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News of the Future

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Carving Out New Territory for American Corrections

THE CORRECTIONAL system in the United States is in the midst of a period of turmoil that portends the possibility of a breakdown in the entire criminal justice system. Prison populations are at an all-time, never-foreseen high¹—crowding is stretching staff and other resources in virtually every jurisdiction. Probation and parole caseloads are similarly high—far too high to allow meaningful supervision for all but a few offenders assigned to high-cost, intensive supervision programs. Private correctional firms—some more successful than others—work to plug the gaps in programs and services and, in some cases, seek to assume operation of major institutions or entire correctional systems; their efforts are successful in some jurisdictions and unsuccessful in others. Government at every level is stretching resources to the limit in order to accommodate current inmate populations and plan for continued growth, often through construction programs that preempt expansion of other vital services to free citizens.

The numbers reflecting overall criminal justice activity in the United States are sobering. The U.S. Advisory Commission on Intergovernmental Relations reports that criminal justice expenditures at all levels of government now exceed \$70 billion a year.² The Commission related that between 1973 and 1990, the number of prison inmates in the U.S. rose 238 percent, and the incarceration rate rose 186 percent. Between September 1981 and May 1993, the inmate population of the Federal Bureau of Prisons almost tripled, from just over 26,000 to more than 80,000.³

Virtually every state has experienced similarly paced growth and resultant crowding, despite an absolutely unprecedented, nationwide prison expansion program. State government expenditures for prison construction increased 612 percent in actual dollars between 1979 and 1990, and during that same period, spending to operate correctional institutions increased 328 percent.⁴

The major reasons for this situation are not particularly hard to discern. A decade of enhanced street enforcement activity has brought tens of thousands of new criminal cases into the courts each year. Additional resources in the judicial and prosecutorial sectors have matched the enforcement pace, quickening the flow of inmates to prison. But the most significant

contributing factor to prison crowding at the Federal level, and in many states, is changes in sentence structure.

Mandatory sentences, coupled with the abolition of parole and reduction of potential good time credits in many jurisdictions, have lengthened time served on virtually all sentences imposed. Comparing Federal inmates sentenced in 1985 under "old law" sentencing provisions with inmates sentenced in 1992 under the 1984 Comprehensive Crime Control Act, the length of time served has significantly increased in many offense categories. The average expected length of stay for Federal drug offenses has increased by a factor of almost 3—from 23 months to 68 months.⁵ But longer terms served are the norm for other categories of cases as well. For example, the average expected length of stay for Federal robbery terms has increased from 45 months to 89 months and that for firearms offenses from 14 months to almost 47 months.⁶

This combination of circumstances presumably represents government's current perception of what the American public wants. But it's hard to determine what the average citizen really does want, once you move beyond the basics of keeping communities safe and removing drug dealers from the streets. Indeed, politicians seem to respond only in those dimensions, fearful of being branded forever as "soft on crime" if they don't support a seemingly unending stream of new, harsher criminal laws. The frantic race to show who is the toughest on crime has resulted in a loss of perspective about where we are going as a society in crime control and prevention.

We have been able to see that our citizens want criminals—particularly those convicted of serious crimes—to incur meaningful punishment for their misdeeds. But at the same time, many members of the public don't think prisons do enough to change people while they're incarcerated. Indeed, while the desire for visible retribution is a very real thread that runs through a great deal of the public discourse about crime, the public also seems to want conditions of prison confinement which are humane and which instill in inmates a desire to improve themselves and remain crime-free. Of the many prison programs operating around the country today, only correctional boot camps appear to satisfactorily address this duality.

Of course, corrections may have inadvertently fed this confusion by over-subscribing to the 1970's "nothing works" movement, which was voiced so promi-

149589

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nently by Robert Martinson. By tacitly accepting that proposition and allowing it to go unchallenged in an effective way in the public arena, we now find ourselves struggling to redefine corrections' mission. Yes, we want to provide programs, and indeed many good programs exist in prisons throughout the Nation. But public misperceptions about our mission—combined with incessant media accounts of crowding, idleness, prison drug abuse, and gang activity—have led many to believe they are receiving a poor return on their investment.

This concept was reinforced in a July 11, 1993, *Washington Post* article by a Maryland state prisoner, Larry Bratt, who describes himself as an 11-year observer of the prison scene from the inside. This article correctly identifies a number of the formative elements of the criminal careers of many (although by no means all) of today's inmates. Mr. Bratt points out the value of programs and paucity of interest in them by the average inmate. Sad to say, it is all too acceptable in his institution and many others around the U.S. for inmates to stagnate in front of TV's and in other mindless activity. Most thoughtful correctional administrators would agree with the proposition that using TV as a management tool is a far less acceptable course of action than motivating inmates to participate in meaningful self-improvement programs.

