QUEST FOR JUSTICE

REPORT OF THE COLORADO
CONFERENCE ON SENTENCING
AND CORRECTIONS

DECEMBER 1975

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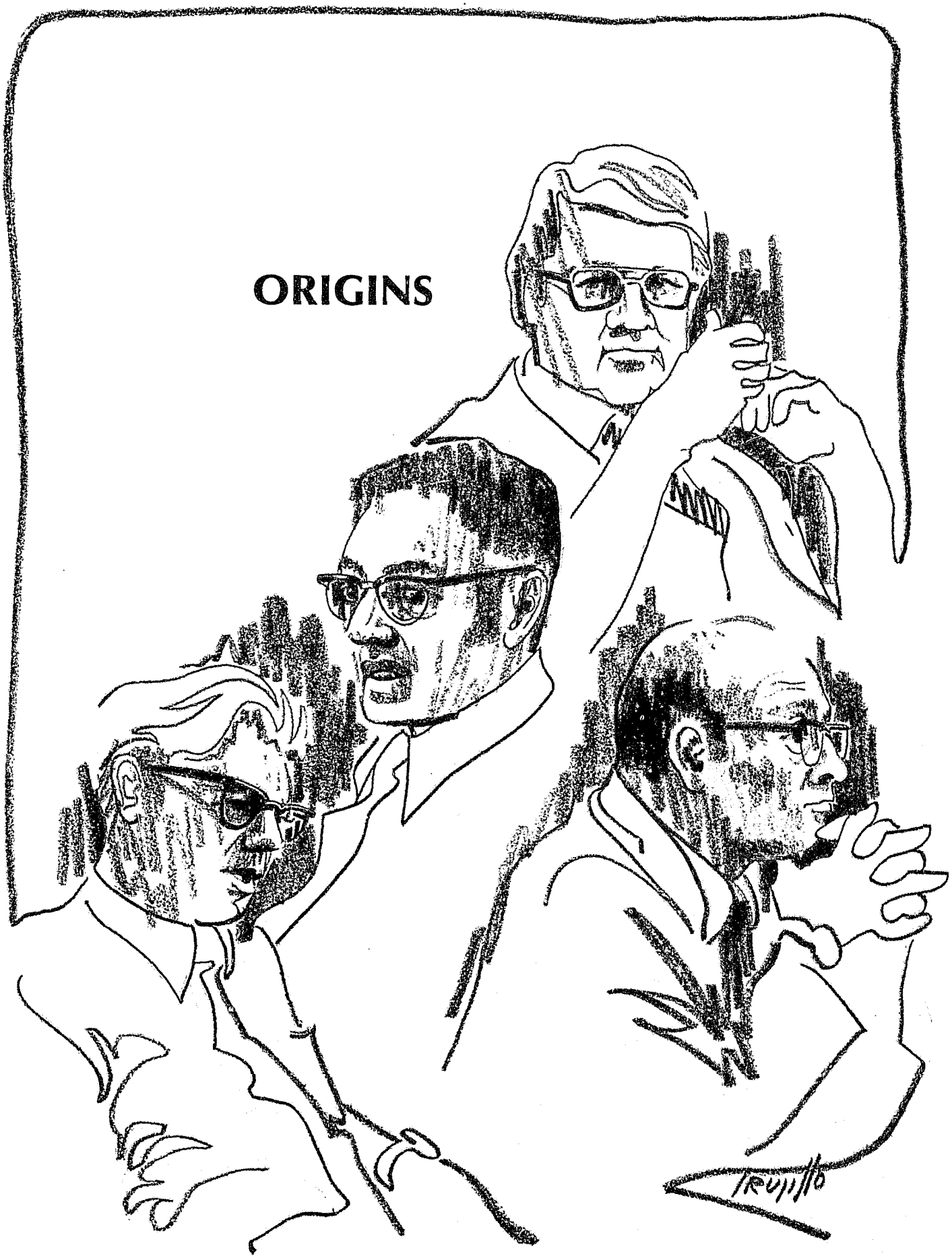
ORIGINS



ORIGINS

In early December 1975, 250 Colorado citizens—judges, district attorneys, public defenders, private attorneys, law enforcement personnel, state and local government officials, correction specialists, ex-offenders and community people—convened at the Denver Marriott Hotel to discuss roles and rights of all parties involved in the sentencing process. This meeting—the first Colorado Conference on Sentencing and Corrections—had originated in the concern of state decision makers for upgrading the criminal justice system. Disturbances at the state reformatory and penitentiary, escapes from correctional facilities throughout the state and divergence of state correctional practice encoded in Colorado statute and court rule from recent developments in correctional philisophy signalled the need for change in Colorado's sentencing procedures and correctional practices. Meeting participants, conference architects hoped, would pinpoint current problems and areas of conflict or confusion, improve communications systemwide and begin developing effective sentencing policies for Colorado.

Conference Planning

In May 1975 Governor Richard D. Lamm had hosted a luncheon meeting to discuss with experts the problems facing the system. Representatives from the two major correctional institutions, the Department of Institutions, the Division of Corrections, the Division of Adult Parole and the State Public Defenders Office discussed these problems in a general way, each participant informing the governor from his perspective of needed improvements.

This first meeting generated enough interest to prompt the governor to convene a similar gathering only a month later. Joining the original group were Attorney General J. D. MacFarlane and representatives of the Judicial Department and of the Colorado District Attorneys Association. Concluding that dialogue among sentencing and corrections decision makers would prove beneficial, the group decided to approach Donald J. Anderson, then director of the Colorado Commission on Criminal Justice Standards and Goals, about drafting a grant proposal for Law Enforcement Assistance Administration (LEAA) financing for a sentencing conference.

Anderson and his staff were already familiar with the sentencing conference concept because of Commission task force recommendations. Following the lead of the National Advisory Commission on Criminal Justice Standards and Goals, the Courts and Corrections Task Forces had proposed that such seminars or institutes be convened periodically to allow judges, prosecutors and defenders, law enforcement and corrections personnel and releasing authorities to discuss problems related to sentencing (Standard 2-1.50, "Sentencing Institutes," and Standard 2-1.51, "Sentencing Institutes," *Standards Working Draft*, Revised Edition, Colorado Commission on Criminal Justice Standards and Goals, 1975). The Standards and Goals staff drafted an application for LEAA money to launch the project, citing as ample reason for conducting a sentencing institute in Colorado such problems as sentencing disparity, lack of data clearly showing the effectiveness of existing sentencing practices and failure of the General Assembly to articulate goals and establish criteria for sentencing and to authorize a variety of sentencing alternatives. The grant application identified the specific problem to be addressed by the institute as "the lack of communication found among the...actors and the confusion and frustration that results. The specific objective of this proposal is to cause...principal decisionmakers together with some members of the community to meet and share their frustrations and problems with sentencing procedures."

Although sponsorship of the conference had originated in the governor's office, planners recognized that sentencing and corrections involve legislative and judicial participation equally with executive action. The conference, they reasoned, would be more certain of success if it enjoyed tripartite support, with Governor Richard D. Lamm, Senator Ralph A. Cole, Representative Gerald H. Kopel and Supreme Court Chief Justice Edward E. Pringle as official co-sponsors. Planning committee membership similarly reflected the three-branch approach. While other states had conducted similar conferences, Colorado's meeting, as Dr. David Fogel later pointed out in his address to conferees, was to be unique in its three-branch participation.

