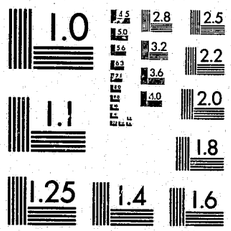

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WORKSHOP PAPERS

Prepared for

Special National Workshop

"CRIME CONTROL: STATE OF THE ART"

Arlington, Virginia

May 30 - June 1, 1979

For

THE NATIONAL CRIMINAL JUSTICE EXECUTIVE TRAINING PROGRAM

These papers are being presented at a Special National Workshop held pursuant to Contract No. J-LEAA-022-76 awarded to University Research Corporation by the U.S. Department of Justice, Law Enforcement Assistance Administration, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. The points of view or opinions expressed do not necessarily represent official policy or positions of the U.S. Department of Justice.

TABLE OF CONTENTS

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Crowding in Prisons and Jails in The United States*

Bradford Smith

1. Background of the Study

The study of the needs of Federal, State, and local correctional facilities was ordered by the U.S. Congress in October 1976 and awarded to Abt Associates by the National Institute of Criminal Justice and Law Enforcement within the Law Enforcement Assistance Administration in May 1977. The preliminary report to Congress, Prison Population and Policy Choices, was delivered in September 1977, and the final report is now being completed. The study included a mail survey with intensive telephone followup of all Federal, State, and local correctional facilities and of the Federal and all State correctional agencies. A central purpose of the study is to assist in the development of coherent corrections policymaking. Three important components of such policy are:

- The size of the correctional population under custody;
- The capacity of correctional facilities to hold the correctional population in custody; and
- The conditions that characterize the custody of the correctional population.

In the first phase of the study, we were tied to notions of rated capacity provided by the jurisdictions and consequently were unable to make an independent assessment of the actual space available or the extent of crowding. We have now obtained data from almost every prison, jail, and community-based facility in the country describing the size of confinement units and the distribution of inmates in these confinement units and facilities. This paper presents some of the basic data which describe prison and jail space in the nation today, and compares them to several of the standards which have been proposed or adopted. Many of these results are preliminary, based on data which are still undergoing final analysis. The broad trends that they present, however, are clear even under cursory examination.

2. Summary

The most striking of these preliminary indications is that State correctional institutions are very near their population limits by any standards. On the day of our survey, only about seven percent of all cells were vacant and we counted six inmates for every five units of physical capacity. The smallest standard of area which any standard-making body has adopted is 60 square feet per inmate. Only 45 percent of State prison cells and 40 percent of local jail cells meet or exceed this standard. Standards as high as 80 square feet have been proposed. Only 10 percent of State cells and 20 percent of local jail cells would meet or exceed this more rigorous standard.

Smaller confinement units are characteristic of older institutions, are more likely to be found in jails than in prisons, and are more likely in the South and West than in the Northeast and Northcentral states. Approximately two out of every three inmates in the United States share a confinement unit with at least one other inmate.

*This project was supported by Contract Number J-LEAA-018-77 awarded to Abt Associates Inc. by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Acts of 1968, as amended.

3. Definitions

Before we can understand what these data mean, we need to understand the operational definitions of the statistical measures employed. The first of these concepts is capacity. Capacity is intended to reflect the number of inmates a confinement unit, a facility, or an entire correctional system can hold. Capacities have traditionally been determined by correctional officials, using whatever criteria they believe to be most appropriate.

Correctional capacities have been changed over time as a function of administrative changes in the definition of capacity with no changes at all to the physical plant. It is also the case that similar facilities in different jurisdictions have dramatically different capacities. For example, a facility may be rated to have a capacity of 500 in one jurisdiction while a similar facility may be rated to have a capacity of 1,000 in another jurisdiction. This could happen if one jurisdiction rated its 500 confinement units as each holding one inmate and the other jurisdiction rated the same number of approximately equal sized confinement units to hold two inmates each. Ratings of dormatory space can be even more arbitrary.

Both this study's survey of Federal and State correctional facilities, and the survey of local facilities conducted by the U.S. Bureau of the Census asked for the physical dimensions, in square feet of floor space, of all confinement units. This request has for the first time permitted the development of a consistent measure of correctional capacity in the United States. Rather than use responding agencies' definitions of the various types of confinement units, which might vary significantly from one jurisdiction to another, all confinement units reported were categorized as measuring less than 120 square feet or measuring 120 or more square feet. For convenience, the terms "cell" and "dormitory" are used to refer to these two groups of confinement units. All confinement units with less than 120 square feet of floor space per inmate are assumed to have a capacity of one inmate. Our capacity calculation assumes double celling is impermissible unless at least 60 square feet are available per inmate. Thus any unit under 120 square feet has a capacity at most of one.

Confinement units with 120 or more square feet of floor space, which we will call dormitories, are assumed capable of holding more than one inmate. Their capacity is defined as the smaller of the two values: (1) total square feet of floor space divided by 60 or (2) the jurisdictionally defined capacity. The jurisdictionally defined capacity for "dormitories" is used when it is smaller than the value obtained by dividing 60 into the total number of square feet of floor space because we found from our site visits that the larger the total number of square feet for a confinement unit, the less likely we were to know what was included in the square footage figure provided. It was our intention to obtain square footage data for confinement units "where inmates spend the night." However, it turns out that in many facilities the actual physical arrangement of the larger confinement units makes comparisons difficult. Activity areas (e.g., day rooms) were sometimes found to be inside confinement units and included as part of the total amount of floor space and at other times were located outside confinement units and were not included. Our measure of dormitory capacity provides a minimum of 60 square feet per inmate and assumes that the larger confinement units have not been jurisdictionally defined in such a way as to have less capacity than they should.

4. Comparisons of Capacity Measures

In addition to a measure of physical capacity based on the number of square feet for each confinement unit, data were also collected for the jurisdictionally reported capacities of the corrections agencies. The jurisdictionally reported capacity of all Federal, State, and local facilities is a little over half a million beds. Application of the physical measure of capacity described in the previous section reduces the Nation's correctional capacity to a little under 400,000 beds. In other words, use of this physical measure of capacity would allow the incarceration of only three inmates in the space now reported by the various Federal, State, and local correctional agencies to be capable of holding four inmates. It is worth noting that we are not yet describing the actual distribution of inmates in correctional facilities, but only reported and physical capacities. As noted below, the approximately 450,000 inmates in Federal, State, and local correctional facilities are far from evenly distributed throughout the available correctional capacity of the country. Table 1 displays the correctional populations for the United States as well as both physical and reported capacities by type of confinement unit.

Figure 1 displays the relationship between the jurisdictionally reported capacity and the physical capacity as we defined it. Application of the physical measure of capacity only slightly reduces the reported capacity for Federal facilities, reduces the reported capacity of State facilities by 16 percent, and reduces the reported capacity of local facilities by over one-third. Clearly, the application of standards being discussed today would have the greatest impact on the approximately 3,500 local correctional facilities.

At both the State and local levels there are very important regional differences. As presented in figure 2, these differences are especially marked in the South. Application of the physical measure of capacity results in the South having 75 percent of its reported prison capacity and only 55 percent of its reported jail capacity. In contrast, the Northeast shows little overstatement of capacity of either State or local facilities. The West, however, shows little impact of the physical measure of capacity on State facilities, but a 40 percent overstatement of reported capacity for local facilities. It is also only in the West that the jurisdictionally reported capacity for local facilities is greater (by 10,000) than the jurisdictionally reported capacity of State facilities.

As discussed above, all confinement units have been dichotomized into two groups, "cells" and "dormitories." Figure 3 shows that about half of the physical capacity of Federal and local facilities and almost two-thirds of State facilities is comprised of cells. Figure 4 shows significant differences in the composition of confinement units in each of the four regions. For both State and local facilities in the South, only 4 out of every 10 places of confinement are cells. Most of the inmates incarcerated in the South live in dormitories, sharing their living space with other inmates. In addition, it will be shown below that nearly half of the State cells in the South also confine two or more inmates. This compares with 16 percent in the North Central region, 7 percent in the West, and only 1 percent of the State correctional facilities in the Northeast. (See figure 10 below.) The predominance of cells as a proportion of the total capacity varies

regionally from almost all of the State capacity in the Northeast to only one-third of the local capacity in the West. By definition, capacity not composed of cells is made up of dormitories, i.e., confinement units with 120 or more square feet of floor space. Therefore, two-thirds of the local capacity of the West is made up of dormitory living space.

5. The Distribution of Cells by Size of Cell in Federal, State, and Local Facilities

There is no agreement on the minimum space necessary for persons incarcerated in prisons and jails. Figure 5 displays three plots for data collected on cell size for Federal, State, and local facilities. In 1973 the National Advisory Commission on Criminal Justice Standards and Goals established 80 square feet as the minimum requirement. It can be seen that a standard of 80 square feet of floor space is met for only 2 out of every 10 cells in Federal and local facilities and only one out of every 10 cells in State facilities. More recent recommendations made by the Commission on Accreditation for Corrections and the Department of Justice draft, Federal Standards for Corrections, have also recommended 80 square feet of floor space when the inmate spends more than 10 hours per day locked in long-term adult correctional institutions. While most Federal facilities report inmates spend 10 or fewer hours in their cells, a sizeable number of state inmates are reported to spend more than 10 hours a day in their cells.

The National Sheriff's Association has recommended 70 square feet of floor space for jails. Both the Commission on Accreditation for Corrections and the Department of Justice draft, Federal Standards for Corrections, recommend 70 square feet of floor space when the inmate spends more than 10 hours per day locked in detention facilities. A reduction of 10 square feet to 70 square feet of floor space results in only one out of every four local confinement units meeting the standard. Although no data were collected on length of time in confinement units in the National Jail Census, it is our belief, based on anecdotical evidence (and site visits), that a large proportion of the inmates incarcerated in local detention facilities do in fact spend more than 10 hours per day in their cells.

Both the Commission on Accreditation for Corrections and the Department of Justice draft, Federal Standards for Corrections, recommended 60 square feet of floor space when inmates spend less than 10 hours per day in their cells for both prisons and jails. The 10th Circuit Court in Battle v. Anderson recently ruled that it would adopt the standards of the American Public Health Association of 60 square feet in a cell (75 square feet in a dormitory) as the minimum number of square feet of floor space humanly permissible in Oklahoma correctional facilities. It can be seen from figure 5 that 62 percent of the cells in Federal facilities, 44 percent of the cells in State facilities, and 39 percent of the cells in local facilities meet the 60 square foot standard. Dropping the standard to 50 square feet of floor space per cell results in a dramatic increase in the number of cells that would meet such a standard: 83 percent of the Federal cells, 73 percent of the State cells, and 67 percent of the local cells.

Figure 6 shows regional differences in the percentage of cells that would meet a 60 square foot standard. Approximately one out of every two cells in State facilities would meet the standard in the Northeast and North

Central regions, but only one out of every four cells would meet the 60 square foot standard in the West. The South falls in between with better than one-third of its cells meeting the standard. Although only one-third of the physical capacity of local facilities in the West are cells (see figure 4), one out of every two of these cells would meet the 60 square foot standard. This contrasts sharply with local cells in the Northeast where three-fourths of the physical capacity are cells, but less than one-third of these cells would meet the 60 square foot standard. The North Central and Southern regions fall between these two extremes with approximately four out of every ten cells meeting the 60 square foot standard. It might be noted that there is wide variation within regions, e.g., 99 percent of Oklahoma's cells meet the 60 square foot standard while in Texas only 10 percent do so.

It is the old, large, and maximum security prisons that have the smallest cells. Only 16 percent of Federal and State cells built prior to 1875 meet a 60 square foot standard compared with 80 percent of the cells built since 1970. For local cells also, the older the facility, the smaller its cells. It's worth noting that, as figure 7 demonstrates, Federal and State facilities are on the average older than local facilities. Fifteen percent of the Federal and State cells were constructed prior to 1875 compared with only 5 percent of the local cells. More than half the jail cells have been built since 1950 compared with one out of every three Federal and State cells. Small facilities tend to have more spacious cells: 65 percent of Federal and State facilities with average populations of less than 500 prisoners meet a 60 square foot standard while only 38 percent of cells in facilities with over 1,500 prisoners do so. The larger local facilities also have smaller cells. In large local facilities (with average daily populations of 250 or more) only one out of every four cells meet the 60 square foot standard compared with one half in small local facilities (with average daily population of less than 10.) For cells in Federal and State facilities, nearly all (96 percent) of the minimum security cells meet the 60 square feet standard compared with 54 percent of the medium security cells and only 37 percent of the maximum security cells. In summary, older and larger facilities are more likely to have smaller cells for prisons and jails, and for prisons, the higher the security level of the facility, the smaller the size of the cell.

6. Density and Occupancy in Prisons and Jails

The previous sections described the capacity and size of the Nation's prisons and jails to house its inmates. It said nothing about the actual distribution of inmates throughout the Federal, State, and local correctional system. This section uses data collected in the surveys to provide a description of how inmates are in fact distributed in confinement units throughout the United States. Two related, but distinct concepts are required to organize the mass of data that have been collected.

Density

Density is the number of square feet of floor space per inmate. It refers strictly to a physical measurement of inmates per unit of space and not to the restrictive aspects of limited space as perceived by inmates exposed to high density living conditions. It will be argued below that density

is a necessary antecedent, rather than a sufficient condition, for the experience of crowding. For purposes of exposition, high, medium, and low density have been defined in the following way:

- o High density--Confinement units with less than 60 square feet of floor space per inmate.

- o Medium density--Confinement units with 60-79 square feet of floor space per inmate.

- o Low density--Confinement units with 80 or more square feet of floor space per inmate.

These definitions have been developed in the context of the current standards discussion and are subject to change as we acquire more knowledge about the experience of density in a correctional environment.

Occupancy

Occupancy refers to the number of inmates per confinement unit. It, like density, is also a physical, rather than a psychological, concept. Occupancy and density are closely related; as the number of individuals increases for any given confinement unit, the density will also increase. However, there is considerable evidence that a given density is experienced in very different ways if confined alone, with one, with several, or with many other inmates. We distinguish single occupancy cells from those which are empty and those that house more than one prisoner. This reflects the near unanimity of standards in specifying only one inmate to a cell. It should be noted that empty cells do not automatically represent slack. Vacancies may be in the wrong state or at the wrong security level. Moreover, since prison and jail populations fluctuate randomly, some vacancy is required to accommodate the difference between average populations and maximum populations. The larger the system, the smaller this random fluctuation is likely to be (as a percent of total population).

Occupancy, Density, and Type of Confinement Unit

Figure 8 summarizes the relationship between occupancy, density, and type of confinement unit. The shaded portions of the figure refer to confinement units that would fall below standards now being considered. The figure can be easily adjusted to reflect other standards. All squares indicating high density or multiple occupancy cells have been shaded. The square indicating single occupancy, medium density cells has been cross-hatched in order to suggest that this level of density (i.e., 60-79 square feet of floor space) is adequate only if inmates spend 10 or fewer hours per day locked in their cell. All squares indicating high density or occupancy of more than 50 inmates for dormitories have been shaded.

Obtaining the entries in this figure for any given Federal, State, or local correction facility provides an excellent first approximation of what the facility is like. Obviously, a great deal of other information is necessary before decisions can be made about how crowded or how adequate the facility is for purposes of housing prisoners (e.g., the length of time spent locked in confinement units). Other physical attributes of the

confinement unit that may change an inmate's perception of being crowded include: noise and temperature levels, access to natural light, air circulation, plumbing, etc.

Occupancy and Privacy

An important issue in the standards discussion now going on is the level of privacy afforded to incarcerated persons. In recent years standards have recommended that each prisoner have his or her own confinement unit, and have generally criticized the use of dormitories in any but minimum security facilities. Figure 9 presents occupancy data for cells in Federal, State, and local facilities. Federal facilities have the smallest percentage of empty cells; State facilities were found to have around 10,000 empty cells across the nation; and one in every four local cells was reported to be empty. Only one tenth of all Federal prison cells contains more than one inmate compared with a fifth of all State cells. As we pointed out above and show in figure 10, there are dramatic regional differences in occupancy. Nearly half of the State cells in the South confine at least two inmates compared with 16 percent in the North Central region, 7 percent in the West, and only one percent of the State correctional facilities in the Northeast. The percentage of empty State cells in the South is only 3 percent compared with 9 and 10 percent in the other three regions. Multiple occupancy cells are also infrequent in local cells in the Northeast; less than a thousand of these twenty thousand cells held more than one inmate. In contrast, nearly a fourth of the confinement units in the South and West hold two or more inmates. Regionally there are not great differences in the overall finding that approximately one out of every four cells was reported to be empty.

At the time of the surveys in early 1978, there were approximately 450,000 prisoners in Federal, State, and local facilities. Figure 11 presents the distribution of these inmates by density and occupancy regardless of whether the confinement unit was a cell or dormitory. The most ideal living situation--low density, single occupancy--is presented at the top of each of the bars. This situation is most prevalent in Federal facilities and least so in local facilities. Of all inmates in the United States, approximately half live in high density, multiple occupancy confinement units. Approximately two-thirds of all inmates in the United States share a confinement unit with at least one other inmate.