However, as important as considerations like that may be to correctional administrators and even to participants in the correctional process like Mr. Bratt, a far more conspicuous public concern today is the cost of imprisonment. Given the prison population trends of the last decade and the direction of current projections, people are beginning to understand that something has to give. While the public wants criminals to be dealt with affirmatively and unequivocally, government cannot continue to underwrite growth of this magnitude in the correctional sector without either cutting other vital services beyond acceptable levels or raising taxes at a time when that option is equally unpopular.

Those who are standing back from the fray and are trying to divine a solution are understandably perplexed because there seem to be no obvious answers. In our political system, the major players respond to constituencies and interest groups, but corrections has no clearly recognized constituency. Yet ironically, every citizen—regardless of age, creed, racial or ethnic origin, or any other defining trait—has a very clear personal interest in how well our correctional system works.

Even so, it is increasingly clear that the public wants two things. It wants criminals to be punished in a meaningful way which protects the public; community corrections, probation, "country club prisons," and

other less strict penal options sometimes don't meet that test in the view of large portions of our citizenry. The public also wants to see corrections in proper perspective in the panoply of government agencies, not disproportionately gobbling up precious fiscal resources. So the dilemma is how to satisfy the public's insistence that the correctional system protect the citizenry in a way that is sufficiently punitive and makes a legitimate attempt to rehabilitate criminals, while at the same time not bankrupting government.

This is not to say that we in corrections should not work to alter those perceptions to a more comprehensive view of our role—we should. Just as importantly, we should encourage drug abuse prevention, early intervention, and other programs intended to prevent criminal conduct from emerging. But the blunt fact is that we are seeing a system in crisis, and daily busloads of inmates arriving in our Nation's prisons (about 1,000 new inmates come into U.S. prisons each week) can't await the slow change of attitudes.

Community correctional programs are not the sole answer to this dilemma, as useful as they are and as much as corrections professionals should continue to support them for appropriate nonviolent, nonrepeat offenders. That is because it is unlikely in our contemporary society that they ever will be seen as sufficiently punitive. We should work toward that end, certainly, but progress in educating the public on this point will be slow, and every program failure will retard the process.

Expansion of the proportion of offenders placed on probation is not going to be a major part of the answer either. First, the resources allocated to that segment of corrections also are sadly lagging. Second, three out of four criminal offenders in this country are already placed on probation, and there are many crimes which simply are inappropriate for probation. But perhaps most important, there are practical limits to public perceptions about the types of offenders who can be placed under community supervision. Citizens want serious offenders to be punished visibly and meaningfully. Probation is not intended for those types of offenders.

Continued prison construction at present rates also is out of the question. Discussions of morality and societal image aside, we cannot afford to confine ever-greater numbers of criminal offenders for the lengths of time now emerging as normative in the U.S. The financial costs are simply enormous and cannot be sustained indefinitely.

So where can we go? After all, the public has a legitimate right to be concerned about safe streets, drug trafficking, and white collar crime. I would propose that the solution lies in adopting a new direction for American corrections—the concept of "tough time."

NEWS OF THE FUTURE

61

Tough time is a sanctioning strategy that imposes a more stringent, Spartan correctional regime on a criminal offender than is now the case in most prisons, while imposing those conditions for a significantly shorter time than now might be the case for the same crime.

On the surface, a tough time institution might look like a military induction camp, or a present-day correctional boot camp, but without the drill and marching. Compared to typical prisons, tough time facilities would have a greatly enhanced program component, focusing on literacy training and drug treatment. Partnerships between the institution and the community—and a high level of participation by volunteers and community organizations—would characterize the tough time environment.

Inmates would start their day early. They would participate in mandatory physical conditioning. They would work for half a day and participate in programming the other half. They would have exceptionally limited recreation opportunities in a no-frills setting.

Tough time would not involve harsh, inhumane treatment, though. It would not be a facility where offenders march interminably or dig holes and fill them up again. Yes, it would be long days with no amenities, limited family visits and phone calls, no television, and virtually no personal property. But it also would be a carefully structured program of work, drug treatment, and educational programming, held together by due process discipline and well-defined policies, all implemented by staff who are firm, fair, and consistent.

Tough time would make punishment real to the offender; it would constitute a world far different than many inmates now encounter. Tough time would instill in offenders a sense that self-improvement and positive change are acceptable life alternatives and the expectation that coming to prison means they have to address the deficient areas in their lives. And tough time would make the correctional system more credible to the public—an issue of immense importance when the expenditure of massive public resources are at stake.

How might such a system be put into place?

In its simplest form, legislation would be enacted that would reduce a prison term by half for service in a tough time facility; an inmate would receive 2 days credit for every day served. This legislation would be coupled with a structured pilot program administered by a correctional agency in one or more institutions of varying security. A research study would also be established, in order to monitor and assess the long-term impact of the program.