When LEAA approved the project, conference planning began in earnest. Working with Project Director Jeremy Shamos, special projects assistant to the governor, and assisted by staff from the Division of Criminal Justice, Standards and Goals Director Mark C. Pautler, and Administrative Assistant Murray C. Bond coordinated conference development. They conducted planning committee meetings, arranged for conference facilities, invited the guest speakers as well as the 250 conferees and in general implemented planning committee decisions.

Meeting regularly, the planning committee developed a format for the three-day conference, which they had scheduled for December 8, 9 and 10 at the Denver Marriott Hotel. To foster the main conference goal of allowing system practitioners to exchange information and generate ideas upon which principal decision makers could formulate needed improvements, the planners tailored the conference agenda to facilitate communication among all conferees. Dividing delegates into ten small discussion groups to address major issues and suggest solutions, they decided, would best advance this scheme.

Planners developed the remaining conference activities to enhance the effectiveness of the small groups. The governor's welcome and the panel discussion slated for the opening plenary session would focus group attention on major issues. To avoid the undue influence which strong keynote addresses can exert on conference deliberations, the guest speakers—Mr. Rick J. Carlson, author of *The Dilemmas of Punishment*, Dr. David Fogel, executive director of the Illinois Law Enforcement Commission and Mr. Kenneth Schoen, commissioner of the Minnesota State Department of Corrections—would talk after group discussions were either well under way or concluded. And the last morning of the conference would be devoted entirely to reports of the discussion groups and final comments of the four co-sponsors.

Panel Conclusions

The nine panelists discussing "Roles and Rights in Sentencing" during the opening session reflected the varied disciplines and perspectives marking the delegation at large. They included:

Representative Richard T. Castro
Member
House Committee on Health, Environment, Welfare and Institutions

Senator Ralph A. Cole
Chairman
Senate Judiciary Committee

Honorable Richard W. Dana
District Judge
20th Judicial District

Mr. James F. Dumas, Jr.
Chief Deputy
State Public Defenders Office

Miss Leanore Goodenow
Member
Senate Bill 55 Advisory Committee

Mr. Gordon W. Heggie
Chairman
State Parole Board

Dr. Raymond Leidig
Executive Director
Department of Institutions

Ms. JoAnn Nation
State Coordinator, Teacher Corps
Loretto Heights College

Mr. Dale Tooley
District Attorney
2nd Judicial District

Each panelist, introduced by moderator Paul G. Quinn, director of the Division of Criminal Justice, spoke briefly about sentencing and corrections, pointing out issues and ideas he considered worthy of conference discussion. The panel discussion itself, designed to highlight major problems of sentencing and corrections in Colorado and to give direction to small group discussions, focused participant attention on six important questions.

About some questions panelists found themselves in general agreement. Panelists addressing the issue of informational needs in presentence and postsentence procedures concurred that while the amount and quality of information available to judges and parole authorities determine sentence effectiveness, adequate information is not now routinely available to these decision makers. The two panelists who spoke about the effects of pretrial release procedures on sentencing—Dana and Dumas—noted the lack of criteria for setting bail and agreed that time spent out on bail allows an individual to establish a record of good behavior, an opportunity denied a person detained until his trial. Panelists endorsed the concept of community-based corrections as holding great promise for easing reintegration and reducing tax costs but stressed that such programs will fail if imposed on communities without regard to local concerns. And without positing specific solutions, panelists agreed that victims of crime must not be excluded from consideration.

Discretion of sentencing and corrections decision makers raised difficult questions. Sharp disagreement marked discussion of control of place of confinement and length of term. Three panelists—Castro, Heggie and Nation—emphasized the need for flexibility in dealing with offender needs and recommended that optimum release time and thus length of term can best be set by the "people working with the offender," the Department of Institutions. Tooley disagreed. The public has a right, he contended, to know who is responsible for sentencing decisions; judges, therefore, should have discretion to set a fixed sentence length. Pointing out a critical distinction between these positions, Heggie said that length of sentence is relevant only in correctional systems emphasizing punishment. Where a corrections scheme is based on rehabilitation, length of sentence has little meaning.

The question of who controls transfer, extra-institutional placement and release elicited a similarly varied response. Several panelists, asserting that adequate information is the only acceptable basis for such decisions, pointed to the lack of information flowing among prosecutors, judges and corrections practitioners as a reason for unsatisfactory results. Others expressed the concern that due process be satisfied in transfer and release proceedings. Principally at odds were panelists who felt that only Department of Institutions personnel had the information necessary to make such decisions wisely and those, led by Tooley, who believed that since community safety is paramount to all other concerns, wide Department of Institutions discretion to make these decisions should be sharply limited.

SPEAKERS

SPEAKERS

Meeting planners invited Author Rick J. Carlson, Illinois Law Enforcement Commission Director David Fogel and Minnesota Corrections Commissioner Kenneth F. Schoen to address the conference because of their fresh, often provocative perspective on sentencing and corrections. The three speakers addressed topics of vital interest to conference participants, with Carlson identifying major sentencing and corrections problems, Fogel outlining the Illinois flat term sentencing structure and Schoen detailing Minnesota's successful experience with community-based corrections.

The Dilemmas of Punishment

Carlson, a University of Minnesota Law School graduate, became involved with the criminal justice system by working with a pretrial diversion project. Planning criminal justice related conferences for the Center for the Study of Democratic Institutions in Santa Barbara, California, acquainted him further with the field. It was, however, his relative inexperience with criminal justice which prompted the National Institute of Law Enforcement and Criminal Justice to invite him to study the corrections field and record his observations. He set to work, advised by a panel of criminal justice luminaries including Marvin Wolfgang, Robert Martinson and Leon Radzinowicz, and produced a 300-page "reconceptualization" of the corrections system. Entitled *The Dilemmas of Punishment*, Carlson's book will be published in spring 1976 by the Lexington Press.

In his talk Carlson held out small hope that solutions to the many problems confronting sentencing and corrections will be easy. The problems, he contended, may in fact be insoluble. He outlined four dilemmas preventing improvement of the system.

He cited first widespread uncertainty about the proper focus of criminal sanctions. Should sanctions be directed against the offense as theories of retribution, incapacitation and deterrence require, or against the offender as rehabilitation theory demands? Together with repudiation of rehabilitation as ineffective in reducing recidivism, this conflict has produced a theoretical vacuum. No satisfactory conceptual axis exists around which to structure needed reforms.

Second, the difficulty of defining "dangerous offender" has blocked effective correctional response to the rise of crime, particularly violent crime. Neither offender-oriented classification schemes based on admittedly weak predictive technology nor offense-oriented systems founded solely on number or type of offense has produced a workable definition.

The community-based correctional movement is a dilemma because no concrete conceptions exist to explain what it really is. Even the fundamental notion that probation is in essence a community program is seldom understood. Although solving this problem demands a "bold conceptual breakthrough," Carlson can envision none.

Carlson's fourth dilemma is deterrence, an idea being advanced as a likely replacement for rehabilitation as the major focus of corrections. But little is known about deterrence beyond data showing that the speed and certainty with which the criminal sanction is applied have an important deterrent impact while severity of the sanction has a far lesser effect.