However, this national picture obscures dramatic regional differences. Only 5 percent of the inmates in State facilities in the Northeast live in high density confinement units they share with others compared with 69 percent in the South. The same situation obtains for local facilities. One out of every five inmates in the Northeast lives in high density, single occupancy confinement units compared with two out of every five in the North Central region and three out of every five in the South and West. Nearly half of the State inmates in the Northeast live in low density, single occupancy confinement units, but only seven percent of the inmates in the South do. It is also worth noting that the number of inmates in local facilities is about 50 to 60 percent of the number of inmates in State facilities in every region but the West. In the West there are about the same number of people incarcerated in both State and local facilities. These figures can be seen graphically in figure 12.

7. Time in Confinement Units

It has been pointed out above that reference to only the physical dimensions of a confinement unit is insufficient to determine if there is crowding or if the facility is adequate to hold prisoners. Both the Commission on Accreditation for Corrections and the Department of Justice draft, Federal Standards for Corrections, recommend different amounts of floor space per inmate contingent upon how long the inmate remains locked in his or her confinement unit. Both require a minimum of 80 square feet of floor space per prisoner for persons held in a State cell for more than 10 hours daily. Given this standard, we might hope that those inmates held in confinement units having the least amount of floor space would spend the least amount of time in their confinement unit. As it turns out, exactly the opposite is the case. Figures 13 and 14 demonstrate that those State prisoners who have the least amount of square footage also spent the most time in their confinement units. Overall, inmates in Federal facilities and State facilities in the Northeast spend less time locked in their confinement units than do inmates in State facilities in the remaining three regions of the Nation.

8. Conclusion

Data collected in this study have provided for the first time a consistent description of all adult correctional facilities in the United States. The data have allowed the development of a measure of capacity and a rough description of the physical circumstances under which inmates live in correctional institutions throughout the country. However, we would argue that the study has not provided a description of crowding per se. What has been provided are descriptions of necessary but not sufficient conditions for inmates to experience the psychological and physiological stress that current research suggests leads to disruptive and aggressive behavior. We would suggest that a state of crowding exists, and is perceived as such when lack of space, along with other physical, social, and personal factors, results in stress. A perception of crowding producing stress among inmates can lead to assault and violence within the correctional facility. Data on density and occupancy are not sufficient to conclude whether crowding exists within a facility. Holding density and occupancy constant, the level of crowding and therefore stress might vary as a function of other physical factors such as noise and temperature levels. The level of crowding might also vary as a function of social factors, such as the allocation of status and power or the distribution of offense type, race, or age within a facility. It should also be noted that individuals experience crowding differently based on their own idiosyncratic personal history (e.g., intelligence, strength, agility, tolerance of boredom, etc.) and current psychological (e.g., anxiety, fear, etc.) or physiological (e.g., hunger, sexual arousal) states.

We recommend that the discussion of crowding in prisons and jails in the United States be informed by consideration of other variables in addition to density and occupancy. The length of time locked in confinement units is already being considered by standards groups as just such an additional variable. We recommend that the concept of crowding be used only to refer to psychological and physiological states that result in feelings of stress on the part of inmate. Responses of inmates to these feelings of stress that have maladaptive consequences, both for the inmate and the institution,

require much more research to determine accurately what constitutes crowded conditions in correctional facilities. Density and occupancy should not be used synonymously with crowding. The data we have collected on the distribution of inmates in correction facilities should be viewed as important and potential conditions of crowding, but not the same thing as crowding.

The presentation of data in this paper is at a very high level of aggregation. Although there is value in presenting a national and regional picture of corrections, it has the effect of masking important differences among State and local correctional agencies. Our final report will include data at the State and local levels that should be of considerable value to corrections policymakers in the development of realistic and coherent corrections policy.

TABLE 1
Physical and Reported Capacities of Federal, State, and Local Confinement Units by Type of Confinement Unit — February 15, 1978

		Total		Type of Confinement Units			
				Cells[1]		Dormitories[2]	
	Number of Inmates	Physical Capacity	Reported Capacity[3]	Physical Capacity[4]	Reported Capacity[3]	Physical Capacity[5]	Reported Capacity[3]
Total, United States	447,000	383,000	511,300	217,800	288,800	165,200	222,500
Federal Facilities	29,700	21,700	22,800	11,300	11,400	10,400	11,400
State Facilities	258,900	213,200	254,600	135,000	159,900	78,200	94,700
Local Facilities	158,400	148,100	233,900	71,500	117,500	76,600	116,400

Note: *This table makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

[2]Confinement units with 120 or more square feet of floor space.

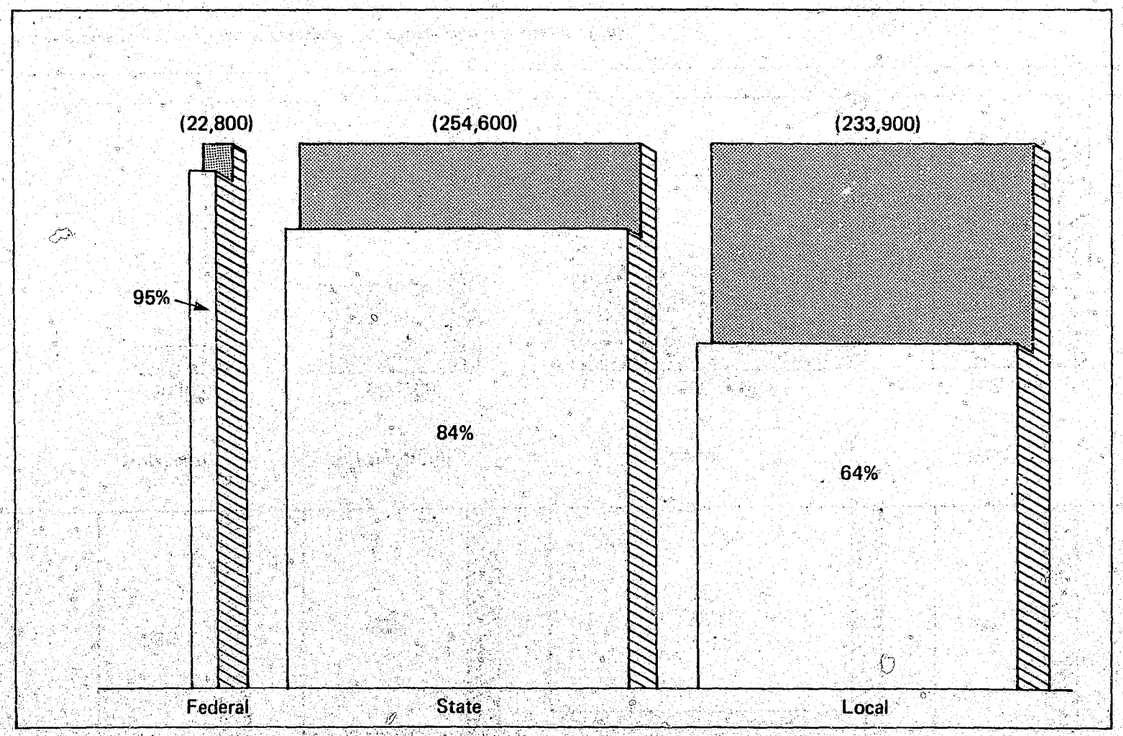
[3]The capacity of individual confinement units as reported by the jurisdiction.

[4]Physical capacity is defined as one inmate per cell.

[5]Physical capacity for dormitories is defined as the smaller of the two values: (1) Number of square feet of floor space/60 or (2) The jurisdicationally reported capacity.

FIGURE 1

Physical Capacity as a Percentage of the Jurisdictionally Reported Capacity for Federal, State and Local Adult Correctional Facilities – 1978[1]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]The width of each bar has been drawn as a proportion of the total *reported* capacity.

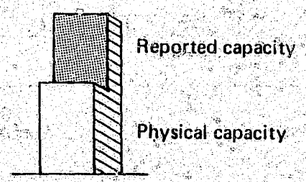
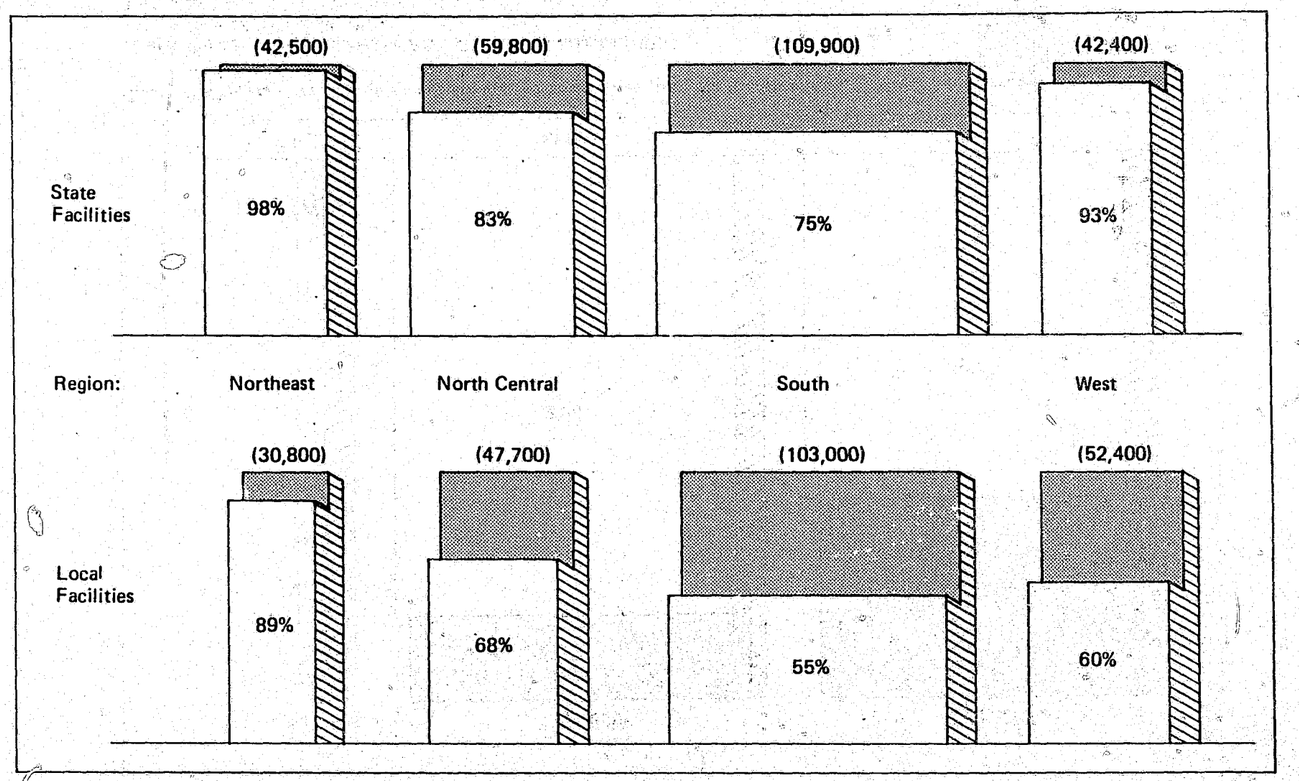


FIGURE 2

Physical Capacity as a Percentage of the Jurisdictionally Reported Capacity for State and Local Adult Correctional Facilities By Region -- 1978[1]



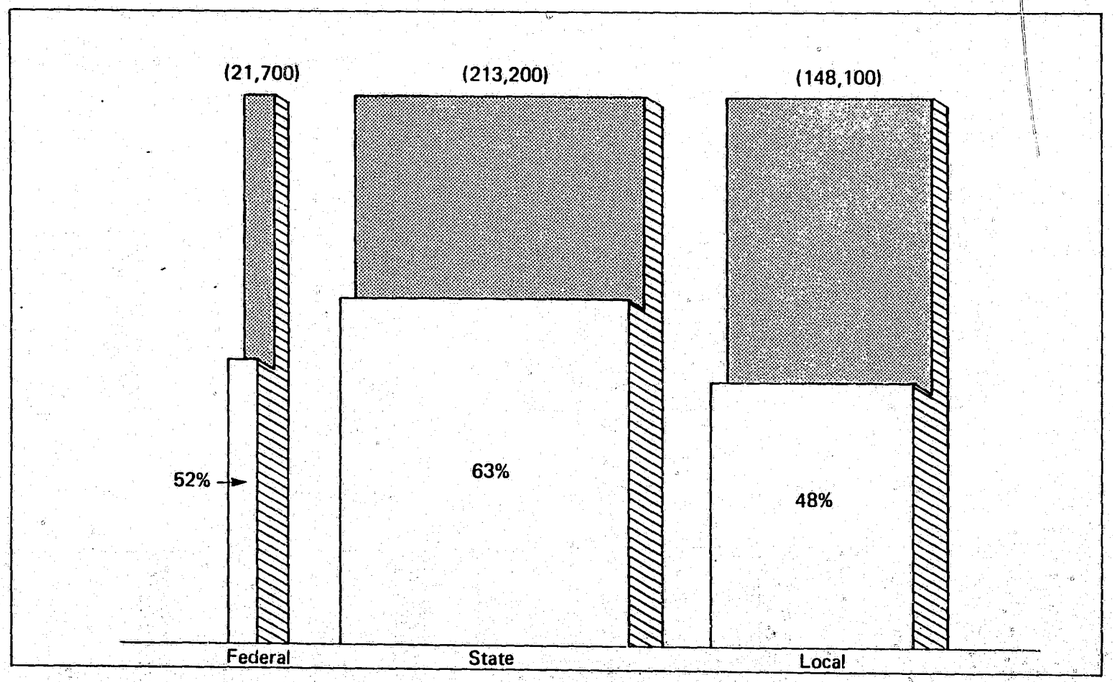
Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]The width of each bar has been drawn as a proportion of the total *reported* capacity.

FIGURE 3

Percentage of the Total Physical Capacity Comprised of Cells[1] for Federal, State and Local Adult Correctional Facilities – 1978[2]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

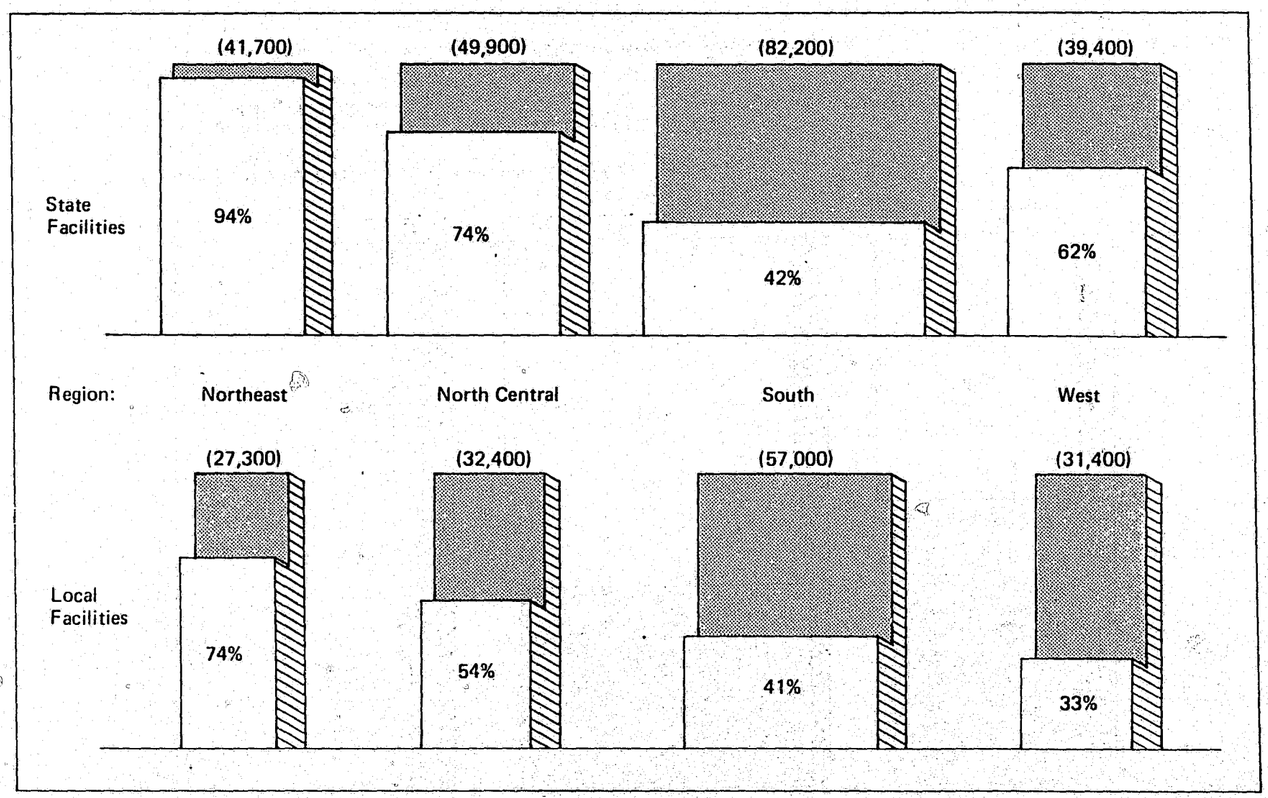
Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

[2]The width of each bar has been drawn as a proportion of the total *physical* capacity.

