shows that 67 percent of persons charged with burglary, 71 percent charged with auto theft and 60 percent charged with armed robbery, had been arrested at least twice in the preceding seven years. For those under 20 years of age the repeater rates are even higher.

We must remember that crime control does not end with conviction and imprisonment: 19 out of every 20 men who enter prison one day return to society.

The purpose of this directive is to make the Federal corrections system a prototype for the much needed overhaul of our generally archaic State and local corrections institutions. The Federal government should make every possible resource available to help states and local systems in similar reform efforts.

There has been some improvement in certain correctional programs in recent years, but it has not been enough. The problems of crime continue to outpace the solutions.

We must immediately begin to make greater progress in dealing with these problems. The processes for returning both criminal and juvenile offenders to a useful life in our society must be rapidly improved. It is most important that we improve not only the Federal system, however, but also the State and local systems which handle the majority of offenders.

Unsuccessful correctional programs must be abandoned. Those which have proved successful must be accelerated and expanded. And new, bold and imagina-

tive programs must be developed and implemented if we are to succeed where past efforts have failed.

I am therefore requesting you to take the following actions:

1. Prepare a ten-year program for complete modernization of the physical plants and correctional programs in the Federal prison system, with emphasis on developing model facilities and programs which State and local systems can follow.

2. Initiate discussions with State and local officials to explore the advisability and feasibility of constructing regional institutions to house State, local and Federal female offenders.

3. Give particular priority in the Federal corrections effort to the special problems presented by special categories of offenders, such as juveniles, women, and the mentally disturbed, with special emphasis on the use of alternatives to traditional institutionalization. These efforts should be consistent with the objectives of the Juvenile Delinquency Prevention and Control Act of 1968.

4. Expedite the planning and construction of a new Federal psychiatric study and treatment facility for mentally disturbed and violent offenders, and assist in the development of appropriate regional and State facilities for this largely neglected class of offender.

5. Develop recommendations for revising the Federal laws relating to the handling of the mentally incompetent charged with a Federal crime, serving a sentence for a Federal crime, or found not guilty solely because of a mental condition.

6. Expedite the planning and construction of Federal demonstration centers for urban areas. Consideration should be given to community-oriented facilities which combine detention efforts, adult and juvenile court diagnostic services, treatment programs for those incarcerated and for those on supervisory release and the half-way house concept.

7. Expand the Federal program of technical assistance to State and local governments that need help in improving correctional facilities and the quality of parole, probation and other alternatives to imprisonment.

8. Work to provide new vocational, educational and employment opportunities for persons on probation, in prison, and on parole, seeking out the cooperation and resources of private industry, and developing a government-wide system of coordination of this effort.

9. Expand training programs for correctional personnel at the Federal, State and local level.

10. Conduct a study to determine if the Federal corrections system can be made more effective by consolidating existing programs in a Unified Corrections Service.

11. Expand the use of "Half-way House" Community Treatment Centers to include offenders on probation and parole as well as inmates preparing to return to society. Assist in the development of similar programs at the State and local level.

12. Institute a program of research, experimentation and evaluation of correctional methods and practices so that successful techniques may be identified quickly and applied broadly in all correctional systems.