Carlson concludes from these problems that philosophic drift and practical confusion characterize the correctional system. He finds at the root of each dilemma the large amount of discretion allowed to all correctional system practitioners. The proper correctional model to diminish the theoretical and practical chaos, Carlson suggested, is thus one based on discretion. Society, through its decision makers must determine philosophically and culturally how much discretion should be allowed each element in the system and set the limits accordingly. Judges should be limited in their exercise of discretion by a legislatively determined structure of flat term sentences and could thereby recapture authority lost to the parole board. Each community should define community-based corrections according to its own needs and educate the judiciary about the purpose of such programs. The system's most dominant feature, plea bargaining, should be understood as an extra-judicial device for determining guilt or innocence and regulated as an administrative process.

Flat Term Sentencing

Dr. David Fogel—student of sociology and criminology, educator, public servant and author of more than 30 professional papers and articles and a book, *We Are the Living Proof...(The Justice Model of Corrections)*—called sentencing the most lawless part of criminal justice. The correctional philosophy of rehabilitation, he said, offers only false hope to offenders and society alike and should be replaced with a more workable theoretical base.

Fogel explained that inadequate correctional system response to widespread prison violence in the early 1970's prompted him to inquire in *The Justice Model of Corrections* why the system could not solve its own problems without court intervention. His investigation, revealing both peripheral and fundamental reasons for the persistence of violence in prisons and the lack of credibility of criminal justice, compelled his present advocacy of a scheme of flat term sentencing.

Fogel identified two peripheral reasons for the problems plaguing corrections. The lack of historical perspective of corrections practitioners insulates, isolates and demoralizes all involved with the system and allows professionals to propose endless panaceas while producing no discernible benefits. The "fortress prison," fostering the pyschology of the keeper and the kept, similarly stymies progress.

The major problems, according to Fogel, are "how you get in [sentencing] and how you get out [parole]." He pointed out that sentences pronounced in America are often disparate, largely nonreviewable and draconian in length. The erosion of judicial power (through plea bargaining, the district attorney exercises more sentencing power than the judge, while indeterminate sentencing gives the parole board more clout than either), Fogel contended, is making sentencing the most lawless part of criminal justice. Discretion is the source of sentencing disparity, the visible inequity upon which prison violence and offenders' lack of faith in the justice system are founded.

Parole boards have traditionally been entrusted with making release decisions because of their theoretically superior ability to predict offender success. But the broad discretion conferred on parole boards by indeterminate sentencing has, he said, quoting criminologist Hans Mattick, "transformed [American prisons] into great centers for drama in which the convicts are actors, the parole board the drama critics handing out Oscars, Emmies and freedom." Dr. Fogel cited Bible class attendance as the way to certain parole for Attica inmates and Alcoholics Anonymous membership as a guarantee of release even for nondrinking Minnesota prison inmates.

Such manipulative behavior, argued Fogel, demonstrates clearly that rehabilitation is merely a fiction engrafted on the true purpose of imprisonment: punishment. Corrections should abandon the empty rhetoric and false promises of rehabilitation and replace it with flat term sentencing.

In response to a question from the audience, Fogel sketched the Illinois flat time format. Every felony, except murder which is in a class by itself, falls into one of four classes. Class four felonies carry sentences of two years and class three felonies, three years; in pronouncing these sentences, judges may mitigate or increase the sentence by one year. Class two felonies carry sentences of five years and class one felonies, eight years; judges may add or subtract two years from such sentences.

Offenders can earn good time, defined by an objective standard as the absence of commission or conviction of an unlawful act, on a day-for-day basis. Good time earned is vested, and only 30 days prospective good time may be taken away for violations. Participation in rehabilitation programs is not compulsory and is unrelated to an offender's release date. Rehabilitation, however, is not ignored, and Dr. Fogel believes that the Illinois scheme will upgrade prison educational and counseling programs. A computer account set up for every inmate is credited with fictional dollars for each day of good time he earns. When an inmate requests a rehabilitation program, he is allowed to hire his own teacher or psychiatrist rather than being enrolled in an established, typically outdated prison program.

Under the new Illinois format, the parole board exists, but only as a safety valve for life sentences. Counseling for ex-offenders, traditionally the province of parole, has become a probation function available to those requesting it.

Fogel concluded by advocating heavy investment in community corrections. When objective standards dictate that an offender must be imprisoned, his incarceration must be "fair and certain and constitutionally just."

Community-Based Corrections: A Success Story

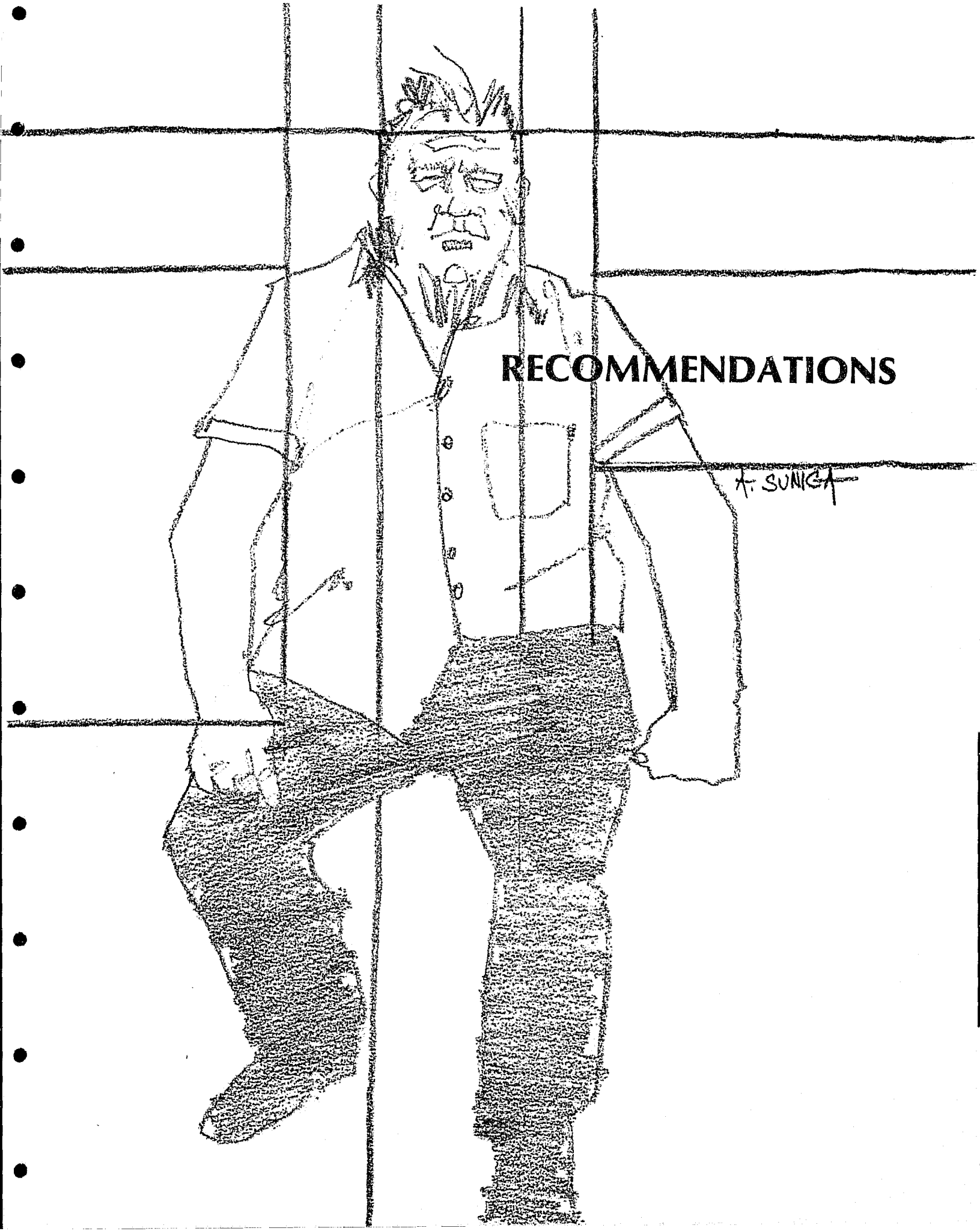
Remarks by Kenneth Schoen, Minnesota State Department of Corrections commissioner, supplemented Dr. Fogel's advocacy of community-based corrections. Schoen, whose criminal justice experience dates from 1957 when he was a parole agent in the Twin City area and who was singled out by the September 1975 issue of *Washington Monthly* as the top corrections official in the nation, was instrumental in securing passage of the legislation launching Minnesota's community-based corrections program.