Offenders who were willing to volunteer for a tough time institution, and who the correctional agency cer-

tified to the court as being eligible, would be sentenced to the full term, with "tough time credit" and any associated conditions of the program specified by the judge. Physically challenged offenders who were otherwise qualified would be exempted from any physical aspects of the program for which they were unfit but would live under the same conditions and limitations as other participants.

Not everyone who was willing to volunteer would be eligible for this kind of sentence structure, though. Violent offenders, drug kingpins, organized crime figures, and others who present a clear and present danger to society would not be eligible for tough time terms. They would serve every day of their sentences.

Existing classification instruments could be used to distinguish between offenders who should be placed in various security categories, according to their custody and supervision needs. Tough time institutions could be operated within existing facilities of different security levels, as satellite camp operations, or as free-standing institutions. In particular, this concept offers a creative option for reuse of surplus military bases and for the employment of military personnel being mustered out of the service during coming force reductions.

There would be no good time structure or parole for a tough time offender. However, following completion of the institutional portion of the term the offender would remain under supervision—first in a community corrections setting and then under a mandatory release-type status—for the balance of the entire sentence. These conditional release terms could be revoked for significant program misconduct or noncompliance with supervision requirements and the offender would be reconfined—this time in a traditional institution—to complete the full term of the sentence.

Tough time institutions also would rely heavily on, and couple sentence reductions with, a community corrections structure that would provide close supervision and regular urine surveillance. Releasees would face the possibility of being sent back to the tough time facility because of significant program failure.

The advantages of the tough time approach are many.

First, it is effective. It controls offenders and provides the measure of societal protection that is inherent in imprisonment. It puts inmates in the position of encountering structure and discipline far beyond those enforced in most facilities. It provides them with the motivation to participate in self-improvement activities—such as drug treatment and education—affording them the chance to return to society better-equipped to remain crime-free.

Second, it is more cost-effective than traditional imprisonment. The typical tough time program would confine offenders for a far shorter period of time than

is now the case for most prison terms. A tough time facility would have no frills or amenities, and the major expenditures (after security) would be for drug treatment and educational staff. Recreation would be minimal, television nonexistent, personal property limited, and food nutritionally adequate but plain. In short, the cost of such a program would be lower than that of a traditional facility.

Third, tough time programs give the courts a credible sanction that meets public safety imperatives but also changes lives. Today, many judges are understandably frustrated that prison seems rarely to change the course of a criminal career; that in many cases, they feel they are sentencing offenders to a futile existence in a warehouse-like environment. Tough time programs immerse an offender in not just a strict regime but one that is aimed at remedying the typical societal deficits that point many people in the direction of crime.

Finally, and perhaps most important, tough time is closer to the vision that most Americans have about what prison ought to be. Most of us believe prison ought to be disagreeable without being inhumane. Most of us believe that prison ought to be structured without being brutal. Most of us believe that inmates shouldn't be reduced to mindless labor but that prison idleness is an evil to be avoided equally vigorously. Most of us believe that prisons are worth it for truly dangerous offenders but that unnecessarily long prison terms equate to wasted dollars. Tough time programs meet those concerns in a realistic, effective way.

Now let's be clear that tough time would not be a panacea—not everyone would succeed in the program or after release. But it is important to point out that we should not hold prisons solely responsible for the success or failure of inmates when they are released to the community. That oversimplifies the real world of the criminal offender. Indeed, it's worth expanding on this a bit because to do so reveals how tough time has to be considered in a somewhat larger context.

Start with the premise that rehabilitation is not the responsibility of prison alone but really the product of three separate elements. Rehabilitation occurs when the institutional experience itself, the community's involvement in the offender's life, and the offender's personal actions and choices all come together in a positive, productive way.

Prisons do have a key role in rehabilitation by providing inmates with access to appropriate programs, such as literacy, vocational training, and substance abuse treatment. Institutions must also have meaningful work assignments so that inmates can learn a functional work ethic and job skills that may be applicable in the community. In short, after fulfilling their

public safety role, prisons have an obligation to provide inmates with an opportunity to acquire the "tools" for self-improvement and law-abiding functioning upon release.

The community has a different but equally important responsibility—that of supporting offenders while they are incarcerated and accepting them back into society in a meaningful, nonstigmatizing way. Support during incarceration can take several forms, starting with the willingness of family and friends to maintain contact with imprisoned offenders. Volunteers are especially critical to this process, both in terms of conducting in-prison programs and in providing an important personalized connection between inmates and the real world. Volunteers can establish and maintain—in a way staff seldom are able to—relationships that can serve to mentor and guide offenders back to constructive attitudes and law-abiding lives. And, finally, the community must be ready to give offenders a second chance by providing employment opportunities and assisting them with suitable housing.