FIGURE 4

Percentage of the Total Physical Capacity Comprised of Cells[1] for State and Local Adult Correctional Facilities By Region — 1978[2]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

[2]The width of each bar has been drawn as a proportion of the total *physical* cell capacity.

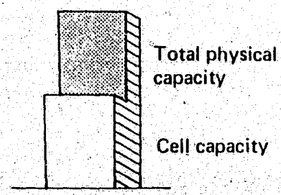
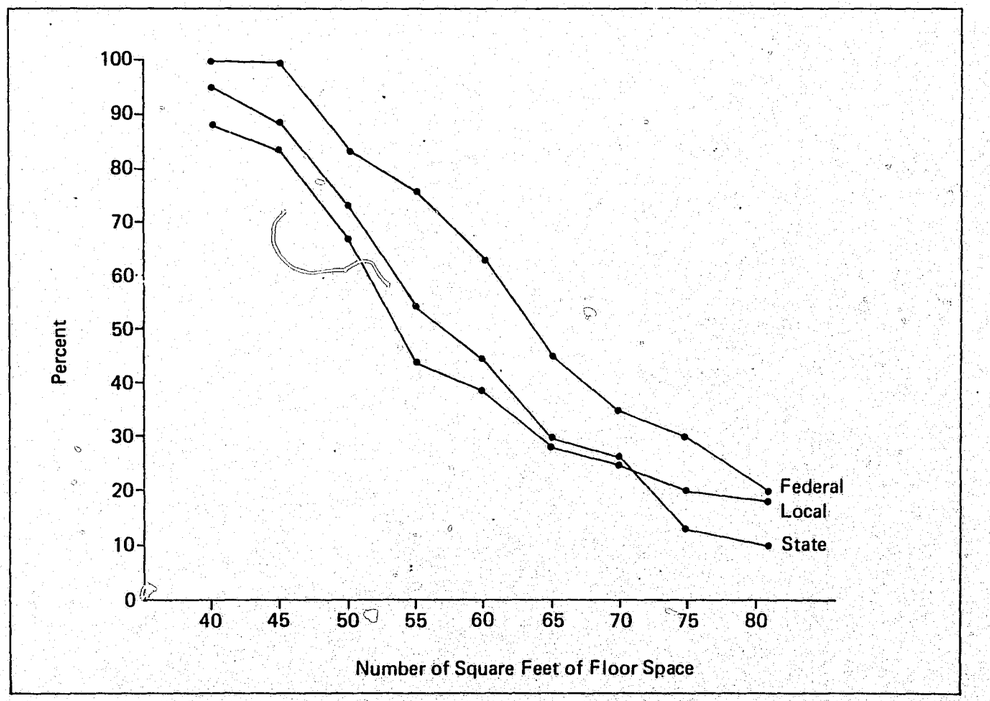


FIGURE 5

Percentage of Federal, State, and Local Cells[1] with Number of Square Feet Greater Than or Equal To Selected Values — 1978



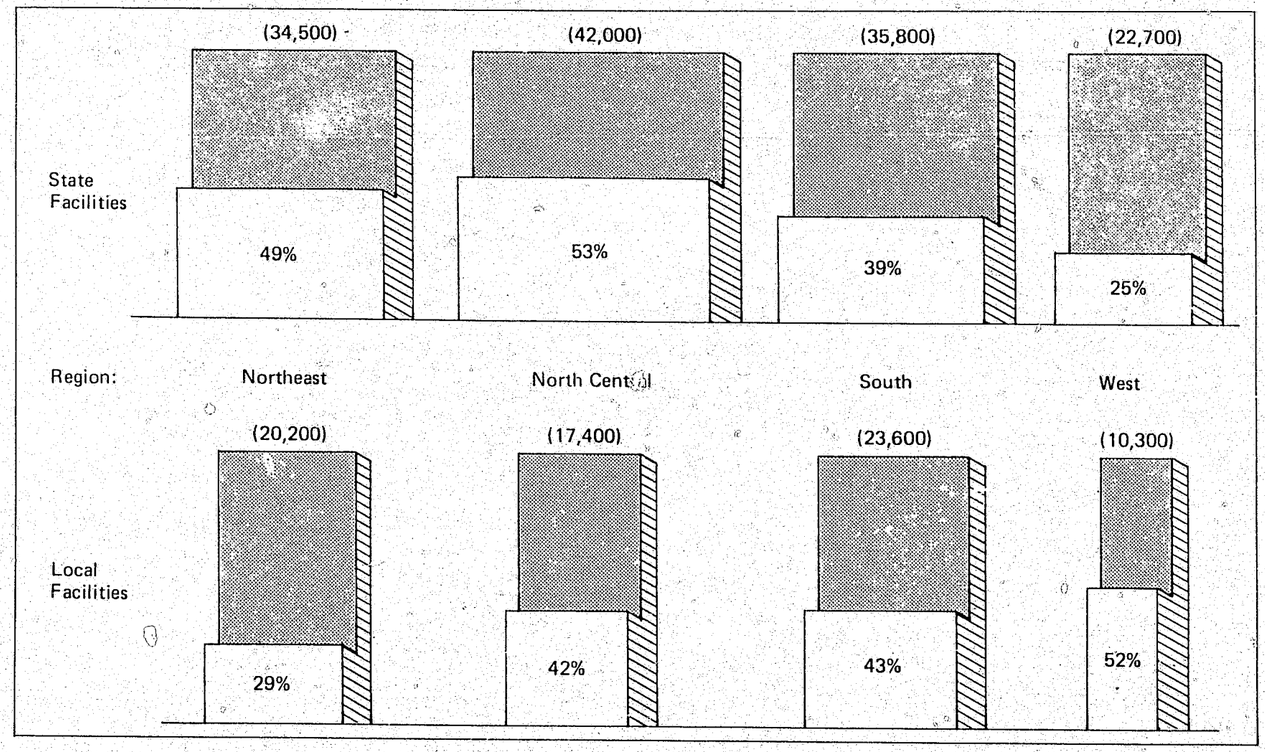
Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

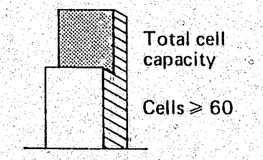
Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

FIGURE 6

Percentage of the Total Number of State and Local Cells[1] with Number of Square Feet Greater Than or Equal To Sixty By Region — 1978[2]





Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

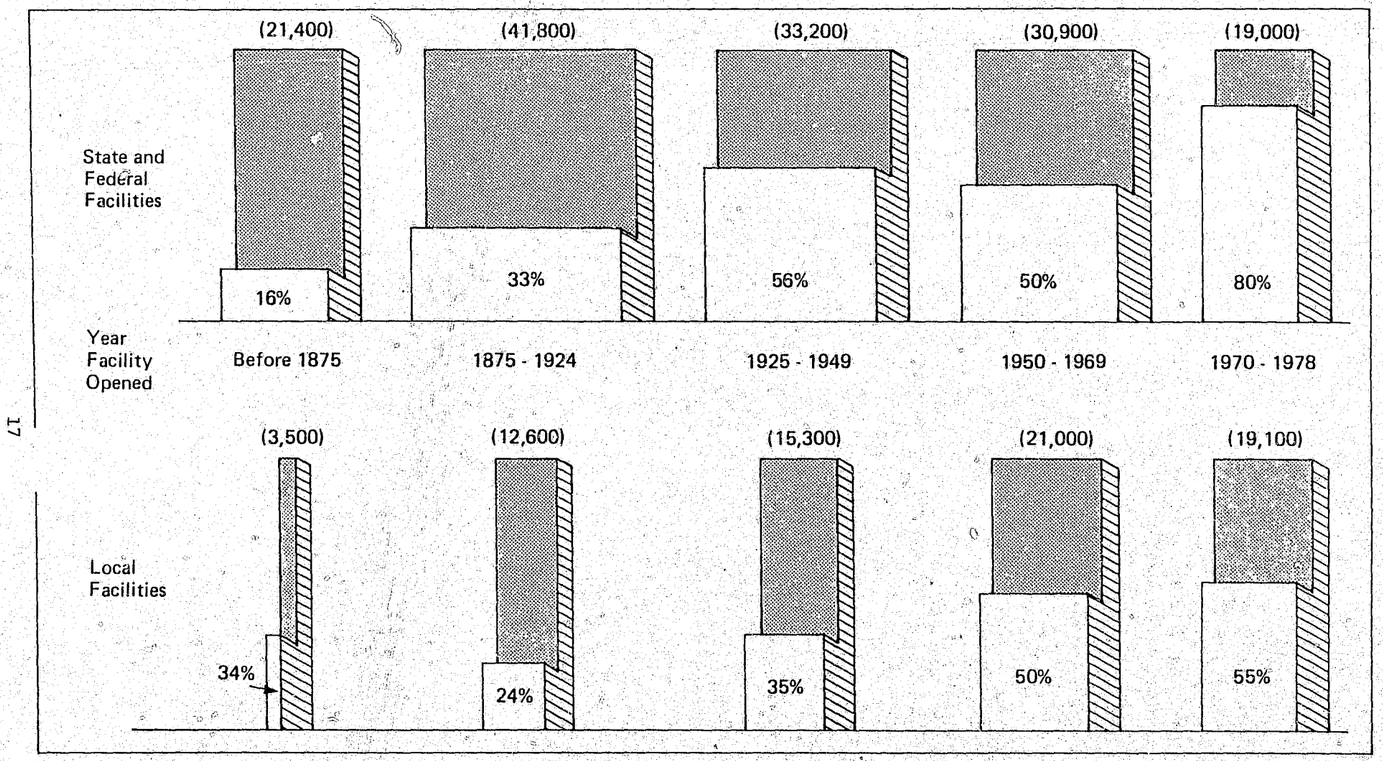
Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

[2]The width of each bar has been drawn as a proportion of the total *physical* capacity.

FIGURE 7

Percentage of the Total Number of Federal, State, and Local Cells[1] With Number of Square Feet Greater Than or Equal To Sixty By Year Facility Opened – 1978[2]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Confinement units with less than 120 square feet of floor space.

[2]The width of each bar has been drawn as a proportion of the total *physical* cell capacity.

FIGURE 8

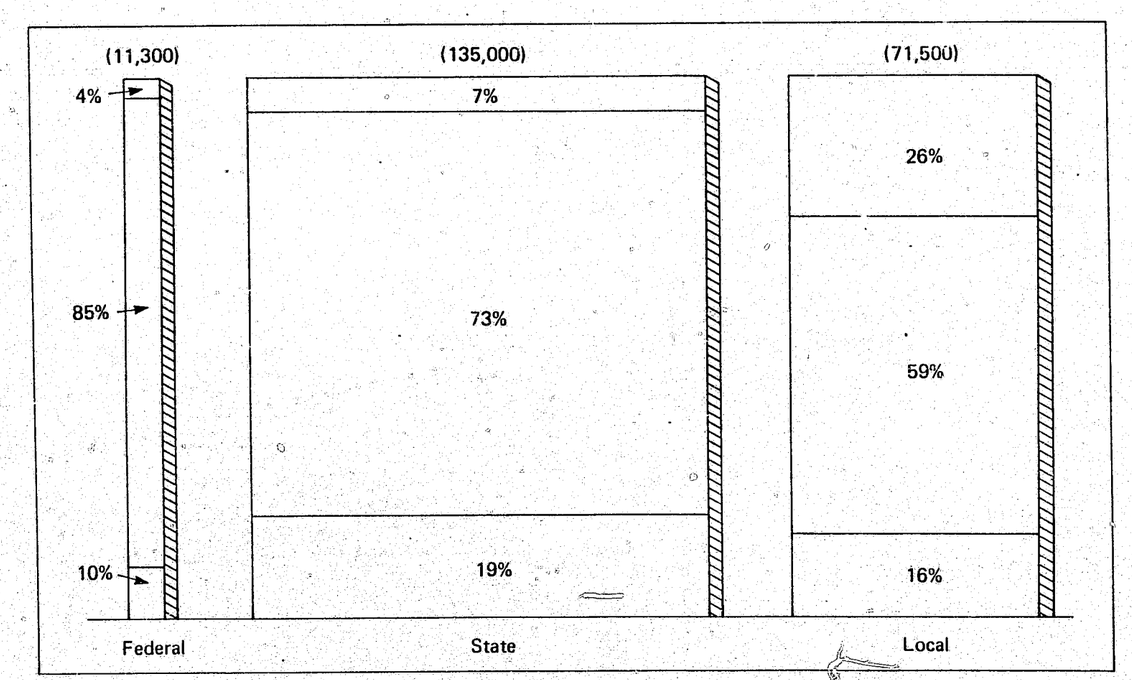
Number of Inmates [or Confinement Units] in Federal, State, and Local Correctional Facilities By Occupancy, Density and Type of Confinement Unit

Occupancy[7]	Density[1] By Type of Confinement Unit					
	Cells[2]			Dormitories[3]		
	High[4]	Medium[5]	Low[6]	High[4]	Medium[5]	Low[6]
Empty[8]						
Single[9]						
Multiple[10]						
2 inmates						
3 - 5 inmates						
6 - 10 inmates						
11 - 50 inmates						
More than 50 inmates						

[1] Number of square feet of floor space per inmate.
[2] Confinement units with less than 120 square feet of floor space.
[3] Confinement units with 120 or more square feet of floor space.
[4] Confinement units with less than 60 square feet of floor space per inmate.
[5] Confinement units with 60-79 square feet of floor space per inmate.
[6] Confinement units with 80 or more square feet of floor space per inmate.
[7] Number of inmates per confinement unit.
[8] Unoccupied confinement units.
[9] Confinement units occupied by one inmate.
[10] Confinement units occupied by two or more inmates.

FIGURE 9

Occupancy[1] of Cells[2] in Federal, State, and Local Facilities — 1978[3]



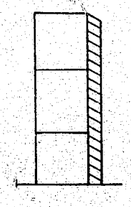
Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Number of inmates per confinement unit.

[2]Confinement units with less than 120 square feet of floor space.

[3]The width of each bar has been drawn as a proportion of the total physical cell capacity.



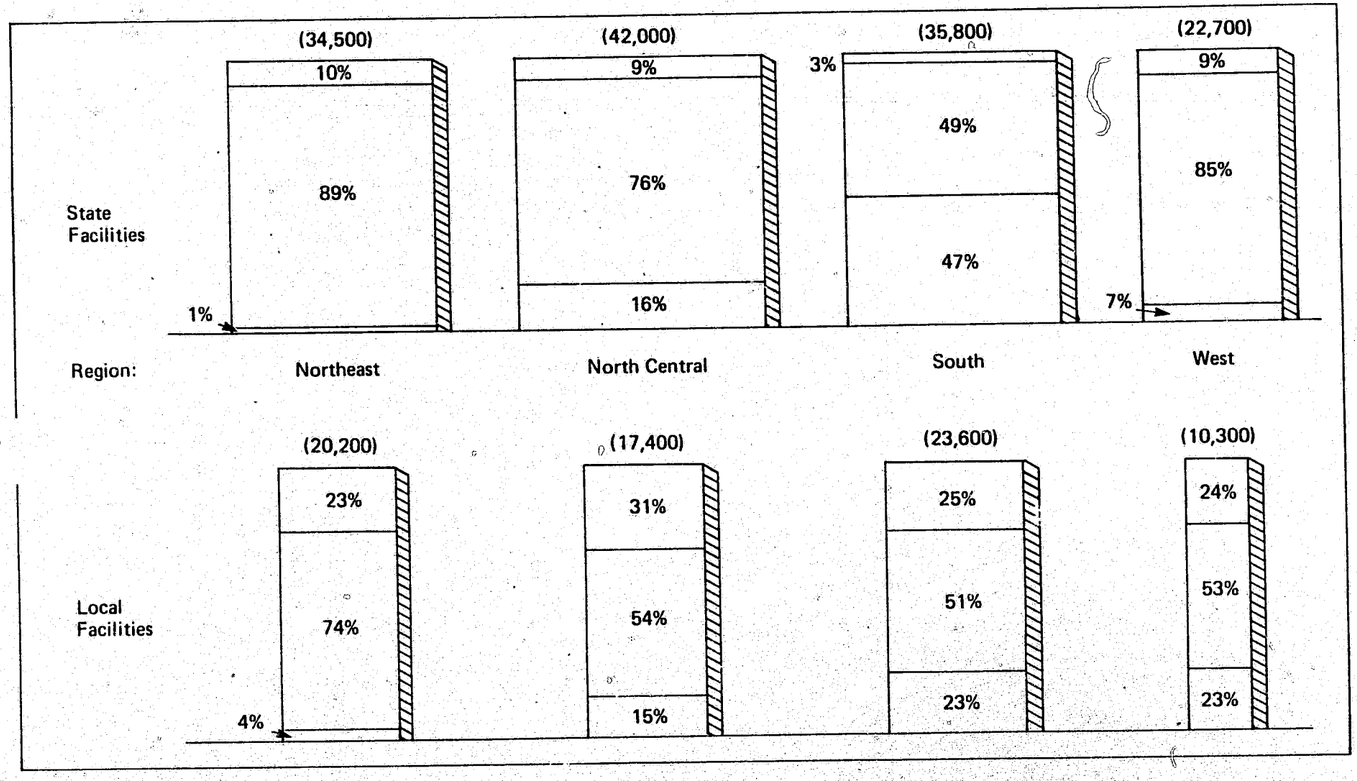
Unoccupied confinement units.