Prisons, Schoen said, should serve a relatively small purpose in the overall correctional scheme, that of isolating dangerous felons, career criminals and persons who have committed heinous crimes. The major correctional thrust should be planned and delivered in local areas. Functions traditionally assigned to central correctional facilities—deterrence, punishment, rehabilitation, isolation—as well as vocational training, education, victim rehabilitation and crime prevention programs can be performed at the community level by using existing resources.

Minnesota's Community Corrections Act, passed in 1973, has four major components. It provides for large subsidies to counties to plan and carry out programs addressing local needs ($3.5 million was allocated for the three pilot programs, and in 1975, $9 million was appropriated to fund programs in 20 counties, roughly 70 percent of the state). The act insists that counties draft comprehensive plans detailing proposals for everything from jail facilities to crime prevention programs. To promote open communication, counties must establish advisory committees on which all system elements are represented. And a negative incentive—counties must pay a per diem rate from their subsidies for every juvenile or adult sentenced to five years or less in a state institution—helps foster local programs.

No doubt partially as a result of community corrections, Minnesota continues to enjoy a low crime rate. The state prison population has always been low, but since 1973, Schoen noted, commitment rates have dropped. Both Schoen and Fogel emphasized in response to audience questions that proponents of community corrections laid solid groundwork for passage of enabling legislation. By educating judges about the wider variety of sentencing alternatives which community corrections would provide, reassuring community residents that state facilities would continue to deal with dangerous offenders and holding public hearings, the bill's advocates obtained local support. To sell the concept to state legislators, they conducted an intensive person-to-person educational campaign, stressing the high cost of institutions and the positive reactions expressed at public hearings.

Community corrections, Schoen acknowledges, is a difficult field because, amoeba-like, society traditionally extrudes from its core the "irritant" of correctional facilities (most prisons are remote from major population centers) and because of the difficulty of reconciling the divergent philosophies and disciplines which must necessarily cooperate in community programs. He stressed that corrections cannot by itself solve the crime problem. But, he concluded, community corrections can respond effectively to the needs of many victims and offenders and the concerns of taxpayers.



RECOMMENDATIONS

RECOMMENDATIONS

Group Discussions

The deliberations of the small groups into which all conference participants were divided formed the nucleus of conference activity. Group recommendations reported at the final plenary session identify problems of sentencing and corrections, pinpoint areas needing detailed study, provide a viable basis for improvement and mirror the concern of all participants that the sentencing and corrections process be just, efficient and accountable.

Recognizing that conference participants of different backgrounds would voice widely varying opinions—district attorneys, for example, would advocate flat term sentencing as embodied in legislation proposed by the Colorado District Attorneys Association and parole personnel would oppose abolition of their function—conference planners strove for balance in group membership. To ensure free expression of opinion in every group discussion and to avoid dominance by any group or perspective, planners assigned individuals of different backgrounds to each group. Anticipating that the presence of key state decision makers, among them the four conference co-sponsors, would inhibit free exchange of opinion in group discussions, planners assigned these individuals to a single group. Conference planners further assured smooth-running discussions by assigning to each small group a facilitator skilled in conducting such proceedings and a recorder to put group decisions in writing. Lists of conference participants, facilitators and recorders appear in the report section entitled "Participants."

Group composition contributed significantly to the success of the conference. As one group reporter, Judge William M. Ela, pointed out, "One of the more important things [to result from the conference] was that...a true cross-section of a large body of disciplines...contributed to our discussion and to our conclusions."

Although each group developed its own discussion style and reached unique conclusions, major topics of discussion varied little from group to group. Groups focused their attention primarily on community-based corrections, the diagnostic function and indeterminate, determinate and mandatory sentencing. Basic to every discussion was awareness of public dissatisfaction with the performance of the sentencing and corrections process and the difficulty of change.

A synthesis of the sometimes widely varying opinions expressed in final group reports follows. While credit must be given to the individuals who contributed their ideas to group discussions, this report, in pursuit of true unity, deliberately avoids attributing comments to particular groups or individuals.

Community-Based Corrections

Eight of the nine groups making final reports endorsed the concept of community-based corrections, with the ninth group declining to discuss the topic because Colorado legislation defining community-based corrections [CRS 27-27-101 through 27-27-110 (1973)] deals inadequately with the question of funding. Some groups, two of them labeling community-based corrections the top correctional priority, expressly endorsed it. Others implicitly endorsed it by offering suggestions for its improvement. Group reports consistently demanded greater legislative specificity in defining community-based corrections and its functions, mandating the establishment of community corrections boards, setting standards for all participants in the process and devising adequate and equitable funding schemes. This very lack of statutory specificity perhaps contributed to conference failure to make truly consensual recommendations for community-based corrections. Conflicting recommendations, however, are not altogether irreconcilable because of fundamental conferee agreement with the rehabilitative goals of the community corrections statute.

In discussing community-based corrections, the conference topic receiving the most detailed and extensive attention from conferees, groups sought answers to several questions. What role should community-based corrections perform? What functions must local community corrections boards undertake? How should community corrections programs be funded?

The group adopting the most expansive perception of community-based corrections viewed it as an alternative to incarceration which should be available to all offenders found through evaluation to pose no threat to public safety if removed from maximum security. A less liberal view expressed by another group would restrict community-based corrections to performing a six-month pre-release function until sufficient data are available to demonstrate its value and to gain public support. The conflict between these positions is more illusory than actual, for the liberal proposition describes an ideal of community-based corrections while the restrictive recommendation, concerned with immediate problems of statistical credibility and community acceptance, expresses hope that community-based corrections will become an alternative to incarceration once these obstacles are overcome.