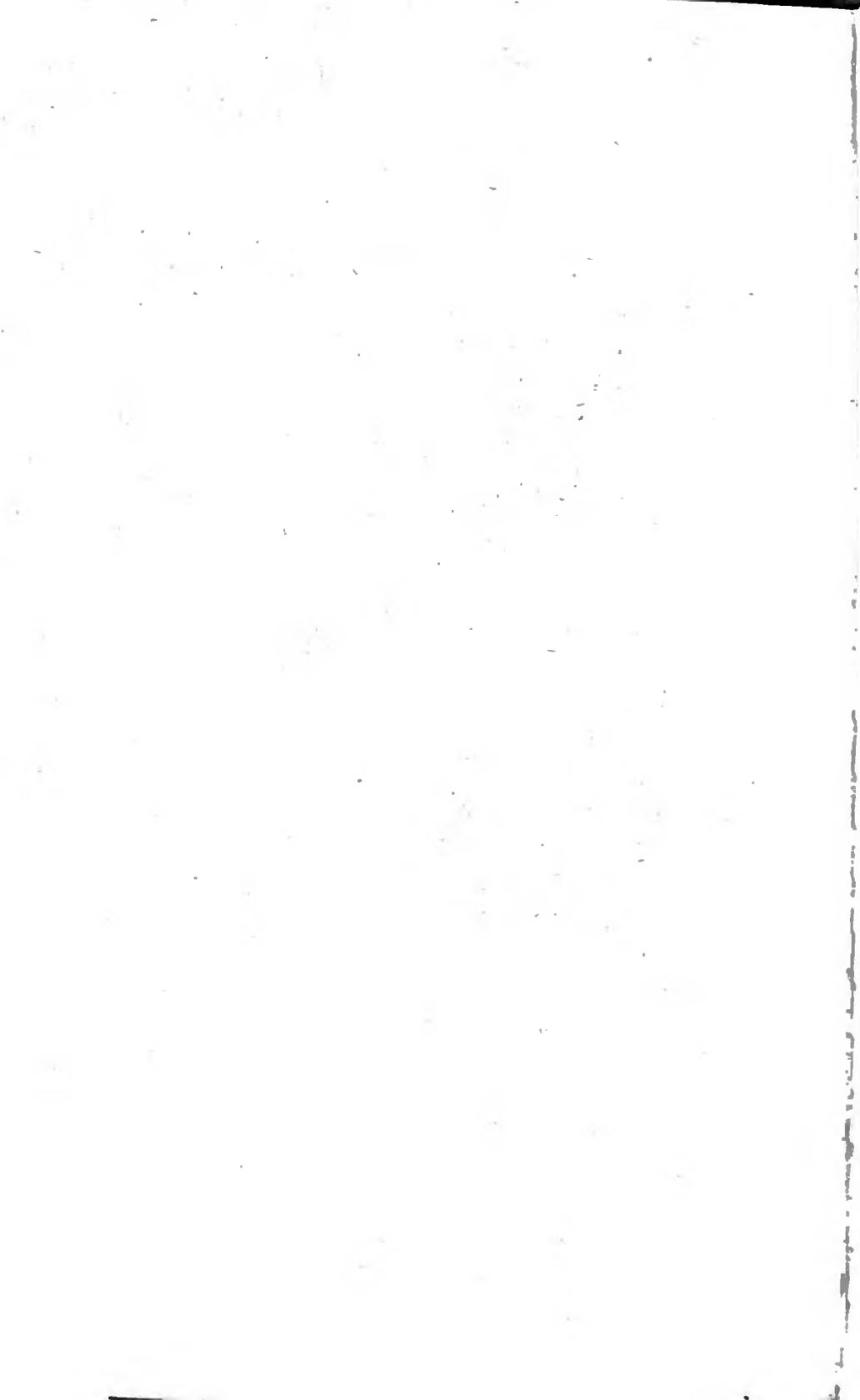
13. In cooperation with other Departments and agencies, coordinate all Federal corrections programs, particularly those programs which assist State and local corrections activities.

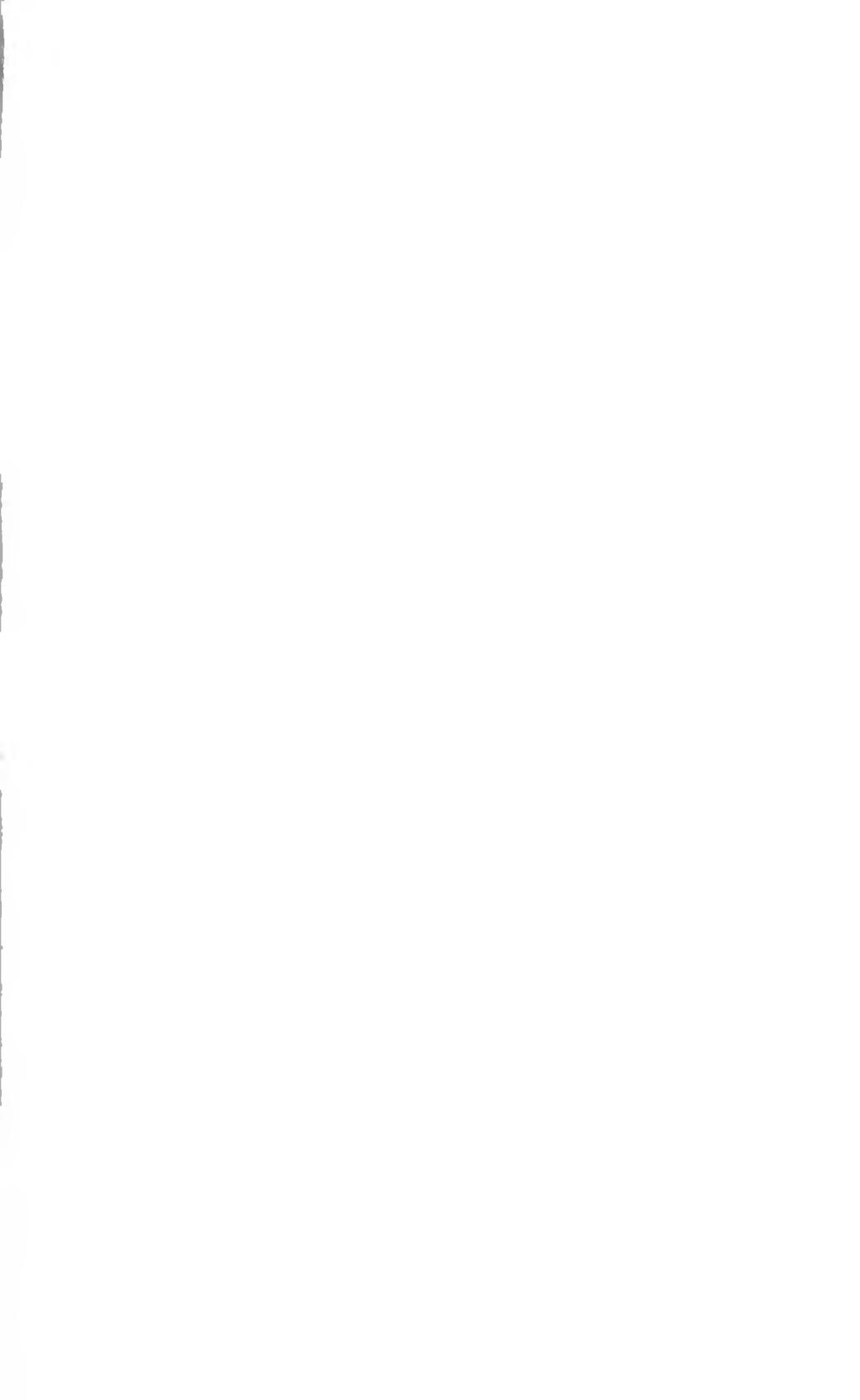
I am asking that you report to me on your progress in six months and that you make any recommendations you may have for further action at that time.