Confinement units occupied by one inmate.

Confinement units occupied by two or more inmates.

FIGURE 10

Occupancy[1] of Cells[2] in State and Local Facilities By Region – 1978[3]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

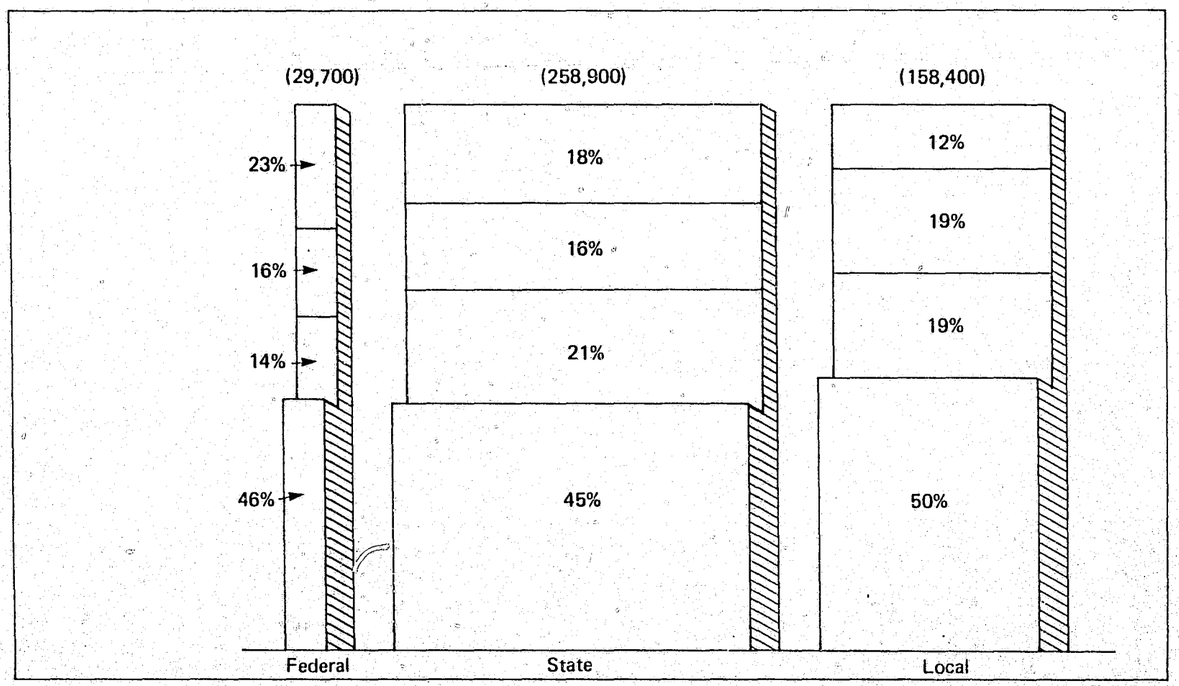
Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, National Jail Census, 1978.

[1]Number of inmates per confinement unit.

[2]Confinement units with less than 120 square feet of floor space.

[3]The width of each bar has been drawn as a proportion of the total physical cell capacity.

FIGURE 11
Percentage of Inmates in Federal, State and Local Facilities By Density[1] and Occupancy[2] – 1978[3]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Number of square feet of floor space per inmate.

[2]Number of inmates per confinement unit.

[3]The width of each bar has been drawn as a proportion of the total number of inmates.

[4]Confinement units with 60 or more square feet of floor space per inmate.

[5]Confinement units with less than 60 square feet of floor space per inmate.

[6]Confinement units occupied by one inmate.

[7]Confinement units occupied by two or more inmates.

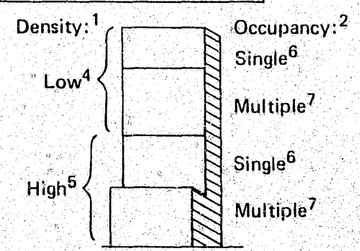
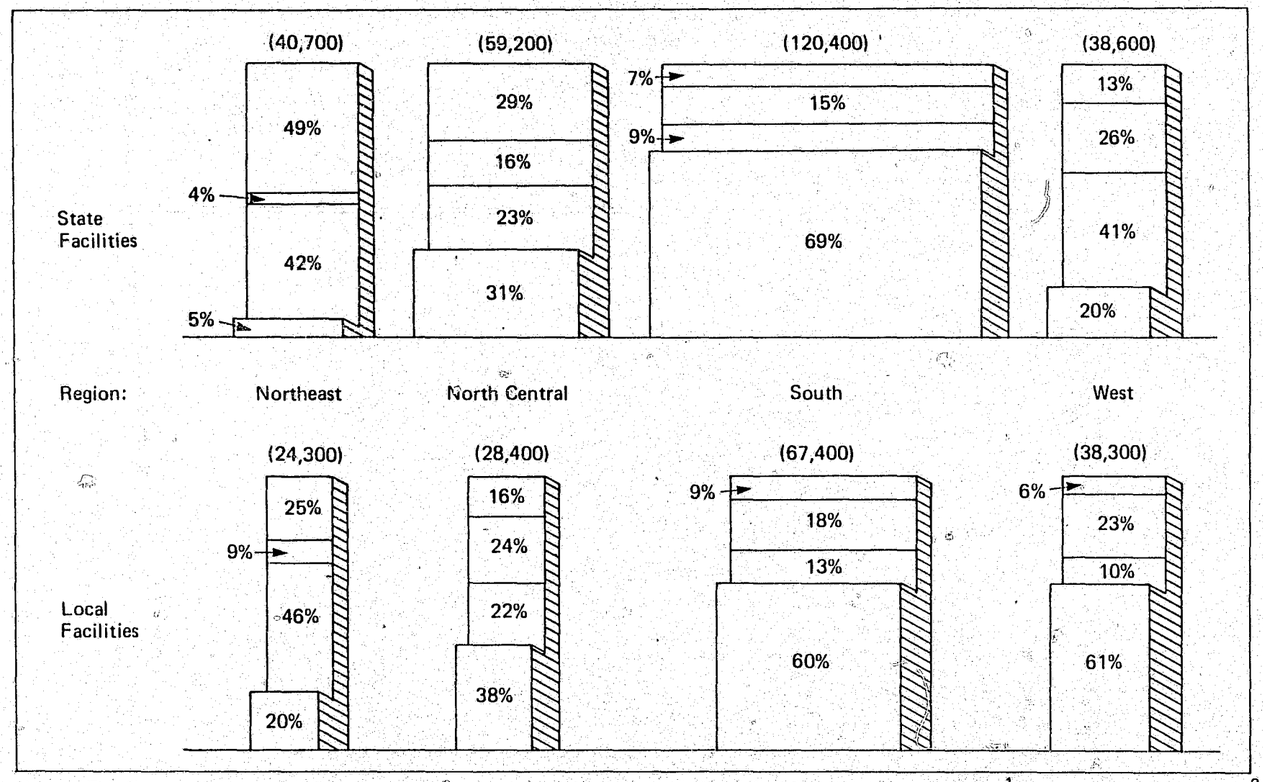


FIGURE 12

Percentage of Inmates in State and Local Facilities By Density,[1] Occupancy[2] and Region – 1978[3]



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978; National Jail Census, 1978.

[1]Number of square feet of floor space per inmate.

[2]Number of inmates per confinement unit.

[3]The width of each bar has been drawn as a proportion of the total number of inmates.

[4]Confinement units with 60 or more square feet of floor space per inmate.

[5]Confinement units with less than 60 square feet of floor space per inmate.

[6]Confinement units occupied by one inmate.

[7]Confinement units occupied by two or more inmates.

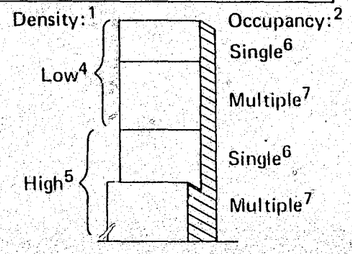
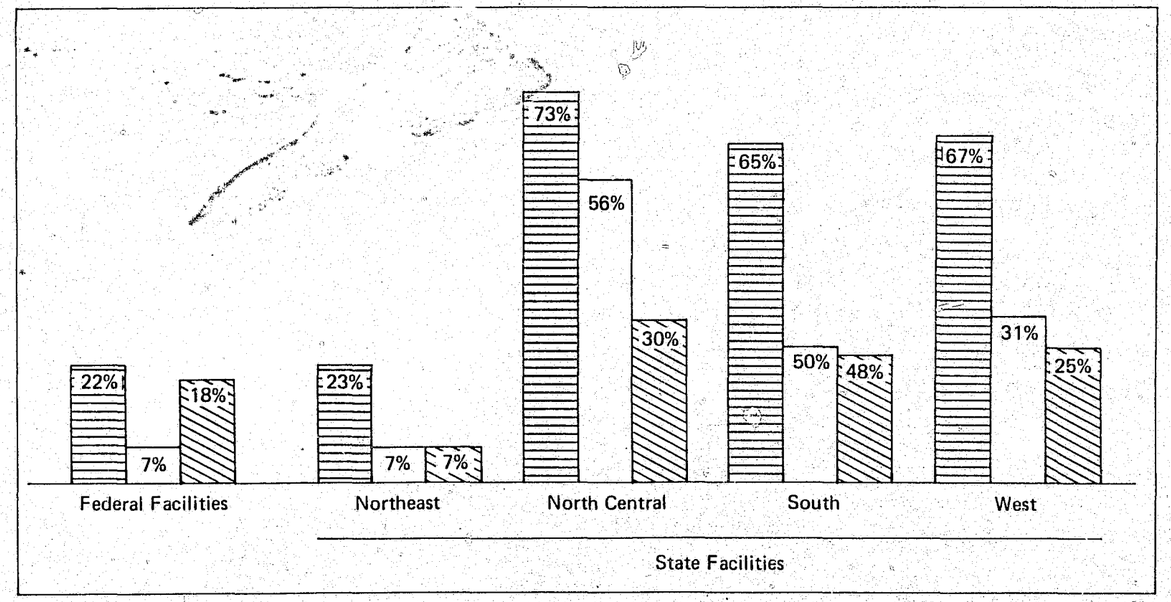


FIGURE 13

Percentage of Inmates Confined Alone in Cells[1] on Average of More Than Ten Hours Per Day in Federal and State Facilities By Region and Density[2] – 1978



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978

[1]Confinement units with less than 120 square feet of floor space per inmate.

[2]Number of square feet of floor space per inmate.

[3]Confinement units with less than 60 square feet of floor space.

[4]Confinement units with 60-79 square feet of floor space.

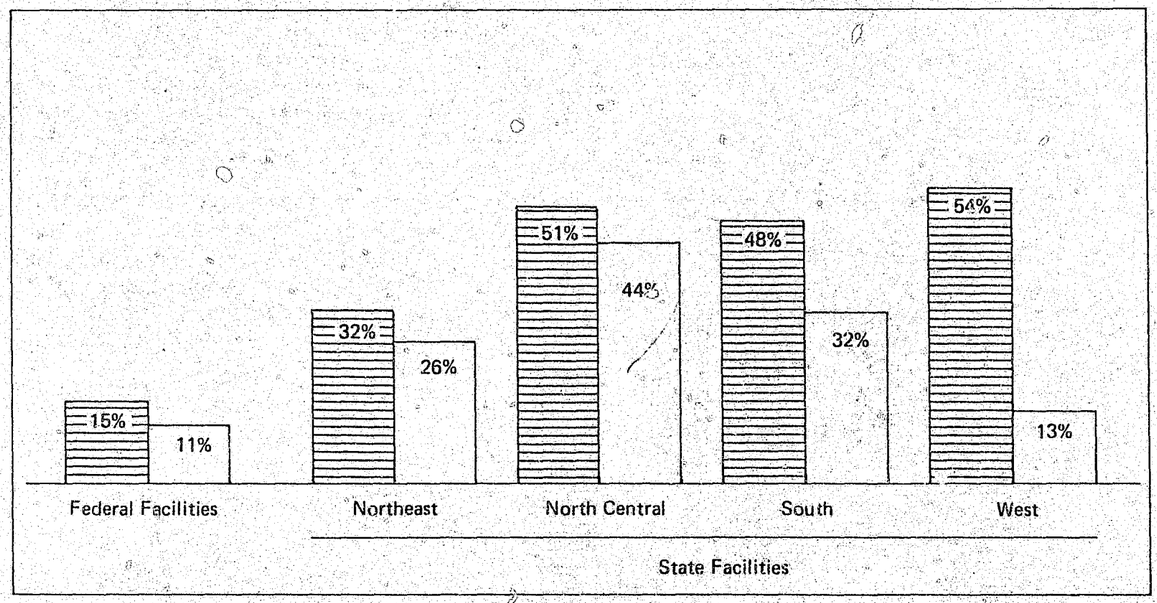
[5]Confinement units with 80 or more square feet of floor space.

Density:[2]

- High[3]
- Medium[4]
- Low[5]

FIGURE 14

Percentage of Inmates Confined With Others in Dormitories[1] on Average of More Than Ten Hours Per Day in Federal and State Facilities By Region and Density[2] -- 1978



Note: *This figure makes use of preliminary data and may change with the analysis of the final data set.*

Source: Survey of State and Federal Adult Correctional Facilities, 1978.

[1]Confinement units with 120 or more square feet of floor space per inmate.

[2]Number of square feet of floor space per inmate.

[3]Confinement units with less than 60 square feet of floor space per inmate.

[4]Confinement units with 60 or more square feet of floor space per inmate.

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Conceptualizing Goals for Criminal Justice Innovation: A Case Study

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It is commonplace among policymakers who must decide whether or not to proceed with or expand upon a particular innovation, and among researchers attempting to explain its varying impact across systems and individuals that a logical preliminary is conceptualizing the ultimate goals to be accomplished or assessed. Whether concern is to marshal resources in the most efficient and effective ways for successful program development, or to identify and operationalize a dependent variable for measurement and evaluation, the almost cliched need to specify goals and make statements of purpose is acknowledged by their routine inclusion in position papers, funding proposals, and statutory preambles.

My purpose is to examine the process of conceptualizing goals, using an evaluation project I am conducting as a case study. A major focus of the examination is on the extent to which familiarity with the conceptualizing principle can breed contempt for, or at least neglect of, the practice. In addition, some implications of such neglect are illustrated and discussed.

The Study

The national evaluation of adult restitution programs is funded by the National Institute of Law Enforcement Assistance Administration (LEAA). It is part of an action-research venture in cooperation with the Office of Criminal Justice Programs (OCJP) of LEAA. The evaluation focuses upon ten programs funded by OCJP encompassing numerous stages in the criminal justice process, in the states of California, Colorado, Connecticut, Georgia, Maine, Massachusetts, New Mexico, and Oregon. Two principal aims of the evaluation are to describe in detail the ten restitution programs, and to assess their effectiveness in a variety of ways related to offenders, victims, and the criminal justice system.

Among the programs being studied, and in the more general literature on restitution (see e.g., Galaway and Hudson, 1978), each of the following has been considered a restitutive response to criminal behavior:

1. To the actual victim, the offender might attempt to atone for an offense in any of three major ways:

   a. Return unlawfully obtained property;

   b. Provide financial compensation in an amount that is:

      (i) Equivalent to the victim's loss or injury; or,

      (ii) Symbolic of the victim's loss or injury, either in the form of partial payment, or punitive payment in excess of the amount of loss, which is usually some multiple of it.

c. Perform a service of a type that:

(i) Repairs damage attributable to the offender's conduct; or is

(ii) Equivalent in value to loss or injury sustained by the victim; or is

(iii) A symbolic gesture by the offender.

2. To symbolic victims, the offender's obligations might include;

a. Financial payment to a designated third party, such as a fund from which uncompensated victims of other offenders could be paid, or to a charity of the victim's choice;

b. Perform a service of a type that is related to the offender's conduct; for example, an offender convicted of drunken driving might perform services in the road-accident ward of a local hospital.

3. To the community, the offender might perform a service of a type that is unrelated to the offense; service of this type is most often for a public agency such as a parks' service or human resource organization.

By far the most frequently employed sanctions for offenders in the national evaluation are financial restitution, and, to a lesser extent, community service. In the only program to attempt systematically to use direct service to victims (Colorado), there was overwhelming rejection of the idea by a large sample of victims contacted. None of the programs evaluated has made systematic efforts to employ service placements that are symbolic of the offender's conduct.[1/]

Explication of Goals and Objectives

Observation of the programs under evaluation, together with a review of previous research literature (Harland and Warren, 1979), reveals three frequently identified general purposes of implementing a restitution/community service program:

A. To benefit the offender.

B. To benefit the victim/community.

1/ It will be noted that both restitution and community service are routinely mentioned rather than subsuming the second under the first. The reason for this separation is that the two types of programs are different in some important respects. In a restitution program, an offender pays back for the specific loss his/her behavior has caused to a specific victim. In a community service program, the offender does not repay the victim, nor does the service provided have any necessary connection to the offense committed. Thus, at the level of psychological meaning to the offender and with respect to the meaning to the victim, the two programs are clearly distinguishable.