Potent tools for securing local acceptance of community-based corrections, community corrections boards are the most visible—and the most visibly lacking—links between local corrections programs and the citizenry. Group reports recognized that these boards must be appointed and offered suggestions for board membership. One group suggested reducing board size to five members. Another recommended that boards be composed entirely of lay citizens who could avail themselves of the advice of law enforcement, sentencing and corrections professionals. A third group resolved that board membership should reflect the ethnic composition of the offender population served.

Group reports differ, however, on the proper function of community corrections boards, with disagreement focusing on two principal issues. Who decides which individuals will participate in programs or live in facilities? Who develops community corrections programs?

One group would explicitly grant each community corrections board authority to approve or deny an individual's placement in a local program or facility while another found such authority vital to securing local acceptance. A third group's recommendation that the legislature, perhaps using as a model criteria now employed for granting probation, set uniform standards for sentences or transfers to community-based corrections suggests, however, that the decision to place an individual in such a program should rest not with community corrections boards but with sentencing judges and Department of Institutions transfer authorities. Although apparently at odds, these positions can be reconciled by noting the heavy emphasis placed by most conferees in all their discussions on rational decision making in the sentencing and corrections process. By this analysis, who makes the decisions becomes less important than how they make the decisions. Decisions should not be made arbitrarily but instead should be based on uniform criteria circumscribing the discretion of the visible placement authority and incorporating as a major consideration protection of the public, a key to local endorsement.

Conferees generally agreed that the success of community-based corrections depends on grass roots autonomy in program development and operation. Local boards, one group recommended, should have authority to develop and implement programs subject only to Division of Corrections approval. A variation on this theme called for a regional specialist reporting to a state level coordinator to help community corrections boards develop programs. Ideally, these proposals seem to suggest, community corrections boards should be free to tailor programs to local needs within boundaries set by state authority.

Several groups acknowledge, however, that securing local acceptance of community-based corrections and defining lines of authority in program design and administration depends largely on the source of funding. Locally funded programs would enjoy far greater freedom from outside control than those dependent on state or federal stipend.

Conferees found that adequate funding, in one reporter's words "the granddaddy problem of them all," is essential for effective community-based corrections and agreed that the major source of such funding should be the state. Particularly strong was one group's condemnation of inadequate commitment of state resources to corrections programs as a major source of corrections problems. No group, however, demanded total state subsidy. One group recommended that the Division of Corrections, the State Judicial Department and the boards of county commissioners prorate their financial support of community corrections programs on the basis of use. Another suggested that full inventory and utilization of existing resources would significantly reduce duplicate expenditures and explored in detail the possibility of surtaxing criminal and traffic fines as a new source of revenue for community-based corrections. Still another group endorsed a funding program in which costs incurred for incarceration in state institutions would be charged to community programs, a plan similar to the Minnesota financing scheme described by Kenneth Schoen.

Diagnosis

The concern of conferees that sentencing and corrections decisions be governed by rational criteria apparent from their recommendations for community-based corrections is equally visible in their discussion of the diagnostic function.

The Colorado diagnostic program was created by legislation in 1974. CRS 27-40-102(2) (1973) describes the primary purpose of the program as providing "a diagnostic examination and evaluation of all offenders sentenced by the courts of this state so that each such offender may be assigned to a prescribed incentive program in a correctional institution..." As directed by this statute, an offender sentenced to incarceration undergoes upon his arrival in the diagnostic unit of either of the state's major correctional institutions a period of observation and testing by diagnostic staff. On the basis of diagnostic findings, he is assigned to an appropriate rehabilitative program, in most cases within the institution to which he was originally sentenced.

As presently constituted, the Colorado diagnostic program neither limits the power of the court to modify the sentence of an offender who has undergone diagnostic evaluation within the 120-day limit set by Rule 35(a) of the Colorado Rules of Criminal Procedure (1973) nor restricts court authority to grant an application for postconviction review in accordance with CRS 18-1-410 (1973). Group discussions, however, revealed confusion about whether diagnostic reports were intended by the Colorado General Assembly to be routinely transmitted to sentencing judges for their consideration in deciding to modify a sentence, and final group reports clearly demonstrated dissatisfaction with existing Department of Institutions practice of sending the reports only to judges specifically requesting them.

Eight of the nine groups making final reports offered recommendations for ending this confusion and making diagnostic evaluation a more useful tool in the sentencing process. One group suggested that diagnostic reports should be routinely sent to the sentencing judge within sixty days, well within the 120-day limit set by Rule 35(a), for his consideration in deciding whether to modify a sentence. Another group, although suggesting no specific study design, recommended re-evaluation of the diagnostic concept in light of such factors as existing statute and presentence information requirements of the judiciary.

Six group reports, reveal, however, that many conferees would support a change more far-reaching than simple clarification of existing law. These groups recommended that diagnostic reports should be made available to judges before imposition of sentence to supplement presentence reports now prepared for judicial consideration by the probation officer, thus enlarging the information base supporting the sentencing decision and increasing judicial credibility.

Presentence diagnosis, which one group noted would necessitate presentence incarceration of all offenders, would have a decided economic impact. Group reports remarked that to require every convicted offender—those who under the old scheme would be sentenced to probation, for example, as well as those who would be sentenced to incarceration—to undergo diagnosis would magnify the cost of providing diagnostic services. No group conclusively recommended who should bear the increased expense. Three groups suggested, however, that regional facilities and resources already in existence, regional mental health centers such as Spanish Peaks, for example, be used to supplement institutional diagnostic units, indicating that the cost of diagnostic evaluation could be shared by all programs and agencies requiring it. Only extensive study could accurately predict such impact and show how current postsentence diagnostic procedures would need to be adapted for presentence use.

Sentencing

Sentences to incarceration shared the spotlight with community-based corrections and diagnosis as a major conference issue. Three general types of sentencing—indeterminate, determinate or flat and mandatory—provoked vigorous discussion among conference participants. A survey of the nine final group reports reveals that six groups advocated retaining indeterminate sentencing as it now exists under Colorado law; that two groups urged changing present law to allow judges to impose minimum sentences in all classes of felonies; and that one group recommended adopting determinate or flat sentencing.

A majority of conferees, it appears, backed an indeterminate sentencing structure not radically different from that presently existing. In other words, conferees in general approved a sentencing structure which allows a judge in all but class one felonies to impose only a maximum sentence limit falling within legislatively prescribed boundaries. The reasons behind this apparent endorsement, however, particularly the lack of ringing enthusiasm for indeterminate sentencing, suggest a dissatisfaction with current sentencing practices signalling a desire for change. Group reports advocating maintenance of the status quo frequently cited as the basis for their position the lack of reliable data demonstrating the effectiveness of indeterminate sentencing. Indeterminate sentencing, proponents argued, must be given more time to prove itself. The unspoken corollary of this rationale is, of course, that factual demonstration of indeterminate sentencing ineffectiveness would prompt many of its advocates to change their position.

Only minor changes were proposed by groups wishing to improve on the existing indeterminate sentencing structure. The principal recommendation, which would require amendment of current law prohibiting imposition of minimum terms in class four and class five felonies, was to allow judges to impose minimum terms in all classes of felonies. One of the groups proposing change suggested that judges should have a determinate option when sentencing repeat offenders.