However, the third and most important area of responsibility is the inmate's. Each inmate has the responsibility to take advantage of whatever programs are available within the institution. They must participate in maintaining family and community ties, plan for their eventual release through participation, choose to find meaningful employment, choose to adhere to any supervision requirements they are obligated to follow, and in general choose to lead a productive life as a law-abiding citizen. Most importantly, they must choose not to commit another crime.

Neither institution staff nor the community at large can make those decisions. They are solely the province of the individual offender. If any of the three parties involved—the institution, the community, or the inmate—fails to shoulder their responsibility, then the chances for success after prison are diminished. But in the final analysis, the offender bears the ultimate responsibility for success upon release.

Having said that, tough time fills very effectively and efficiently the institutional niche described above. It provides the key program opportunities in a way that allows every offender with a drug problem or educational deficit to remedy that issue in a way that improves the offender's ability to remain crime-free upon release.

As a result, there should be very few objections to such a plan. The public should like it because the name says it all; inmates will be doing hard, no-frills time. Inmate advocates in the legal community should like this concept; it is understandable, humane, and offers shorter prison terms than now are commonly imposed. Dare I say that deep down inside, inmates may like it;

NEWS OF THE FUTURE

63

those who want to change their lives are provided the tools to do so but are not buried so deep by a long sentence as to lose hope.

Now having said all this, it's reasonable to expect someone to ask, "Isn't this the same Mike Quinlan who presided over the largest expansion program in the history of the Federal prison system while talking all the time about the value of community corrections, and if it is, what is he doing making a proposal like this, which doesn't rely on either?" The question is fairly put. And in the answer lies the real reason why this proposal is so valuable.

As director of the Federal Bureau of Prisons, I had to respond to realities—not just projections—realities of massive inmate population growth in our system. To have done otherwise would have preordained a disaster in Federal corrections. At the same time, I recognized as director, and acknowledge now, that when properly used, community correctional programs are effective and cost-effective. But at this point in time, neither continued construction at the current rate nor community corrections options are the solution to the triple problems of public attitudes about punishment, providing realistic treatment programs, and reducing the overall cost to society of imprisonment.

Another question is likely to surface, "If this is such a good plan, why didn't you do this while you were director of the Bureau of Prisons?" Again, the question is a fair one.

While I was director, and with the encouragement and support of the Department of Justice, the Bureau of Prisons established Intensive Confinement Centers (ICC's) for both male and female offenders which are similar to correctional boot camps operated in other correctional systems. However, the Bureau's use of these facilities was sharply circumscribed by sentencing guidelines considerations and the demographics of the Bureau's population—there were few of the short-term, low-risk youthful, first offenders which typical correctional boot camps serve. Had there been sufficient flexibility in the sentencing or good time statutes to incorporate tough time concepts, we would have refined our ICC concept and expanded it in the direction of tough time programming.

At its heart, a correctional system that incorporated "tough time" principles would satisfy the three imperatives which we as a society must confront—and con-

front soon—about our correctional system. First, it is tough on crime while safeguarding the public from the continued criminal activity of these offenders. Second, it gives offenders a structured opportunity to benefit from incarceration in a way that is seldom possible in today's crowded prisons. Third, and of critical importance, it reduces the amount of time a prison bed is occupied by an individual offender, reducing the cost to society of a prison sentence.

As a final note, nothing in this proposal should be interpreted as meaning there is no longer any place for traditional prisons, nor should anyone infer that we have passed the point where prisons need additional resources to cope with the incoming flood of inmates. There always will be offenders who need traditional prison for long periods of time, and we must have the physical plant and staffing resources to deal with them. And until sufficient diversion and alternative confinement mechanisms are in place to dampen prison population increases, the public must support legislators in appropriating sufficient funds and personnel to continue to expand prison capacity so that correctional personnel can operate safe, secure institutions.

We in corrections need to step out with new ideas and fresh adaptations of concepts we know work and forcefully advocate them. It will require persuading the public, legislators, and elected officials across the Nation, and doing so quickly. But if we do less, we fail not only our profession, and we also run the risk of having far less societally acceptable solutions imposed on us. Given the current pace of prison population growth, there is little time to debate and even less to act.

NOTES

¹U.S. Department of Justice, Bureau of Justice Statistics, press release, October 3, 1993.

²The Role of General Government Elected Officials in Criminal Justice," The U.S. Advisory Commission on Intergovernmental Relations, July 1993, cited in *Corrections Digest*, Vol. 24, No. 14, p.1.

³Federal Bureau of Prisons, Office of Research and Evaluation.

⁴U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditures and Employment, 1990*, NCJ-125777, September 1992.

⁵U.S. Sentencing Commission, *Annual Report, 1992*.

⁶Ibid.

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