C. To benefit the criminal justice system.

Within these general categories of purpose some of the more specific objectives that have been proposed are:

A. Offender Benefit

1. Reduced recidivism. The theory is that recidivism is reduced among participating offenders compared with an equivalent group not processed by the program or compared with an expected recidivism pattern.

2. Reduced intrusiveness. The goal is to minimize the offender's experience with the criminal justice system. This might include an objective to divert offenders at a stage in the process earlier than would be the case without restitution or community service. Pretrial restitution might be used, for example, instead of prosecution; restitution as a sole sanction might be used instead of probation; restitution as a condition of probation or continued probation might be employed instead of incarceration, or instead of a return to incarceration after probation violation; similarly, restitution on work-release, community residential release, or parole might be used instead of continued incarceration or return to incarceration after a release violation. In addition to using restitution to reduce the type of criminal justice sanction, it might also serve to reduce the <u>length</u> or <u>hardship</u>. Probation could be terminated, for example, upon completion of restitutive obligations, and conditions of confinement or supervision might be relaxed or ameliorated in return for a restitutive agreement.

B. Victim/Community Benefit

1. Victim compensation means financial compensation or service of an equivalent value for the harm attributed to the offender's conduct in the incident leading to his or her involvement with the system. Similar compensation, or more usually symbolic or general services, might be provided to the community under this objective.

2. Equity restoration increases the victim's perception that equity has been restored through the offender's disposition.

3. Victim satisfaction increases the victim/community's satisfaction with the system and sense of confidence in it.

4. Fear/hostility reduction reduces the victim/community's level of fear of offenders and hostility towards them.

C. System Benefit

1. Alleviation of Agency Problems. This objective relies upon the strategic value of restitution/community service to promote solutions to agency problems. Used in the diversionary fashion already discussed, for example, a restitution program may have as an objective the relief of overcrowded court calendars, the reduction of probation or parole caseload, or the relief of overcrowded correctional institutions.

2. Cost Reduction. The system objectives mentioned above can be pursued in the absence of specific problems, to meet a common objective of reducing the expense of processing offenders.

Going beyond this simple listing, the various program objectives can be conceptualized in relation to the reasoning and underlying values which enter into their formulation. By doing so, it is possible to identify specific areas of potential overlap and conflict.

Within the general category of offender benefit, for example, a program emphasis upon reduced recidivism might be rooted in a belief in the evident rationality of a restitutive sanction, which could increase the offender's sense of fairness about the system and lead, in turn, to a reduction of alienation. Alternatively, it could be argued that restitutive obligations may increase self-esteem through guilt reduction and by instilling a sense of responsibility, as well as by facilitating the reintegration of the offender through his or her increased acceptance of society after the payment of restitution. Also, reduced recidivism might be expected as a result of anticipated effects of a restitutive obligation upon the offender's social stability, especially insofar as it may provide incentive and possibly opportunity for employment in order to satisfy restitutive requirements.

Staying within the offender-benefit category, the objective of reducing the intrusiveness of the system, by offering restitution in mitigation of traditional dispositions, might be the product of a value system that sees existing criminal justice sanctions as being too harsh or counterproductive; moreover, if one assumes the latter position has merit, reduction of the imposition or severity of such sanctions might also serve to enhance the recidivism objective.

Reasoning behind the victim-related objectives can be more straightforward. Compensating and otherwise assisting crime victims is often supported as a matter of "simple justice" that perhaps stems from an instinctive empathy with victims of all kinds. In the latter sense, the provision of restitution can be thought of as a type of social program not unlike other programs such as medical aid programs to ease the financial burden upon victims of physical illness. Not to be hidden behind such altruistic reasoning, however, are the very real political advantages to be derived from supporting a cause that invokes almost universal approval.

Such political or strategic utility of restitution/community service, whether based upon expectations of offender or victim benefit, plays an important role for programs pursuing system objectives. In essence, the reasoning behind this type of objective might be that support for the ultimate objective, such as reducing prison overcrowding by increasing the incidence of work release or parole, can be secured more readily via an intermediate or ancillary objective involving restitution or community service. A prison administrator attempting to secure funding for increased bed space in work-release facilities, for example, might have more success before a legislature in today's political climate if the request were framed in the context of a humane gesture to facilitate restitution to victims than if it were proposed because of either the potential benefits to offenders or to the system in general.

Finally, it should be apparent that, whatever the underlying reasoning or value structure, several of the objectives in one of the purpose categories can also achieve or obstruct desired results from either of the other perspectives. Diversion to improve the offender's situation may also reduce system costs; moreover, in the case of diversion from incarceration, it may be the only way to achieve victim compensation objectives, because of the traditionally low or nonexistent earning opportunities for incarcerated offenders. Conversely, diversion for either of these reasons may adversely affect the equity restoration objective, if a sizable proportion of victims prefer to see traditional sanctions imposed in addition to restitution or community service.

Hierarchy and Conflict

Having thus developed an awareness of the diversity of purposes for which restitution has been embraced, a critical next step in the conceptualizing process is establishing a hierarchy of goals and acknowledging preferences in the event of conflict. Within such a hierarchical structure, decisions can then be made about matching implementation strategies and operational procedures with the goals being sought, and setting evaluation standards against which to make continuation assessments. Examples abound from the present and previous studies of instances in which restitution proponents have encountered difficulty, either because the basis for their support did not match other actors' motives for pursuing restitution, or because their restitutive goals did not coincide with more general operating goals and procedures of actors in the system.

From previous research, the experience of the well-publicized Minnesota Restitution Center is illustrative of both types of difficulty, largely as a result of which the program lost much of its focus and was ultimately closed down. The center was established to receive recently admitted prison inmates whom the parole board was willing to release early to fulfill the terms of a restitution contract with the crime victim(s) (Fogel, Galaway, and Hudson, 1972).

Despite the original restitutive focus of the parole board, correctional staff at the center effectively relegated restitution to a secondary role behind more traditional offender-treatment goals such as various counseling and other therapeutic approaches. Such an irresolute approach to restitution, repeated in several of our study programs, lends itself to a variety of explanations.

At the least cynical level, the response of the Minnesota staff and similar actions of program staff in the present study can be taken to imply a less-than-firm belief in the utility of restitution as an offender-treatment tool in its own right. A second explanation attributes the reaction to a rejection or compromise of the victim compensation purpose of restitution when it appears to conflict with more traditional offender-treatment goals. Finally, perhaps the most cynical, but the most supported explanation from experiences in the present study, is that restitution has been used not primarily for either its victim compensation purpose nor its offender treatment benefits, but for its political and strategic utility in achieving ends not necessarily related to the concept of restitution per se.

For example, in the Minnesota Restitution Center, the program report states that:

> The purpose of the Minnesota Restitution Center is to provide a diversionary residential program which functions as an alternative to the continued incarceration of selected property offenders (Minnesota Department of Corrections, 1977. Emphasis added.)

In addition to diversion from more intrusive contact with the system as in the Minnesota example, further instances exist of strategic or political manipulation of the restitution concept for ulterior and not necessarily related purposes. In the Georgia Restitution Shelter Program, for example, goals included:

> [To] [p]rovide an alternative to incarceration for both the Courts and the Board of Pardons and Paroles. . .
>
> To divert 275 offenders during the 22 months of program operation. . .
>
> To save $592,900 as a result of program diversion (Flowers, 1977. Emphasis added.)

And, more obviously, in the Restitution in Probation Experiment in Iowa:

> Reportedly, one important motive for the development of the project was to facilitate the expenditure of available LEAA dollars . . .
>
> The principal objective of the Department of Court Services to consenting to operationalize the project appears to have been the acquisition of additional staff. (Steggerda and Dolphin, 1975.)

Almost without exception, similarly latent motives for participating in the restitution experiment occurred in programs in the present study, making the actual payment of restitution at best a secondary issue.

Perhaps more than because of a conflict of goals over restitution itself, advocates of any particular benefit may encounter implementation difficulties through failure to anticipate conflicts with more traditional criminal justice goals and procedures. Phases of the restitutive process can range throughout the criminal justice system, from initial screening of potentially suitable cases and imposition of restitution, to provision of support services such as job placement, and enforcing and monitoring payments. Problems that can arise from spreading the responsibility for these activities among a number of agencies or agency units involve issues of procedural quality control and goal consistency at each processing stage.

Programs at the prosecutorial level, for example, may have a great deal of control over the imposition of restitution through the plea bargaining process and through sentence recommendations; nevertheless, victim compensation objectives or offender sanctioning objectives may be frustrated if the program has little or no control over the enforcement stages of payment or service. Indeed, in this situation, if high amounts of restitution are imposed but poorly or never enforced, perhaps because probation officers dislike the "debt-collector" connotations of enforcing payment (see, e.g., Cohen, 1944), the victim may not only receive no compensation, but his or her expectations may be raised and dashed, possibly resulting in decreased levels of satisfaction with the program and the system in general. Moreover, an offender for whom restitutive or service obligations are set but not enforced is unlikely to be impressed by either the rationality or threat of the system.

Similarly, program objectives related to victim satisfaction may be frustrated if the program has control over imposition of restitution, but disbursement procedures are inefficient and beyond the control of program staff. At least one study has revealed, for example, that in cases in which restitution has been imposed on probationers, many victims never received money paid by offenders or were never even notified that restitution had been awarded (Chesney, 1976). Victims are unlikely to be enthusiastic about a program if they know nothing about its efforts on their behalf.

Once the task of conceptualizing potentially interactive goals surrounding restitutive sanctions is accomplished, implementation energies can be channeled into coping with goals and procedures that might otherwise act in opposition to those of a restitution program. How important is restitution to a prosecutor in relation to his or her conviction and incarceration records? And, how important is it to the judge or parole board in relation to more traditional goals of deterrence, rehabilitation, deserts, and, in particular, incapacitation? Are fines, court costs, and attorney fees subordinate to restitutive obligations? What priority does restitution have for the prison administrator in relation to other demands upon an inmate's work-release earnings, such as room and board, savings-for-release, support of dependents, and other civil obligations?

Finally, if competing and conflicting goals and procedures can be neutralized sufficiently to permit implementation of a restitution program, measurement of the impact upon those goals and procedures can give a rounded evaluation picture when coupled with more direct measures of the program's achievements. Decisions about continuing, modifying, or terminating the program often take on a balancing property that is likely to be more useful than simplistic success/failure statements. If the primary goal of victim compensation is achieved, for example, but the recidivism rate among participating offenders increases appreciably (perhaps due to new offenses committed to secure money for restitution) what steps, if any, will be taken? Similar questions arise if the offenders in the program are diverted from custody (perhaps meeting court mandates to reduce overcrowding), but victim compensation goals are not being met and/or recidivism is high.

Conclusion

This brief summary and explication of goals and objectives illustrates the complexity of issues that might influence policy decisions about the use of restitutive sanctions; it also shows the broad range of interests to which restitution might appeal. Not surprisingly, restitution has achieved support from across the political spectrum, from fiscal conservatives concerned with saving system costs, to prison abolitionists concerned with providing alternatives to incarceration, and from treatment-oriented theorists to desserts-oriented practitioners. In short, restitution appears to have something to offer everyone. 2/

It is precisely because of this multiplicity of projected benefits, however, that the need for thorough conceptualization of goals and setting priorities among them has become so essential. By not clearly delineating the expectations of different proponents of the concept, the stage is set for conflict and disappointment in the ways in which it is put into operation. If competing and conflicting purposes, among restitution's advocates, and between them and other criminal justice agents, are not taken into account at the level of policy decisions, chances are high that such differences may be exacerbated if the policy is put into practice. In either case, the resulting programmatic misfortunes, experienced by many of the programs in the present study, and evident in past reports (e.g., Steggerda and Dolphin, 1975) might be attributed less to the concept of restitution itself than to a failure to conceptualize adequately the goals it has been expected to meet.

2/ For a series of readings examining restitution and community service from numerous theoretical and programmatic positions, see Galaway and Hudson, 1978.

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Excerpts from a Program Model

on the Organization of

Correctional Services

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Efforts to improve American correctional systems have long been preoccupied with facilities and programs--the operation of jails, prisons, and youth institutions; the supervision of offenders on probation and parole; and more recently, the creation of diverse "alternative" services such as community correctional centers, youth service bureaus, and drug or alcohol treatment programs. Relatively little attention has been directed to the organization and management of these programs. Yet problems of correctional administration seem omnipresent. There are gaps in service and costly duplications. There is an overall pattern of fragmentation engendered by the fact that correctional programs are administered by all levels of government (and many private agencies) with little concern for coordination or rational divisions of labor.

A major impetus for correctional reorganization derives from the perception that existing organizational structures are obsolete, neither reflecting nor promoting the philosophies, functions, or interagency relationships of the modern correctional service. The reason for the perceived incongruence between form and function is that, in most states and localities, correctional operations and their conceptual underpinnings have changed. The general trend has been toward the expansion and upgrading of services for offenders in the community and a shift in responsibility for offender management from the state to the localities. In addition, the number and variety of correctional services has expanded tremendously, producing a chaotic assemblage of related programs under the auspices of administratively unrelated agencies. Among the most significant developments of the past decade with implications for the reorganization of correctional services are:

- Expansion of corrections into areas traditionally within the province of law enforcement or the courts (e.g., pretrial screening and classification, pretrial detention and field services, postconviction/presentencing services, etc.)

- A philosophical, and often operational shift from an institution-oriented corrections program to one that places greater emphasis on community-based alternatives to incarceration and diversion.

- An "outreach" orientation, including strategies for service brokerage, offender advocacy, public education, resource development, use of volunteers and paraprofessionals, and contracting for services from private and public agencies in the community.

- Growing involvement of courts in defining and upholding offenders' rights; and of state governments in setting standards for correctional operations and subsidizing or otherwise creating incentives for adherence to state standards and policy objectives for local corrections.

- A tendency for juvenile and adult programming to converge, in both theory and practice, as juvenile services become more concerned with due process and adult services become more service-oriented.

- Increasing concern for the continuity of services from point of arrest to discharge from the correctional system, for equity in offender management, and for standardization of bureaucratic procedures to enhance equity and to permit sharing of correctional processing.

No single organizational model can be expected to meet the needs of local corrections in all jurisdictions of the United States. The demographic, geographic, and political circumstances are enormously varied: from dense to sparse distributions of population; from small to very large service areas; from jurisdictions in which counties are strong governmental entities to those in which there are no counties at all. Behind such prominent features lie a multitude of other more subtle differences in customs, traditions, attitudes, and practices that characterize the public services generally and the workings of the justice system in particular.

The study reported upon presents three basic models for the organization and administration of community corrections. It is not anticipated that any of these models will be exactly right for a given situation. In fact, it is likely that none of the models offered here as "pure types" will be found to exist in reality exactly as described. Those who develop organizational designs for community corrections generally will adopt some combination of models that meets the specific needs of their situation. For purposes of analysis, however, it may be useful to consider the attributes of each pure type independently--its strengths and weaknesses, the problems that must be surmounted in its implementation, and some strategies and tactics for dealing with those problems.

The Unified County-Administered Model

The county-administered corrections agency is, perhaps, the organizational option that best fits the theory and philosophy of community-based corrections. Under this model, correctional services are comprehensive, integrated, community-located, and locally controlled and financed. Although the legislative

framework may be provided largely by the state, correctional services are administered by officials at the local level--where staff and clients live, where crime is generated, and where, many authorities believe, it must be prevented or controlled. Under this arrangement also, the electorate to which program administrators are responsible is in a position to observe program successes and failures. Consolidation of programs within a single unit of government tends to avoid the clash of purposes that often frustrates multi-government efforts. Finally, the strategy is consistent with the more general goal of simplifying the operations of local government and enhancing their cost-effectiveness. This model thus represents a confluence of two strong movements whose time may have come: unified community corrections service delivery and broad-based reform of local government operations.

Through this process a general pattern has begun to emerge, reflecting many of the recommendations of the various study groups and national commissions over the past 15 years. While still somewhat nebulous, this pattern has some distinctive characteristics which are guiding intergovernmental divisions of responsibility for correctional services in many jurisdictions today. Most states, it seems clear, will retain control over the operation of long-term institutions for adult and serious juvenile offenders--essentially the correctional options of "last resort." These programs apparently will operate within a philosophic context that is increasingly "justice oriented" rather than rehabilitative, although many rehabilitative services still are offered. A major change in the traditional state role, however, is evident in the movement away from direct state operation of non-institutional correctional services (typically probation and parole) and toward providing an array of indirect services to local governments. Financial subsidies are now elaborately "fine-tuned" in response to numerous criticisms. In addition, many states are involved in planning, standard-setting, technical assistance, staff training and manpower development, and research and information dissemination. This development is providing steadily increasing support for the assumption by local governments of new and expanded activities in the corrections arena.