The group endorsing determinate or flat sentencing specified that it backed the fixed term concept, which mandates judicial imposition of a sentence of definite duration, rather than any particular embodiment of it.

Mandatory sentencing, that is, imposing a statutorily defined sentence on a particular type of offender or for a specific type of offense as defined in the statute, enjoyed no broad support. The two final group reports addressing mandatory sentencing opposed it.

Consistent with conference consensus that protection of the public should be a central concern of sentencing and corrections, much discussion focused on methods of dealing with violent and repeat offenders. While rejecting mandatory sentencing as a method of curbing accelerating rates of violent crime and detailing no comprehensive alternatives, final group reports suggest directions which needed reforms should take. One recommendation for satisfying citizen demand for protection and redress by allowing judges to impose minimum terms in all classes of felonies has already been mentioned. Some final reports recognized that before equitable legislative solutions can be devised, adequate statutory definition of "violent crime" and "repeat offender" is needed.

Discussion of all types of sentencing was often couched in terms of discretion, and participants seemed to concur that the present system allows judges an undesirably wide latitude in imposing sentence. As the tally of group opinion demonstrates, conference participants in general shunned flat term and mandatory sentencing, two obvious curbs on judicial discretion. Group reports, however, suggest alternative methods of limiting discretion.

Consistent with their position that decision makers in the corrections process should be visible and accountable, a plurality of conference participants advocated that judges should follow standards in determining type and length of sentence and should state for the record factors considered in reaching sentencing decisions. Standards for sentencing, whether promulgated by the Colorado General Assembly or the Supreme Court, would limit the types of sentences which could be imposed in a particular case and lessen the possibility of sentencing disparity. Requiring judges to consider such standards and to enter their reasons for imposing sentences into the record, several groups noted with approval, would together produce a case law of sentencing.

Minority Caucus Report

Following presentation of final group reports, Clark Watson, president of Watson Associates, spoke briefly about the concern of minority conference participants that the conference had failed to adequately address problems of nonwhite participants in the sentencing and corrections process. Watson identified the absence of nonwhite participation at the policy level of the criminal justice system as a major system problem.

Watson identified four issues which must be dealt with by the criminal justice system to effect improvement. First, proportional representation of nonwhite system participants at the policy level is necessary. Nonwhite administrators, not just guards, should be hired in proportion to the percentage of nonwhites in the offender population served. Second, integration must be assertive, with active recruiting and hiring of nonwhites going beyond mere compliance with existing law. Third, while acknowledging the importance of education and experience for administrators, Watson stressed that those hiring administrative level personnel should look beyond their credentials to find individuals sensitive to the needs of the offender population. Finally, Watson noted that the community-based corrections movement must originate at the grass roots level.

Conclusion

Conference deliberations covered other topics which cannot be neatly assigned to community-based corrections, diagnosis or sentencing. Such suggestions and observations are presented here without attempt to synthesize or explain them.

- Two groups suggested decentralizing state correctional facilities. These suggestions envision not replacing the major institutions now existing but supplementing them by providing institutional services—diagnosis, classification, rehabilitation—in secure facilities on a regional basis.

- One group recognized the problems caused by mixing clients not yet tried or sentenced or on probation with clients released from institutions in the same community programs and facilities.

- Two groups reminded conferees that the reduction of crime is not the sole responsibility of the sentencing and corrections process. Improved law enforcement and court management are vital to reducing the crime rate.

- Two groups advocated that probation and parole remain separate functions. Another group recommended that these functions be combined. Probation supervision fees, one group resolved, should be uniform throughout the state.

- Several groups noted the lack of reliable information on which to base realistic system improvements. One group suggested that studies of sentencing disparity and of correctional practices in other jurisdictions be undertaken as one means of closing the informational gap.

- Two groups cited the need for more sentencing alternatives, noting in particular the lack of victim restitution programs. A third group noted that to succeed, programs must be adequately funded.

- The criminal code needs revision, according to conferees. One group noted that revision should ensure that all offenses are included in the penalty structure while another group advocated modifying the structure by providing lower maximum and minimum penalties in all classes of felonies.

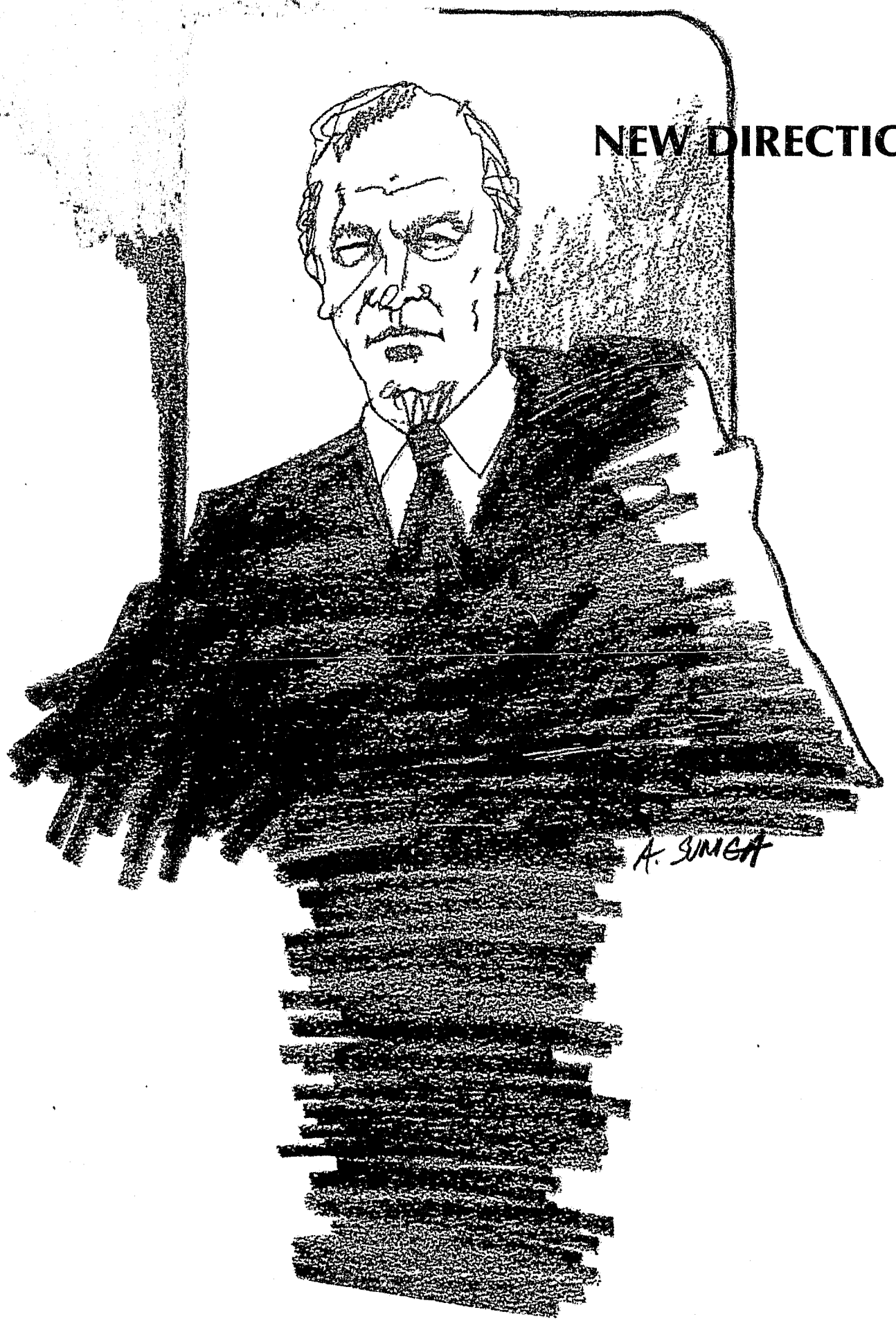
- One group advocated the consolidation of statutory provisions governing corrections, correctional institutions and parole into a comprehensive corrections code.