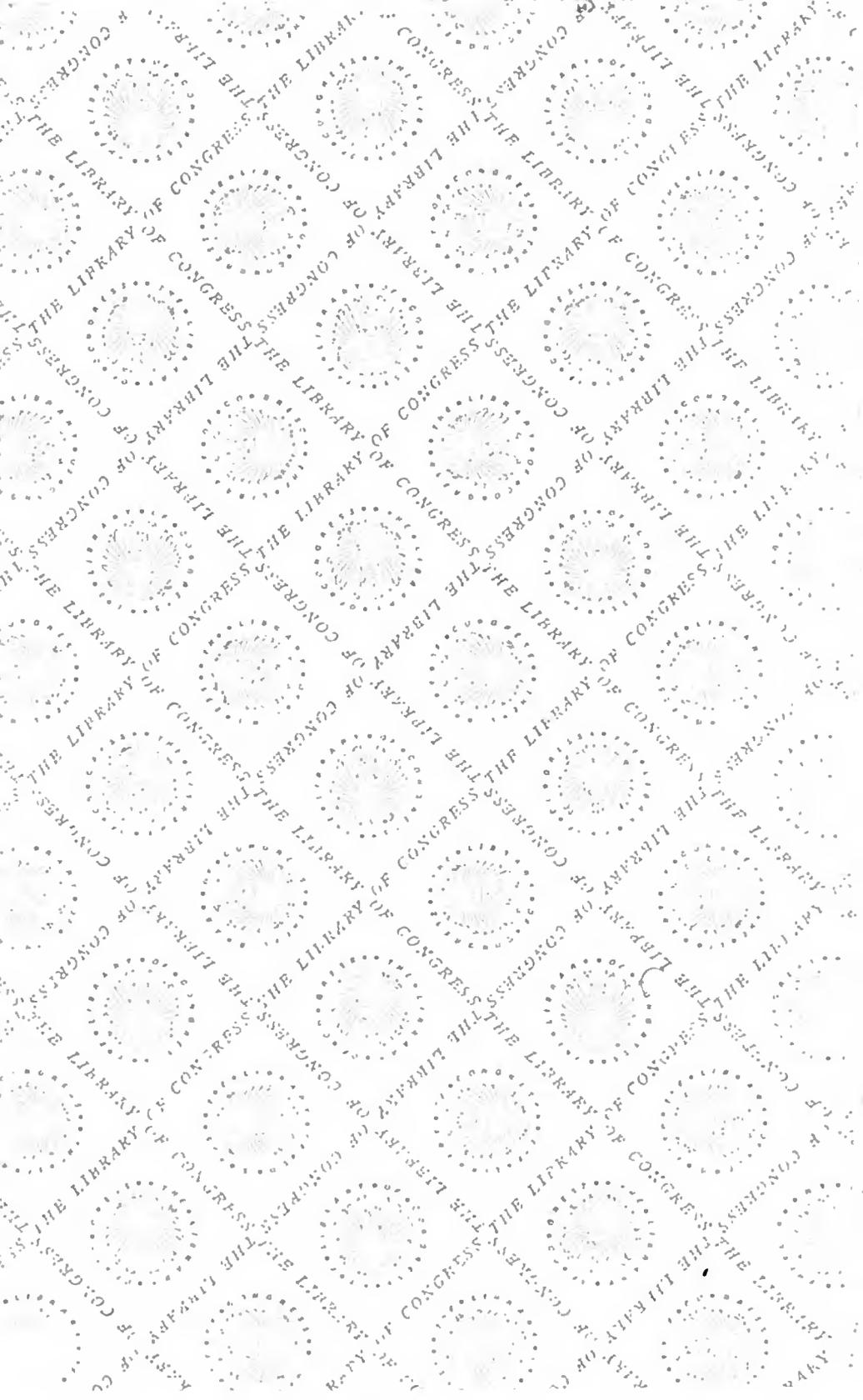
NOTE.—For a statement by the President outlining his 13-point program, see the preceding item.











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