The Multi-Jurisdiction Local Government Model

The concept of cooperation and reciprocity among units of government in providing correctional services has been present since the early days of corrections in this country. Although plagued by gaps and duplications in service, the crude division of labor that emerged at least recognized that the task must be shared. Offenders present themselves to the criminal justice system in ways that confound jurisdictional boundaries and the niceties of bureaucratic territory. The uncrowded city jail across the street from an overflowing county jail makes the public justifiably uneasy, particularly in a time of growing taxpayer resentment of the costs of government. Programming for small segments of the offender population (e.g., incarcerated females and mentally ill offenders) has produced a variety of contractual arrangements between states and, occasionally, between or among local governments. However, the comprehensive, integrated community corrections system, financed by and serving two or more local governments, is only now beginning to appear in a few parts of the country. This is the pattern which is here defined as the multi-jurisdiction local government model.

Yet logic and reasoning, it seems clear, will not be sufficient to bring the multi-jurisdiction model into widespread use. Where it is beginning to be implemented, the stimulus appears to come from a skillfully devised system of state incentives to a set of contiguous local governments, providing convincing financial reasons to set aside parochial patterns in favor of a cooperative approach. Where an outside, higher-level government is willing to help with financing and offer technical assistance, some exciting new organizational roles are beginning to emerge.

The multi-government model actually may become the dominant pattern for the future in many parts of the country. This is the model that fits the increasingly intergovernmental image of public business. As it becomes more prevalent, the insularity of local governments will be reduced. New interdependencies and alliances will cut across county lines, creating networks for planning and operating unified programs to meet regional needs. As economies of scale are achieved, the public is likely to support such sensible ways of doing business. Optimism in this area derives in part from experience in fields analogous to corrections (such as mental health) and in other countries (such as Sweden) where regionalized organization is the norm.

The State-Administered Decentralized Model

Although a state-controlled community-based corrections organization might seem a contradiction in terms, there are situations in which state administration is most appropriate. Some local governments have neither the mandate nor the resources to provide a full range of modern correctional services. Some states are so compact that the state government seems close and "in touch" with local problems and needs. Traditional relationships among the different levels of government sometimes suggest a primary role for the state because county governments are weak or nonexistent. And some would argue that a certain amount of distance between local problems and ultimate authority is desirable in order to avoid the pettiness, parochialism, and neglect that sometimes have characterized local government.

Under the state-administered decentralized model the state not only performs its traditional function of operating prisons and long-term youth institutions, but also seeks to deliver comprehensive correctional services within local communities. This model goes much further than state administration of probation and parole. It requires that the state initiate and carry out a broad range of services for offender reintegration in a unified and cost-effective manner. Such an arrangement might be considered more "unified" than any other since, as the responsibility of a single authority, institutional and community services can be better coordinated. The model calls for an ideal mix of coordination and dispersed "grass roots" organization as many state services and the power to influence the manner in which services are delivered are decentralized to the local level.

Confusion over territory, mission, and jurisdiction has plagued efforts to decentralize governmental activities in the human services in general. This is conspicuously the case with respect to corrections, since the

problems that underlie crime and delinquency also appear in other arenas--mental health, substance abuse, social welfare, unemployment, and so on. One of the most appealing aspects of the state decentralized model, theoretically at least, is the opportunity it seems to offer to coordinate correctional services with other state services directed to the same or similar populations. The discouraging side of this argument is that examples of effective coordination are extremely difficult to find.

Some promising examples of state activity in this area do exist. The more imaginative efforts seem to involve a blending of the state-administered model with one or both of the other two models described above. In such situations, the state government adopts the role of facilitator and regulator, while local governments are primarily responsible for service delivery. There are other intriguing developments based on entirely new alliances between state government and local interests that follow the pattern of the state-administered model. The state, under such arrangements, relinquishes the role of service provider and develops alternative delivery methods (e.g., contracts with private and public agencies, brokerage techniques, and public education programs) or even attempts to create a strong political constituency supportive of community-based corrections but independent of government control.

Organization and reorganization, it must be stressed, often are illusory solutions to complex problems. Changes in form may be merely cosmetic, having no demonstrable impact on the problems they are designed to address. The goals and values that provide impetus for change, while giving it purpose and integrity, can make the critical difference.

Upgrading the Prison System

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Prison reform has been a recurrent phenomenon in this country throughout the almost 200 years we have had such institutions. The type of reform has varied depending on the change agent or agency or on what was seen as the problem crying for attention. Issues involved have ranged from complaints of abuse of prisoners to allegations that prisoners were out of control, and from complaints about lack of amenities and services for prisoners to wasteful use of tax dollars on them.

Generally prison reform has been inseparable from efforts to promote change in the prison's environment, that is, through criminal and penal laws, in broad administrative or organizational arrangements, and in prison-community relations.

There has been backing and filling over the years. For all his vaunted conservatism, the prison administrator, more often than not, has been given to fadism. And at times, over his objection, he has been forced onto some bandwagon by those in authority over him. Various nostrums, management modes, security devices, communication gadgets have come and gone, and sometimes come again. New goals and methods have often come to mingle with opposing ones as the newly fashionable was grafted onto what remained of earlier approaches.

There has also been one persistent trend over the last hundred years, one which has become increasingly sharp in the last twenty. This has to do with the one-time isolation of the prison and the autonomy of the warden.

Typically, the 19th century prison was enclosed within a high stone wall, often turreted. Usually it was situated at a distance from the major city or cities of the state. The prisoners were sealed off from contact with family and friends, even correspondence was forbidden in some systems. The warden enjoyed almost absolute authority and freedom from intrusion or serious scrutiny -- at least so long as no mass escapes or major riots occurred, and sometimes even then. In some states, the prisoner was legally dead, and in all states he was seen as having no rights. Any measure of freedom or any amenities he enjoyed were regarded as privileges granted by the warden.[1]

Both the isolation and autonomy of the prison have eroded, more and more rapidly of late. Today the warden is often a career civil servant lodged somewhere between the third and fifth tiers of a bureaucratic state hierarchy controlled by the governor.

Today prisoners may not only enjoy correspondence and supervised visits with family and friends, but may be eligible to go home on short furloughs, and in some systems may enjoy unsupervised overnight family visits at the prison. Increasingly, they enjoy uncensored and minimally restricted correspondence, and letters to the editor from prisoners are no longer an unusual occurrence. Their access to the courts, to legal advice, to ombudsmen and formal grievance procedures is almost beyond the belief of those of us who entered this field 40 years ago.

The warden's absolute control of prisoners is constrained by newly defined rights of prisoners and freer communication. Tolerance and even encouragement

of organized groups are prevalent in prisons today. Although many of these groups are designed to serve recreational, social, and educational purposes, some exist primarily to enable prisoners to make representations to management on program and policy matters. [2]

Just as prisoners have varying degrees of access to the media, journalists too have much freer access to the prison, its staff, and inmates. This is true also of all sorts of professional organizations, community groups, citizen volunteers, and others. The walls today not only have freer swinging gates but many portholes. The warden, like other public administrators, is confronted by many citizens who are not fully satisfied with representative democracy and want to intervene at every level of government on a continuing basis.

The warden is no longer a czar in relation to staff either. First, he was constrained by civil service systems. More recently he finds himself dealing with employee unions and having to negotiate matters of policy that were once totally reserved to management. [3]

The warden has always been subject to a measure of constraint from the courts. For a long time this was only in the matter of the sentence as originally imposed, subject to whatever modification the warden could lawfully impose under good time statutes. How the prisoner was treated and how the warden managed his prison were not viewed as matters for court intervention. This, of course, has pretty well gone by the boards over the past 20 years. [4]

In another area, the prison has experienced wide directional swings over the past 200 years. Initially and for the first several decades of its history, the prison was seen as having a reformative mission. Over time, this gave way to frank exploitation of prison labor in the context of a punitive mode of imprisonment. The concern with prisoner reform was revived in the 1870s and became associated with emerging disciplines and professions concerned with teaching, training, counseling, and otherwise helping people to develop their talents and solve chronic problems. This, in turn, reflected a growing perception of the prisoner as a salvageable social failure rather than just a bad egg deserving only to be punished.

For a century, beginning about 1870, much of the history of the American prison was related to efforts by wardens and others to garner resources needed to implement programs based on the rehabilitative and, more recently, "re-integrative" model of prisoner treatment. [5] This was associated with the rapid spread of various adaptations of the indeterminate sentence concept -- tying the prisoner's gradual, supervised release from confinement to his progress in making use of treatment and training opportunities in the prison.

The perception of prisoners as human beings in need of help rather than as desperadoes requiring expensive maximum security facilities inevitably gave rise to the establishment of minimum and medium custody facilities. This development paved the way by the early 1960s for work release centers and, soon after, the use of privately operated half-way hosues for some persons under sentence. [6]

The same attitude encouraged rapid expansion in the use of probation and other alternatives to imprisonment and to more frequent and earlier parole. As

a consequence, federal and state prison populations, having reached a historical peak in 1961, fell off 11 percent by 1972. This happened with a population increase approaching 15 percent and steadily rising reported crime and arrest rates. [7]

Sporadically during this century the more humanized concept of the prisoner led to experiments in prison management with what the President's Crime Commission in 1967 termed the collaborative mode -- with staff, prisoners, and community representatives cooperating to foster rehabilitative efforts. [8]

This set of movements toward reduced use of prison, amelioration of the prison experience, and emphasis on rehabilitation is presently caught, however, in a backwash of counter forces. Since 1973, prison populations have soared. And too, increasing challenges to coerced rehabilitation through the practices of indeterminate sentencing and parole have led to repudiation or drastic modification of them in some states and the probability of similar legislative and regulatory changes in many others. [9]

Within the prison, any tendency toward collaborative management is giving way before the increasing spread of an adversarial relationship between staff and inmates. While this is not essentially a new condition, it is different from times past in that much of the conflict now expresses itself in various procedural forms rather than in assaults and disturbances.

Our purpose here today is to explore issues related to the upgrading of the prison system, and the first issue we need to confront is what we mean by upgrading or improving the prison system. There are those -- perhaps a dwindling few -- who would like to improve it out of existence. To others, improvement relates primarily to physical changes. Still others would focus on continuing efforts to expand and foster observance of prisoner rights.

There are those persons in general government and among concerned taxpayers whose chief concern is with more efficient management, and who challenge any current practice or proposed new one unless there is demonstrable evidence of some measurable effect sufficient to justify the cost.

Finally, there are those whose first concern is more with how we use the prison than with where and how we operate it. They can be divided roughly into two camps: advocates of imprisonment for punishment and restraint and those whose faith in the rehabilitative model is still unshaken. This is not really a new situation, but there are new features.

The punishment/restraint advocates today are a new breed -- sophisticated, even scholarly in some cases. [10] They are not all out of the same mold. Some have reached their conclusions out of concern for the rights of offenders. They oppose the indeterminate sentence, since, in effect, this results in depriving people of liberty for purposes of treatment, but, they maintain, there is little or no evidence that coerced treatment works. The only basis, then, for imprisoning people is punishment, restraint, or both. People in this faction tend to favor decent facilities and amenities and expanded rehabilitative services, so long as these are used voluntarily and not associated with time to be served.

Others who favor prison as punishment are concerned with social control. How prisoners are treated may not especially interest them. Their concern is primarily with sentencing practices; they would eliminate parole boards and judicial discretion and rely almost exclusively on the wisdom of legislators to define crimes with greater exactness and attach mandated penalties to them.

We cannot even begin to resolve these issues here today to everyone's or perhaps anyone's satisfaction. But any effort in an individual state to improve the prison system must go forward with some general understanding of what the prison is for, what it should do, what it can and cannot do, and how its use and operation relate to social control, on the one hand, and to constitutional rights of offenders and democratic ideals, on the other.

Perhaps we can all agree on some things -- for example, that we do not want our prisons to be barbarous dungeons in which people, inmates, and staff live in fear and danger. Concensus on this point can serve as a point of departure for varying levels of agreement on a number of specifics.

We cannot afford, incidentally, to ignore one fact of life in relation to prison conditions and prisoner rights. Since the courts have moved away from their "hands off" policy toward prison adminstrations, there probably is no corner in this country immune from the prospect of court intervention, if it allows its prison system to fall below some reasonable standard of decency. In other words, if executives and legislators do not strive to maintain adequate prison conditions, the courts will be used to force the issue, as we have seen time and again in recent years.

Improvement through court orders is costly and messy and the results are not likely to be optimal because undesirable side effects of the process may diminish some of the gains.

The best response to the prospect of court intervention is self-generated improvement. This may not only avert successful court suits, but it means that the changes introduced are expressive of goals, priorities, and standards voluntarily chosen by those responsible for funding and administering the system.

It is recognized that tax funds are not inexhaustible and that states have many programs competing for them. Nevertheless, if we are going to continue to use imprisonment as a frequent response to lawbreaking, it does not appear that we can avoid sizeable expenditures for prison facilities and operations. Our federal constitution and a number of state constitutions have been interpreted to require a level of treatment of the offender that simply does not come cheap.

It was recognition of this fact a decade ago that contributed to the reduced use of imprisonment and the rapid spread of less costly modes of confinement, such as work release. It appears now that either we must spend more heavily on our prison systems or reconsider those policies that are overfilling our facilities and overstraining prison personnel and programs.

In the matter of determining the need for improvements in our prison systems, we are not without useful sources of information and guidance. We will be hearing shortly about one of these, the American Correctional Association's standards and

accreditation processes. We will hear also from two people on the firing line in prison administration and learn something of their problems, options, and strategies in trying to move their systems toward optimal levels. We will also hear about a specific approach to dealing with one key issue in the area of prison standards -- medical services.

But first we will review the condition of American prisons today in relation to the issue of standards. To assist in this we have Bradley Smith of Abt Associates, Cambridge, Massachusetts. Mr. Smith, who recently completed a study of correctional facilities that was mandated by the Congress, will present some of the policy implications of the study findings.

Footnotes

[1]For a classic study of the first 150 years of the American prison, see Blake McKelvey, American Prisons Chicago: University of Chicago Press, 1936.

[2]The American Justice Institute will complete its final report this summer (1979) on a study of inmate organizations and less formal groups in a selection of large, high security state prisons.

[3]For extensive treatment of employee organizations and bargaining processes in corrections, see John M. Wynne, Jr., Prison Employee Unionism: The Impact on Correctional Administration and Programs, and M. Robert Montilla, Prison Employee Unionism: A Management Guide for Correctional Administrators, American Justice Institute, Sacramento, California,

[4]See M. Kay Harris and Dudley P. Spiller, Jr., After Decision: Implementation of Judicial Decrees in Correctional Settings, National Institute of Law Enforcement and Criminal Justice, LEAA, Washington, D.C., October, 1977.

[5]The concept of "re-integration" as an extension of the earlier guiding purpose of "rehabilitation" was given wide dissemination in Task Force Report: Corrections.The President's Commission on Law Enforcement and the Administration of Justice, Washington, D.C., 1967. (See especially pages 7-12.)

[6]A good source of information, training, and technical assistance in relation to community-based residential treatment of offenders is the International Half-Way House Association, National Training Institute, P.O. Box 18258, Seattle, Washington, 98118.

[7]For statistical information on state and federal imprisonment, see the annual National Prisoner Statistics bulletins published by LEAA's National Criminal Justice Information and Statistics Service. For data on reported crime and arrests, see annual reports of the FBI's Uniform Crime Reports program.

[8]Op. cit. -- Task Force Report: Corrections, p. 47. Also John Galvin and Loren Karacki, Manpower and Training in Correctional Institutions, 1969. Available from the American Correctional Association (Chapter 6).

[9]For a summary of issues and literature on the subject of sentencing, see John Galvin et al., Instead of Jail, National Institute of Law Enforcement and Criminal Justice, Washington, D.C., October, 1977, (Volume 4, Sentencing the Misdemeanant -- Appendix A).

[10]Ibid.

Changing Public Training Schools: The Massachusetts Experience

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Traditional public training schools, organized on the principle of enforced respect for authority, have been the focus of criticism for the past several decades, with attacks coming from three major sources. First, the high rates of recidivism among graduates of the training schools have created pressure for new solutions, and critics have pointed to the role of these institutions as agencies for the criminalization of the young people who emerge from them. The juveniles committed to a training school are quickly labeled as "delinquent" or "criminal," a stigma reinforced afterwards by family, neighbors, school, mates, and co-workers.

Criticism from a second source has come from proponents of treatment ideologies in the human services. These critics argue that counseling and therapy must replace traditional custodial care, and that youthful offenders should be considered in the context of their families and communities. The third challenge to the training school system has come from advocates of the civil rights of children, and has focused on the issues of due process, the "right to treatment," and the "right to be left alone."

These several challenges have placed severe strains on the correctional systems in many states. If the training schools are failures, what new system of services should replace them? What kind of programs work? Will a new system produce better results? What happens to those young offenders who require secure care? How is a community's demand for protection met?

Such issues posed by these questions were confronted during a tumultuous period of crisis, reform, and reaction in Massachusetts correctional policy that made the state a unique site for observation and evaluation. It was at the beginning of this period that the Harvard Center for Criminal Justice inaugurated its study of the reform process. A brief review of the events surrounding the Massachusetts reforms will allow for a proper assessment of the nature of this project.

The Massachusetts Situation

The Department of Youth Services underwent six critical investigations of its operations, policy, and philosophy beginning in 1965 and ending in 1969 with the resignation of the director. The studies all criticized that system for a variety of ills, including the dominance of custodial care and security over treatment goals; the lack of effective centralized supervision and child care; an inadequate diagnostic and classifcation system; poor personnel practices; and the inefficient and ineffective parole system. Some of the earlier studies also reported on brutality in the state's institutions.