- District attorneys and sentencing judges, one group recommended, should be notified prior to an offender's transfer or release and should be permitted to make recommendations about such action.

- One group noted that the sole function of imprisonment is punishment and isolation.

Consensus on all issues involved in sentencing and corrections, it appears obvious, is a remote goal. Group reports, however, indicate that present lack of agreement will not foreclose the search for solutions to the problems of sentencing and corrections. The hope expressed in group reports and by many individuals that sentencing forums be held periodically indicates optimism that progress can be made and demonstrates that the first Colorado Conference on Sentencing and Corrections was a success.

NEW DIRECTIONS



NEW DIRECTIONS

The first Colorado Conference on Sentencing and Corrections has been and will remain a fountainhead of creative proposals for upgrading every stage of the sentencing and corrections process. Resulting directly from conferee recommendations, Department of Institutions and Supreme Court directives have rendered diagnostic reports effective guides to judges considering sentence modifications. A study to determine the existence and extent of sentencing disparity undertaken by the Colorado Judicial Department likewise responds to conferee concerns. Legislation embodying conference recommendations was placed on the Governor's Call for General Assembly consideration. Equally important, though regrettably difficult to measure, is the positive influence of the conference on sentencing judges and probation officers, corrections professionals and parole personnel of whose decisions the sentencing and corrections process is composed.

In his remarks on the final day of the conference, Chief Justice Edward E. Pringle noted that conference dialogue had already produced results. Henceforth, he said, all sentencing judges will routinely receive diagnostic reports on offenders whom they sentenced to incarceration. The judges will be directed to consider such reports in deciding whether to modify their original sentences.

The Chief Justice's closing statement soon became official reality. A "Directive Concerning the Receipt and Consideration of Diagnostic and Evaluation Reports from the Department of Institutions of All Adult Offenders Sentenced to a State Correctional Institution" issued by Chief Justice Pringle on February 25, 1976, states:

> WHEREAS, the Department of Institutions has agreed to forward to the sentencing judge a complete diagnostic report and evaluation well within 120 days of the receipt of the offender at the diagnostic center;
>
> NOW THEREFORE,..., IT IS HEREBY ORDERED That the sentencing judge, upon receipt of the diagnostic report and evaluation from the Department of Institutions, shall carefully read such report and consider the correctness of the sentence in light of it within the time limits set forth in Rule 35(a) of the Colorado Rules of Criminal Procedure;
>
> AND FURTHER, if, after due consideration of all information available to him, the sentencing judge determines that a reconsideration of the original sentence is appropriate he shall cause such to occur pursuant to the Colorado Rules of Criminal Procedure.

The directive, though not addressing the recommendation voiced in six final reports that diagnostic reports and evaluations be available before sentencing, represents significant progress toward the often expressed conference goal of a sentencing process governed by clearly articulated guidelines.

The apprehension expressed in several final group reports that sentencing disparity exists and must be curtailed prompted Chief Justice Pringle to commit the Colorado Judicial Department to undertake a comprehensive study to determine if similar sentences are meted out for similar crimes in Colorado. The Judicial Department staff reports that the process of collecting data for the study has been completed. Analysis of the data—the dispositions imposed statewide in all cases of second degree burglary (both the class three and class four felony), aggravated robbery and second degree assault—will be completed by July 1976.

The complexity of the legislative process makes tracing the precise effect of conference recommendations on final General Assembly enactments far more difficult than perceiving conference influence on Supreme Court directives. Noting the degree of concurrence of legislative measures with conference suggestions, however, makes possible hypothesizing about conference impact.

House Bill 1241, providing for the creation of a dedicated fund to be used to finance training of law enforcement, probation and corrections officers, failed to win approval of the House Appropriations Committee. The bill, which through a ten percent penalty assessment on criminal fines with the exception of minor traffic fines would have yielded $900,000 in annual revenues, did not address major conference concerns. One final group report, however, had suggested that revenue similarly raised could help finance community-based corrections.

Two nearly identical bills proposing that mandatory sentences be imposed on persons using firearms in the commission of a felony (House Bill 1082) or on persons using weapons in the commission of a felony (Senate Bill 33) failed. Their failure is consistent with general conference disapproval of mandatory sentencing.

A statutory triad unique in corrections history, its success overshadowing the demise of House Bills 1241 and 1082 and Senate Bill 33, launches a three-pronged attack on problems of sentencing and corrections. Senate Bill 4 embodies conference mandates for adequately funded, locally administered community-based corrections, an essential building block of any comprehensive corrections effort. In providing sentencing alternatives for violent and repeat offenders, House Bill 1111 incorporates the loudly voiced conference concern for community safety. And House Bill 1237 addresses the long overlooked needs of crime victims. Passage of the legislation represents only the beginning of improvements which will ultimately benefit not only the sentencing and corrections process but all Colorado citizens.

Senate Bill 4 modifies the concept of community-based corrections as embodied in the Community Corrections Act of 1974. The bill's redistribution of authority to establish and maintain community-based corrections among units of local government, judicial districts and the Department of Institutions and its appropriation of funds adequate to successfully launch community-based corrections on a wide scale correlate to a great degree with conference recommendations.

Senate Bill 4, sponsored by Senator Ralph Cole, confers autonomy in establishing programs, setting standards for program operation and offender conduct and accepting or rejecting the placement of an offender in a community program or facility pursuant to contract with a judicial district or the Department of Institutions on corrections boards, roughly analogous to the community corrections boards of the previous community corrections legislation. The bill thus answers a major concern of conference participants that grass roots autonomy is vital to the success of community-based corrections and incorporates as well conferee recommendations that every step in the sentencing and corrections process be governed by standards. The bill's definitions of the types of offenders who may be sentenced to community programs or facilities embodies regard for community safety, an element found by conferees to be basic to securing local acceptance for community-based corrections. The $301,500 appropriation attached to the bill and the provision for a fifteen-dollar per diem reimbursement from the appropriation for every offender enrolled in a community corrections program answer conference recognition that without the incentive of adequate state funding, community-based corrections is doomed.

The present form of Senate Bill 4 reflects the observations of a group of corrections decision makers who traveled to Des Moines, Iowa, in March 1976 to view firsthand the operation of community-based corrections there. Those making the trip—staff members of agencies dealing with corrections, county commissioners and state legislators—were favorably impressed with the Iowa program. Before the Iowa expedition, Senate Bill 4 focused primarily on state authority—funding was to come from the state, although no appropriation was attached to the bill; establishing community-based corrections programs and promulgating standards for their operation were both state concerns. The most striking feature of the post-Des Moines version of Senate Bill 4, aside from the state appropriation, is the switch of focus from state to local authority. The new draft of the bill adequately considers county concerns and places principal authority for program establishment and administration in the hands of corrections boards.