These critical studies were publicized extensively throughout the State by the newspapers and by a group of civic and professional groups led by the Massachusetts Committee on Children and Youth. The extensive publicity helped to

develop a loose coalition of the various groups--all intent upon and held together by the prospect of reform. Reform legislation was finally passed in 1969 and the way opened to initiate progressive policies for the treatment of delinquent youth.

At the same time, Dr. Jerome Miller was appointed director of DYS. The new director came equipped with a doctoral degree in social work and correctional experience in the military service and later in the State of Maryland. His goals were to humanize the services rendered to the children and youth under the care of DYS and to develop a treatment scheme modeled after Maxwell Jones' "therapeutic community." By administrative decree, Miller abolished such regressive practices as short haircuts, school uniforms, marching in silence to various activities, physical punishment, etc. In addition, attempts were made to retrain staff to work within the framework of the new rehabilitative philosophy. The inservice training, although sporadic, went so far as to bring in Maxwell Jones and others to influence existing staff. But change was stymied by an increasingly recalcitrant staff.

Changes were slow in coming and after two years, the director gave up his original plans and formulated more clear-cut organizational changes. These included regionalizing the responsibility for delinquents, establishing community-based treatment centers, expanding the forestry program, regionalizing detention facilities and revising their program, developing a variety of residential and nonresidential programs as alternatives to training schools, establishing grants-in-aid for cities to involve the local community in the rehabilitation process, and, finally, planning an intensive-care security unit for the extremely aggressive, hostile, "dangerous" youth. The reasoning for the last measure was sound. Since opponents of deinstitutionalization were inclined to characterize all delinquents as needing secure care, to ignore the small percentage of delinquents actually requiring secure care was unfair to the community and the delinquent, and would only give credence to the more outlandish complaints of the critics.

Thus, in 1971, the director had shed his original plans, which he considered unworkable, and had hired some new staff, had developed new ideas and plans, considerable community and newspaper support, and had received some newly-found money from federally sponsored programs which made him less dependent on the increasingly tight state appropriations. Decreasing dependence on the state for funding was important because the first two years of reforms had seen the polorization of views and of staff and heightened admininstrative conflict. This fight was carried to the legislature, to the correctional community, and to a lesser extent than before, to the public at large, thereby affecting funding.

In the winter of 1971, with his plans formulated but far from operational, the director moved suddenly and quickly. By administrative fiat, he closed two institutions and converted one to privately run programs. Late in 1972, another was closed and subsequently all the other institutions followed suit. However, institutional facilities were reserved for those delinquents who were deemed in need of secure care.

The press, for some years, had carried stories of the brutality practiced in the correctional schools. Thus, the press and the public reacted positively to the sudden, dramatic closing. The immediate results of the sudden closings were somewhat chaotic, but exciting.

It should be noted that regional offices had already been established and a number of community--based facilities were already available. About two-thirds of the young offenders ready for alternative care were placed in their own homes or in foster homes. Equal proportions of the remainder were placed in other institutions, ran away, or remained unplaced.

Gradually, the regional offices became more adept at locating or contracting for the required community--based services. As a result, what had once been a rigid system offering little except institutional placement became a flexible system which offered treatment in a variety of settings.

The Harvard Evaulation Study

During this time of the change, the Center for Criminal Justice has started a study of the process. Seventeen separate data-gathering efforts took place in the course of the study. These focused on recidivism, program dynamics, the relations between youth and DYS staff in various settings, and the politics of the reform and counter-reform movements. The components of the overall study are described briefly below (see also figure 1, following):*

*There is no way to briefly summarize the various research projects and conclusions without oversimplifying at best, and at worst, misleading the reader. Therefore, for a thorough understanding, readers are referred to the books published by the project, listed in the bibliography.

1. Recidivism Baseline: A study of official records of youth paroled before the reforms to provide a comparison baseline for recidivism of youth passing through the new programs. The results showed that recidivism before the reform was slightly less, statewide, from recidivism after the reform.

2. Longitudinal Youth Cohort: This study consisted of repeated interviewing of youth at different points in their progress through the system from intake to return to the community, along with official record checks of recidivism for comparison with the recidivism baseline. The results showed the effects of implementing a wide range of service alternatives, from secure programming through group homes, boarding schools, forestry programs, foster care, and nonresidential programs.

3. Cross-Sectional Program Surveys, Staff and Youth: These surveys were interviews of staff and youth to characterize further programs through which youth in the cohort had to pass. It demonstrated the effects of a wide range of programs in terms of positive and negative social climates and in terms of linkages to community, with these two types of variation not necessarily related to each other.

4. Subculture, 1971: This study consisted of interviews and participant observation in selected programs before the closing of the institutions. It showed a crucial link between custodial orientation and inmate and staff violence.

5. Program Baseline: Data for this study were from interviews in institutions immediately prior to the closing. They showed variable degrees of success of attempts within the institutions to produce more favorable social climates by introducing the therapeutic community orientation.

6. Subculture, 1973: This study was comprised of interviews and participant observation in selected programs after the closing of the institutions. It concentrated on the trade--offs between competing goals relating to social climate, linkages to the community, and control or security. Of particular importance is the negative relationship between the heavy emphasis on positive social climates in therapeutic communities and the development of community linkages. The therapeutic communities depend on isolation from the larger community to develop their more positive social climates, and frequently even develop a subculture in opposition to the larger community in the process.

7. Staff and Youth Survey: Interviews of staff and youth in the institutions during the first year after reorganization made up this study. The results showed a wide range of reactions to the reforms. Professional groups were more favorable; youth were generally favorable except for a concern that clear, universal standards be used in decision making. This concern ran counter to the individual focus of decision making in therapeutic communities.

8. Staff Survey: This survey was comprised of informal interviews of the staff of the institutions after most had closed. The findings showed the extent of feelings of dislocation occasioned by the closings, even though there had been warnings of the closings well ahead of time. The staff simply tended not to take the warnings seriously until the youth were actually removed, all at once.

9. Key Participant Survey: Interviews of staff after consolidation of the reforms made up this survey. The results showed the steady growth of

BLOCK PLAN OF STUDY CORRELATED
WITH MAJOR CHANGES IN DYS

	1968	1. Recidivism Baseline						
Reorganization and new Commissioner	1969				7. Staff and Youth Survey			
	1970			4. Sub-Culture				
Therapeutic Communities	1971			5. Program Baseline	8. Staff Survey	10. UMass Study	15. Observation and informal and semiformal interviewing in institutions	17. Observation and informal and semiformal interviewing and retrospective data collection on organizational and political process at the State level
Deinstitutionalization	1972					11. Neutralization Study		
	1973	2. Longitudinal Cohort -	3. Cross Sectional Program Surveys -	6. Sub-Culture		12. Court Study	16. Observation and informal and semiformal interviewing in Regional Offices and Community--Based Programs	
Community--Based Programs	1974		Staff and Youth			13. Court Study		
	1975	Youth						
	1976				9. Key Participant Survey	14. Police Study		
	1977							

10. University of Massachusetts Study: This study consisted of interviews and observation at the University of Massachusetts conference that was used to place youth taken from the closing institutions. It showed that placements for large numbers of youth could be arranged, that it was possible to handle large numbers of youth correctional clients in an open academic setting depending heavily on students as companions and advocates, and that education institutions could play significant roles in correctional change.

11. Neutralization Study: This study was based on interviews with participants in and observation of the process of setting up group homes in specific communities, during which attempts were made to neutralize community resistance. The fundings demonstrated the importance of fitting strategy to an analysis of the power structure of a community. Also shown was the feasibility of establishing a group home in a community within about six months, if one simultaneously addressed the political problems and the problems of actual housing arrangements.

12. Court Study, 1973: The purpose of this study, which was based on interviews and observation, was to assess the interface between the courts and the Department of Youth Services.

13. Court Study, 1974: This study was a continuation of Court Study, 1973. These two studies showed considerable tension between corrections and the courts. Cooperative relationships between the two tended to vary widely in extent and form and to depend much more on personalities and informal arrangements than on the offical structure of the liaison program.

14. Police study: This analysis was based on interviews, questionnaires, and observation to assess the interface between the police and potential DYS youth. The findings showed a high level of police concern for troublesome behavior by groups of youth, a feeling of frustration at the lack of a means to do something about this, and an awareness that the biggest problems were not ones of violence or mayhem.

15. The three remaining studies (15 through 17) were monitoring programs and were based on observation and semiformal and informal interviewing. One study was of the day-to-day process in the institutions. Another was of the daily process in the regional offices and the community-based programs. The third was of the day-to-day process of the organizational and political processes at the state level. Data were collected retrospectively for this third study. These three studies enabled the project staff to coordinate their work with anticipated developments in the department and provided much of the data for the general analysis of the change process.

The General Findings

The reform gave rise to some high expectations on the one hand, and to some dire predictions on the other. The findings of the evaluation, therefore, disappointed somewhat both the proponents and opponents of deinstitutionalization. The former expected dramatic reductions in recidivism and costs as a result of the humane and professional treatment afforded the children and youth who had formerly been institutionalized. It was disappointing to learn that neither recidivism rates nor costs of the new system differed significantly from the previous system. The opponents predicted disaster following the release of large numbers of delinquents in the community. There was no significant change in the rate of recidivism, despite

factors that would lead to an expectation of an increase; namely the aging of the delinquents and the increase in delinquency rates nationally. A brief summary of the results are as follows:

1. Recidivism: The recidivism record of the new system was neither better nor worse than the old. In two of the seven regions, the recidivism rate was lower under the new system. In the other five, it was higher. Overall, it was slightly higher but not significantly so. However, on closer examination, some significant differences emerge. Recidivism decreased in the two regions where the programs were most varied and provided considerable linkages to the community. Also recidivism increased in proportion to the amount of security of the different programs. Thus, the lowest rates were for youth in foster homes and nonresidential programs; the highest were for those in secure facilities.

2. Costs: The average daily costs for both systems were approximately the same; $29 per day for the training school system versus $30 per day for the community--based system. Costs varied widely between kinds of care under each system. For example, foster home care cost $13 per day, compared to $57 per day for secure facilities. One must consider, however, that although overall costs are approximately the same, the community system offers a much broader variety and higher quality of services than the institutional system.

3. Humaneness of the Setting and Rights of Children: One can hardly compare the essential gain in decency and dignity afforded by the community--based facility as against the old institution. Nor does placement in the new setting involve as startling a deprivation of freedom. Our research findings show a marked improvement in the quality of life for the youth in community-based programs compared to the traditional training school setting. In the community-based system, punishment was deemphasized, rewards were emphasized, and youth became involved in rewarding each other. The institutional setting, compared to the community-based system, produced more negative subcultures and effectively isolated youth from the community.

Conclusions

A common thread is emerging from our study of both the political organizational process of changing a correctional system and the process of serving youth and their communities. Rapid and extensive change requires action on all fronts at once. It will not ordinarily suffice simply to implement a change directly without addressing vested interests in the status quo. However, neither will it ordinarily suffice to act only indirectly by trying to deal with opposition to a new program without at the same time setting up the program. Similarly, efforts to improve relationships between clients and staff without attending directly and simultaneously to improvements in the relationship between clients and the community are likely to be less productive. Favorable political relations do not by themselves produce the necessary relationships between clients and the community. The Massachusetts experience illustrates the value of proceeding on all these fronts simultaneously to accomplish major reform within a brief time.

It is our opinion that the community--based system is a workable alternative to a training school system. It is at least as effective as the institutional system; it is no more expansive and far more humane. The change in Massachusetts from one system to another demonstrates that most delinquents can be handled in relatively noninstitutional settings. However, our research indicates that the network of relationships which youth maintain in the community have a crucial

impact on their ability to stay out of trouble after their release. In fact, it seems clear that the total community experience of the youth before and after his or her correctional experience may override even the most constructive elements of the correctional program. The development of beneficial ties within the family, school, work world, church, neighborhood, etc., is a necessary followup to the program. Supportive social contacts established during a youth's enrollment in the community--based correctional program must be provided after he or she leaves the program if the gains made during the program are to be maintained.

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87978

Serious Juvenile Crime*

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This paper is a summary of the major findings, conclusions, and recommendations contained in a 1,000 page report assessing serious juvenile crime and the juvenile justice system in the United States. This summary was compiled from the topical sections of the report on definition, characteristics, substance abuse, legislation, jurisdiction, confidentiality of records, program intervention and economic impact. For purposes of readability, no citations or footnotes are included here. These will be found in the report itself.

Definition

A definition of serious juvenile crime must include both the offense and the offender. What should be considered a serious juvenile offense? Who should be considered a serious juvenile offender?

As a first step in developing the definition of seriousness, the following definition was adopted for this assessment for the term juvenile offender as it reflects the ages most likely to be found in various jurisdictions:

> A person not yet 18 who has been adjudicated for a delinquent act by the juvenile justice system or for a crime by the criminal justice system: or, for purposes of disposition, a person not yet 21 who has been adjudicated as an offender by the juvenile or criminal justice system for delinquent or criminal acts committed prior to his or her eighteenth birthday.

This section was developed through an assessment of the literature, statistics, and expert opinion.

Three criteria for seriousness are identified:

- Violence or injury to persons.
- Property loss or damage.
- Chronicity or repetition of offenses.

A serious juvenile offense is defined to include the following offenses (or ones of at least equal severity as measured by the Sellin-Wolfgang seriousness scale):

- Homicide or voluntary manslaughter;
- Forcible sexual intercourse;
- Aggravated assault;
- Armed robbery;
- Burglary of an occupied residence;
- Larceny/theft of more than $1,000;
- Auto theft without recovery of the vehicle;
- Arson of an occupied building;
- Kidnapping;
- Extortion;
- Illegal sale of dangerous drugs.

A serious juvenile offender is defined as a person whose offense history includes adjudication for five or more serious offenses (on the Sellin-Wolfgang scale) or a person who is adjudicated for one or more offenses whose severity is equal to homicide or forcible sexual intercourse as measured by the Sellin-Wolfgang scale.

Characteristics of Incidents and Individuals

This section includes an assessment of three topics:

- Patterns and trends of serious juvenile crime.
- Spatial distribution, contexts, and settings of serious juvenile crime.
- Characteristics of juveniles arrested and adjudicated for serious offenses.

The method used in preparing this assessment consisted of an informal "grapevine survey," a review of available national data, a nationwide survey

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* This paper summarizes a recently completed report by the National Juvenile Justice System Assessment Center (NJJSAC) entitled, Severity, Chronicity, and Bewilderment: A National Assessment of Serious Juvenile Crime and the Juvenile Justice System by Charles P. Smith and Paul S. Alexander et al. This report is still in the review process of the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), and should not be quoted or reproduced without approval from the NJJSAC

of State agencies, and a general literature search on characteristics.

According to the definition recommended in this report, not all incidents subsumed within the Uniform Crime Report (UCR) Index Crime categories can be considered serious, and the UCR omits some incidents the recommended definition includes. However, since UCR is the only national source which provides detailed data of the kind needed for this topic, the Index Crimes are used as the basic indicator of the extent of serious juvenile crime. The UCR shows that:

- Based on 1977 arrest frequencies, the property crimes (burglary, larceny theft, and motor vehicle theft) are more proportionately committed by juveniles than are the violent crimes (murder, forcible sexual intercourse, robbery, and aggravated assault). In fact, arrests of juveniles for the three violent crimes only constitute 1 percent of all arrests for criminal offenses (both juvenile and adult).

- Overall, arrest rates for 1964 to 1977 indicate that juveniles are continuing to be involved in the property crimes of burglary and larceny theft, but leveling off their involvement in the violent crimes of murder and forcible sexual intercourse.

- The proportion of juveniles to other age groups (i.e., 18- to 20-year olds and 21- to 64- year-olds) arrested for the crimes of robbery and aggravated assault has steadily increased from 1964 to the present.

- There is little connection between geographic regions or individual States ranked according to juvenile arrest rates for violent versus Index property crime. This suggests that demographic distribution of property and violent crime is not similar. However, juvenile property crime is more equally distributed than juvenile violent crime.

- Indications are that increased mobility by automobiles is partly responsible for changing patterns of criminal behavior among juveniles.

- Based on 1977 arrest rates, it appears that involvement in Index property crime "peaks" around age 16, while involvement in the violent offenses increases throughout the juvenile years. Similar age distributions are found when each offense type is examined individually. Based on arrest frequencies, juveniles in the age group 15 to 17 appear to be most responsible for the serious Index crimes.

- Based on arrest rates for the years 1964 to 1977, overall trends for Index Crimes combined indicate that older juveniles (15 to 17 years) are becoming proportionately more involved in Index crime while involvement of younger juveniles (14 and under) has remained stable. However, very recent trends (1975 to 1977) indicate a possible decrease in rates for all Index offenses. Therefore, rates that had increased during the 1960s and early 1970s may now be decreasing.

- Based on 1977 arrest frequencies, the juveniles most responsible for Index offenses are males. Although the arrest rates for females has increased more rapidly over the time period 1964 to 1977, males are still responsible for a much greater proportion of the Index crimes.