Several revisions of Colorado sentencing statutes contained in House Bill 1111, legislation sponsored by Representative Gerald Kopel, are consistent with sentencing conference recommendations. Consonant with the suggestions of two group., House Bill 1111 requires the imposition of minimum sentence terms, even in class four and class five felonies, on repeat offenders as defined in the bill. The bill's definition of "repeat offender" comports with conference demands for specificity.

Other revisions effected by House Bill 1111, notably enactment of a mandatory sentencing provision, diverge from conference suggestions. The bill's lack of concurrence with conference disapproval of mandatory sentencing is mitigated, however, by its comprehensive definition of "crime of violence" which correlates with the meaning ascribed to that phrase by one final group report.

Although an early version of House Bill 1111 included downward revision of the penalty structure, a modification of existing law reflecting conference recommendations, the bill as enacted leaves current provisions unchanged.

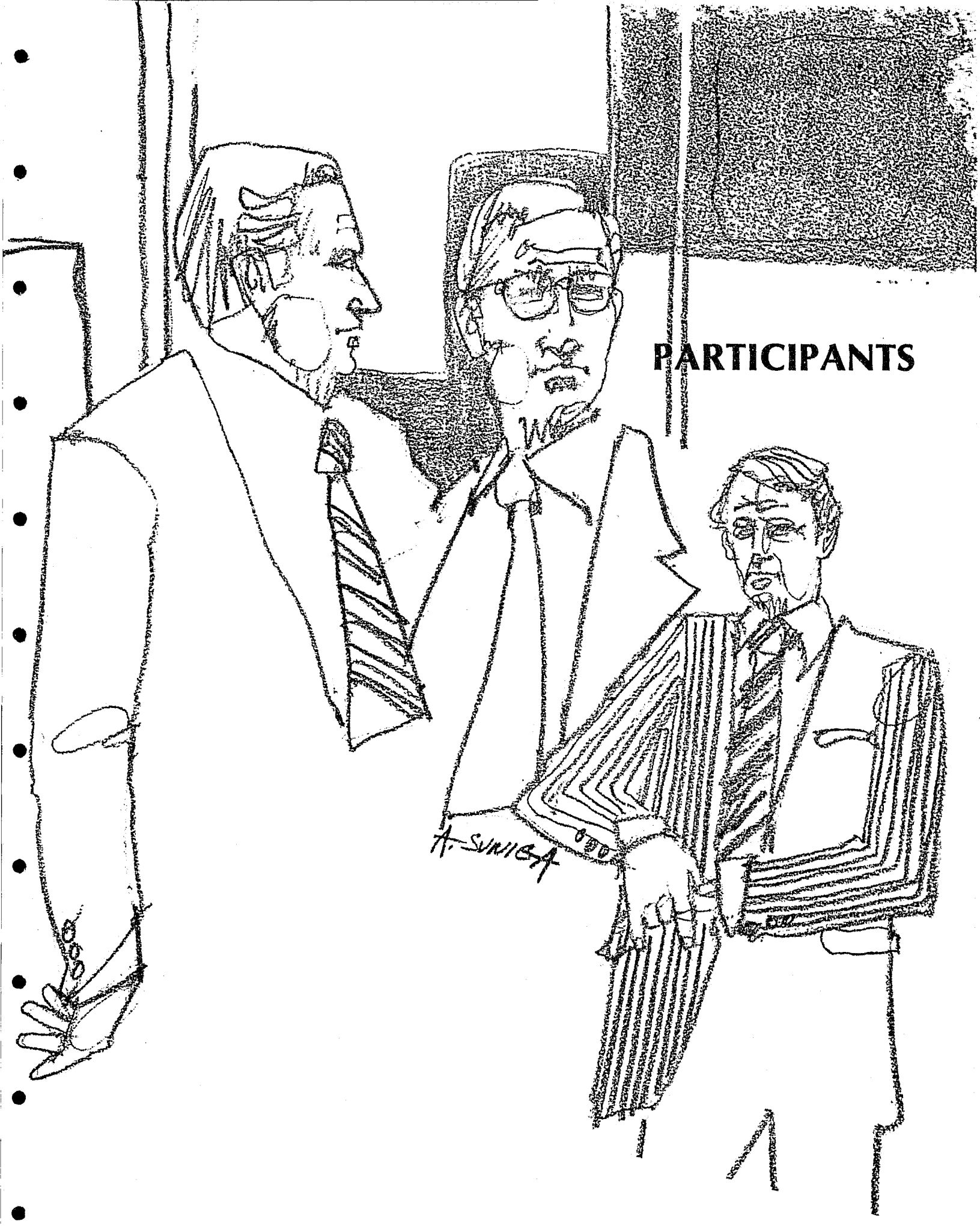
State response, both legislative and administrative, to conference demands for more, and more adequately funded, sentencing alternatives has been swift. Prompted by suggestions of two final group reports, his own interest and concern of the other conference co-sponsors, Governor Lamm directed staff of the Colorado Commission on Criminal Justice Standards and Goals and the Division of Criminal Justice to investigate victim restitution and compensation.

Three staff members—Mr. Randall W. Klauzer, Standards and Goals corrections coordinator, and Dr. Leonard Zeitz and Ms. Pat Ratliff of the evaluation unit of the Division of Criminal Justice—worked intensively for three weeks to produce the requested study. Study findings led the staff members to conclude that Colorado's existing restitution program, operating through probation and normally involving only property offenders, is inadequate, that victim participation in restitution efforts is necessary for long term program success and that restitution programs could be effectively launched in existing or expanded minimum security facilities. The study recommended review and clarification of existing work release and Prison Production and Use Laws as well as enactment of legislation governing parole-based restitution programs and discouraged the creation of victim compensation programs.

At Governor Lamm's request, staff drafted legislation found to be necessary through their investigation. The purpose of House Bill 1237, a measure sponsored by Representative Don Brinton, is "to encourage the establishment of programs to provide for restitution to victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in local correctional and detention facilities. It is the intent of the General Assembly that restitution be utilized whenever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society." House Bill 1237 was passed by the Colorado General Assembly without a dissenting vote.

While House Bill 1237 was being deliberated in the legislature, Randall Klauzer drafted a grant application for Law Enforcement Assistance Administration funds to operate and extensively evaluate restitution programs to determine which would function cost effectively in Colorado. The State Council on Criminal Justice which considered the grant application at its March meeting unanimously approved the $250,000 grant. Grant implementation will include victim restitution through service and financial compensation by offenders, probation work incentives, local work release, victim-offender contacts, institutional and community work placement and employment counseling.

Had nothing more than dialogue among participants resulted from the conference, that meeting would have been termed a success. That benefits in the form of legislation and Supreme Court directives continue to accrue to the sentencing and corrections process, to its participants and thus to all Colorado citizens further demonstrates the soundness of state and federal investment in the conference. In sum, the Colorado Conference on Sentencing and Corrections, in identifying problems and suggesting solutions, laid the groundwork for continuing and significant improvement.



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END