- Arrest frequencies for 1977 indicate that black juveniles are "over-represented" (i.e., arrested more frequently than would be expected based upon their population) in each of the Index offenses, particularly the violent crimes. A comparison of arrest rates for 1964 to 1977 indicates an increasing likelihood that a juvenile arrested for many of the Index crimes will be black.

Based upon these findings, the following recommendations are made:

- A survey should be undertaken of selected States to ascertain the characteristics of those arrested and referred to court and corrections.

- An effort should be made to determine the amount of crime (over time) attributable to those with prior records and the nature of that relationship.

Relationship to Substance Abuse

This section assesses the state-of-knowledge concerning the relationship between substance abuse and serious crime among juveniles.

Abstracts, reference lists, and indexes of literature were searched for the years 1968 through 1978. All but four of the 77 studies reviewed were concerned primarily with adults; however, all had some relevance for juvenile drug abuse and serious crime.

The studies consistently revealed three different patterns of relationship between substance abusers and serious crime:

- The drug-abusing criminal who usually has a lengthy career of crime prior to the onset of drug use;
- The criminal-abuser, who generally does not become involved in any extensive criminal behavior until after the onset of drug abuse; and
- The criminal-alcoholic, whose violent behavior and alcohol abuse both begin in early adolescence.

Primarily among the latter two, substance abuse and serious crime are centered on juveniles.

The crimes of the criminal-abuser are nearly always related to need for money with which to purchase drugs. The crimes of the criminal-alcoholic are largely unpremeditated and episodic, resulting in violence.

No association was found between serious crime and the use of depressant, stimulant, or hallucinogenic drugs other than their role in generating "rip-offs" and retaliations within the drug world itself. Marijuana was not directly associated with serious crime, although, since it is highly associated with the use of other drugs, it tended to be indirectly correlated with the occurrence of serious crime through users of other drugs (particularly opiates and alcohol).

The studies concur that elements of the social and economic background of the individual, his or her personality and psychological set, and the influence of locale and time are all important in determining whether any criminal event will occur in relation to substance abuse.

Recommendations include the following:

- There must be a considered effort to initiate and conduct multivariate studies of the role of drugs and other mediating elements on serious juvenile crime. Most of the studies to date have been simple correlational or group comparison studies which are unable to expose the real nature of the relationship between substance abuse and serious juvenile crime.

- Voluntary self-help centers are necessary since it is highly improbable that the individual who needs help with an actual or impending drug problem will voluntarily seek assistance from a facility associated with or sponsored by agencies of law enforcement or criminal justice.

- The provision of both opiate (methadone) and other alternatives to illicit narcotics must be considered as preventive, rather than simply as treatment.

Legislation

This section reports on the statutes in the United States (50 States and the District of Columbia) related to the serious juvenile offender.

The information was gathered from a statutory analysis of Federal guidelines and juvenile law in the 50 States and the District of Columbia concerning the dispositional methods created specifically for dealing with the serious juvenile offender. Dispositions refer to four juvenile justice processes: 1) detention, (2) jurisdiction of the juvenile court, (3) sentencing, and (4) confinement.

It does not appear that there has been much Federal direction given to the States since 1967 on what to do with the serious juvenile offender.

The statutory analysis identified six States (California, Florida, New York, Colorado, Delaware, and Washington) as having punitive type of provisions for dealing with the serious juvenile offender.

In the jurisdictional area, Florida now provides for mandatory waiver hearings for certain youth that commit one of a group of target crimes listed in the statute; a second jurisdictional mechanism used in Florida and New York is to exclude certain offenses from the jurisdiction of the juvenile court; and a third mechanism developed in California creates a presumption in favor of waiver if one of 11 target offenses is alleged. In the sentencing area, Colorado, Delaware, and Washington have passed mandatory sentencing laws for juveniles of a type that have traditionally been used in the States only for adults. Finally, in the confinement area, California, Florida, and New York have provisions which permit juveniles to be placed in adult, youthful offender facilities.

The analysis of State statutory provisions to deal with the serious juvenile offender shows that a small group of more urbanized States have decided to deal more punitively with youth charged with serious offenses. This action has been limited in other States, with most jurisdictions still maintaining the traditional juvenile court philosophy that is dedicated to rehabilitation. Among those States that are dealing more punitively with the serious juvenile offender, the options appear to be divided between waiving the juvenile to the adult court and prescribing mandatory sentences within the juvenile justice system.

Jurisdiction

This section reviews statutory provisions regarding jurisdiction of the juvenile court and the criminal court over youths under the age of 18 in all 51 State jurisdictions of the United States (50 States and the District of Columbia).

The paper is based on a review of available and current literature on jurisdictional statutes and practices in the United States and upon a statutes analysis.

There is considerable variation between jurisdictions:

- The juvenile court has jurisdiction over youths under 18 in 39 jurisdictions, over youths under 17 in 8 jurisdictions, and over youths under 16 in 4 jurisdictions.

- In 37 of the 51 jurisdictions, the time at which the jurisdiction of the court attaches is the date of the offense.

- The duration of juvenile court jurisdiction extends until age 21 in 32 jurisdictions, and until ages 18, 19, or 20 in all except one of the others (which does so until age 23).

- All except 10 of the 51 jurisdictions provide for exclusive original jurisdiction over juveniles by the juvenile court.

- In 10 jurisdictions, provisions are made to exclude certain serious offenses from the jurisdiction of the juvenile court. In 10 jurisdictions also, there is concurrent jurisdiction between the juvenile and criminal courts.

- The waiver of jurisdiction from juvenile court to criminal court is designed for the serious offender. All but three of the jurisdictions permit waiver. Twenty-six of the jurisdictions require either a felony or a specified serious offense before waiver to the criminal court. In almost all of the jurisdictions, a waiver hearing is required before a juvenile can be transferred to criminal court.

The following recommendations are offered:

- The maximum jurisdictional age of the juvenile court for adjudication should be the eighteenth birthday and for corrections, the twenty-first birthday.

- The time at which the jurisdiction of the juvenile court attaches should be the date of the offense.

- The juvenile court should have exclusive original jurisdiction over all youths under 18 and certain serious offenses should be excluded from the original jurisdiction of the juvenile court.

- Concurrent jurisdiction between the juvenile and criminal courts should not be allowed.

- Provision for waiver of jurisdiction over juveniles under 18 to the criminal court should be made in all jurisdictions, with a minimum waiver age of 16, a list of serious or repeat offenses required for waiver, and complete due-process protections guaranteed.

Confidentiality of Juvenile Records

This section interprets information on confidentiality of juvenile records contained in the American Newspaper Publishers' Reporters' Guide to Juvenile Court Proceedings.

Based on data available, the public and the press appear to be ordinarily excluded from:

- Juvenile court hearings,

- Inspection of juvenile records, and

- The right to disclose an alleged juvenile offender's identity under jurisdiction of the juvenile justice system.

These prohibitive measures may be stated in the statutes, or the jurisdiction may empower the court to use discretion on the elements within the issue of confidentiality. Exceptions to this practice vary greatly from one jurisdiction to another, but evidence of public disclosure can be found permissible by statute on occasions when the juvenile under jurisdictional consideration is alleged to be a repeat, serious, or repeat-serious offender. No restrictions are apparent on confidentiality of information when the person under 18 is waived to the criminal court.

Program Interventions

In this section, 14 programs for the intervention and treatment of serious juvenile offenders are described together with their critical evaluations. The programs are roughly ordered according to their comprehensiveness and differentiation, beginning with those attempting large-scale change of the juvenile justice system and ending with small-scale specialized projects under State, local, and private sponsorship.

All of these, with one or two exceptions, reflect the movement towards community-based correctional programs for juvenile offenders. Reforms in Massachusetts went farthest in this direction. Claims of success for its programs rested on their great diversity which allowed maximum individualization of treatment. The only program which evaluators asserted reduced recidivism significantly was the Unified Delinquency Intervention Service (UDIS) in Illinois, which was believed to have a "suppression effect" on further juvenile misdeeds. However, the statistical basis for the claim is questioned.

Generally, exemplary programs tended to revolve around remedial education, vocational training and placement, and recreation, with accessory counseling in one-to-one relationships and in groups.

Issues raised by the program assessment concern the utility of the medical model, system versus service delivery change, institution versus community-based treatment, and methods of evaluation. UDIS and research on programs in Massachusetts raised questions about what "community-based" means and whether closed residential treatment needs to be retained for residual hard-core, violent offenders.

Several tentative recommendations are offered:

- A number of analytical studies should be commissioned to explore possible applications of nonmedical models of intervention.

- Continued support should be given to broad-based, social/political studies of intervention of the sort carried on by the Harvard Research Group, but with additional emphasis on ethnographic and microcosmic aspects of the process.

- Careful consideration should be given to intervention with hard-core, violent offenders by means of small, closed residential centers, using a number of different models.

- A law center should be commissioned with support of the legal profession to study how to reconcile maximum experimentation in intervention with accountability and protection of juvenile rights.

- The meaning of community-based intervention needs both analytical analysis and empirical investigation.

- Further experimentation with the use of paraprofessionals and community workers in intervention should be supported.

- The problem of high and disproportionate unemployment among minority group teenagers should be recognized, especially in devising aftercare programs.

Economic Impact

This section reviews the economic implications associated with serious juvenile crime in the United States. The paper is the result of an assessment of economic literature that has estimated the costs and cost relationships associated with the commission of serious criminal acts. Costs are divided into two groups: direct costs (e.g., uncompensated costs to victims; psychic costs incurred by victims and witnesses) and indirect costs (e.g., increased expenditures due to rises in consumer prices; increased taxes; diminished neighborhood quality of life; juvenile justice system processing costs).

Cost relationships are subdivided into two separate types of program impact evaluation: process evaluations (i.e., the extent to which inputs contribute to desired program outputs) and outcome evaluations (i.e., extent to which inputs and outputs contribute to desired program outcomes). Together, these measure the extent to which effectiveness is achieved, and serious juvenile crime, with its resulting costs, is decreased.

Some of the principal findings are as follows:

- Based upon estimates of the direct costs to the victim of single-crime incidents (using UCR data, victim survey data, and the Sellin-Wolfgang scale for a severity measure), the average primary costs for serious crimes were computed as follows:

  - Homicide $178,000
  - Forcible sexual Intercourse (involving serious injury) $ 29,000
  - Assault (involving serious injury) $ 18,600
  - Robbery (involving serious injury) $ 18,600
  - Burglary (forcible entry) $ 2,300
  - Auto theft $ 1,300
  - Larceny (loss exceeding $250) $ 600

- Total aggregate primary direct costs of serious juvenile crime in the United States are estimated at $10 billion for 1975.

- Indirect costs of serious juvenile crime were estimated as follows:

  - Cost of business crime, in household expenses, equals approximately $400 per year per household.
  - Homes in neighborhoods with high crime rates decreased in value between $3,500 and $5,500 in average 1977 value.

- Juvenile justice system processing is estimated at $1.4 billion for an average of $17 at the household level for juvenile index crimes in 1977.

- Average costs for juvenile arrests were estimated at $456; for juvenile court processing, at $286; and for secure detention, $60.

- Nonsecure programs are less expensive than secure programs, with per-bed construction costs from secure correctional facilities ranging from $40,000 to $60,000.

Among the recommendations are the following:

- Juvenile justice resources should be concentrated on serious juvenile crimes rather than minor, victimless, or status offenses.

- Small jurisdictions could pool available resources for handling serious juvenile offenders.

Conclusion

In summary, an assessment of serious juvenile crime and the juvenile justice system shows that Federal, State, and local resources and policies should be concentrated on:

- Those offenses which are deemed to be particularly severe.
- Those offenders who are deemed to be particularly chronic.
- Reducing bewilderment associated with serious juvenile offenses and offenders through improved research and statistics.

87979

Sentencing Trends in the United States*

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Recent trends in sentencing in the United States address issues so fundamental to the whole system of criminal justice that they must have a profound impact on the whole of that system in the next few years.[1] These trends concern the purposes of sentencing and the extent of discretion to be allowed. The purpose of this paper is to describe these trends briefly, in order to set the stage for the analyses by our panel members. In addition, I seek to suggest one particular challenge posed by the trends to be described.

Problems of sentencing lie at the hub of current controversies central to the entire criminal justice system. In contrast with the continental model of criminal procedure, which emphasizes a unity of proceedings, the American criminal trial consists of two distinct phases to determine: (1) criminal liability, and (2) the appropriate sentence.[2] In fixing the sentence, the judge and the parole board have critical roles capable of influencing all other parts of the system. Sentencing decisions can and do affect the roles and behaviors of the police, prosecutors, and correctional administrators and clinicians. Thus, changes in sentencing or paroling law or practice may have important implications for the entire system.[3] The purposes of sentencing, however, are by no means agreed upon. There is not only disagreement about the proper goals, but also much current debate about them.

In the context of that debate, however, clear trends have emerged. Before discussing them, it may be useful to define the debate by outlining briefly the most commonly held theories of sentencing.

SENTENCING GOALS

The bifurcation of American criminal trials already noted (between determination of criminal liability and of the sentence) is such that one important sanction already has been imposed before sentencing. This is the conviction itself, which publicly, authoritatively, decisively, and enduringly certifies that the defendant is guilty of blameworthy conduct causing harm to an innocent victim. Although it often is overlooked in discussions of sentencing, this stigmatization of a person as an offender inflicts "not only a damaging, but also one of the most enduring, sanctions which the state can mete out."[4]

*Adapted from portions of a paper by the same title presented at the VIth International Seminar on Clinical Criminology, Santa Margherita, Italy, May, 1978.

Rarely, however, is the conviction alone considered to be a sufficient sanction, and a variety of justifications for additional ones have been argued -- historically and recently. Two basic moral conflicts lie at the root of this complex of theories of sentencing. The first distinction is found between utilitarian and desert perspectives.[5] The first is committed to maximizing the general good; the second is addressed to principles of justice, fairness, and equity. A related distinction poses the conflict between reductionism and retributionism. This fundamental difference has profound implications for issues of diagnosis and treatment, including the justifiable role of prediction. As summarized by Weiler:

> The one view holds that criminal penalties can be justified if, but only if, they will reduce the level of crime within the community. The other responds that sanctions are justified if, but only if, the defendant has done something for which he merits their infliction. It is clear then that the arguments within the first perspective are focused forward in time, toward the future beneficial consequences of punishment; within the second the arguments look backward, to events which have already occurred, as the source of moral support.[6]

The literature on sentencing goals is vast, but we can identify the major currently debated perspectives in order to examine some implications.[7] Accordingly, we can discuss four sentencing aims widely discussed and argued about: deterrence, incapacitation, treatment, and desert.[8] Each has a long history in philosophy, in literature, and in criminology.

Deterrence

The concept of deterrence "refers to the prevention of criminal acts in the population at large by means of the imposition of punishment on persons convicted of crime."[9] This concept is often called "general deterrence" in order to distinguish it from "special" or "specific" deterrence, "the latter referring to the inhibition of criminal activity of the person being punished as a result of the imposition of that punishment."[10] (The term "deterrence" is used here to refer only to general deterrence, since special deterrence may be subsumed under the general term, "treatment

In this theory,

> the punishment given to an individual or class of individuals, is explicitly designed to decrease the probability that others will engage in unlawful behavior. Hence, the validity of deterrence as a sentencing goal is determined by the effect that a given punishment applied to a particular offense has on the future criminality of those not punished.[11]

Thus, the deterrent aim is future-oriented, and its objective is to "persuade or warn others not to commit criminal acts."[12]

Incapacitation

Incapacitation (sometimes called "neutralization" or "isolation") refers to the sentencing aim of restraining the person being punished from committing further criminal acts. To the extent that the intent of the sentence is purely incapacitative,

attention is not focused on the reduction of the offender's propensity for future criminal acts; rather, the offender is controlled so as to preclude his opportunity for such behavior, at least while under the authority of the state.[13]

Clearly, this aim, too, is future-oriented:

An essential component of the incapacitative purpose is prediction -- that is, an assessment is made of the probability of future criminal conduct by the offender and the imposition of penalties for the offense reflects that assessment. Thus, incapacitative dispositions are meant to be preventive....[14]

So, too, are sentences based on a deterrent perspective; but while the latter focuses on prevention of crime by others, the incapacitative frame of reference seeks prevention of crime by the convicted offender. Its justification must be that restraints are necessary for what the offender may do, rather than for what he or she has done.

Treatment

Treatment aims in sentencing are future-oriented, preventive in design, and focused on the individual offender. The goal "is to lessen the propensity of those convicted of crime to commit further crimes."[15] The term "treatment" is used here in its broadest sense to include anything done to, with, or for the offender for the purpose of reducing the probability of new criminal acts. Thus, potential vehicles for achieving this aim include all programs designed for rehabilitation or reintegration of the offender into the community, the punishment of the offender with the aim of "specific" deterrence, and variations in place of confinement or length of sentence when designed to change the offender's behavior. In short, it includes all means intended to reduce the offender's proclivity toward future criminal acts. As with the other utilitarian purposes of deterrence and incapacitation, "the prediction of future events...is inextricably involved with a treatment purpose."[16]

Desert

In the desert theory of sentencing, there is only one question to be answered. It is: "What sanction is deserved in this case?"[17] The desert rationale "has no explicit crime control aim; its purpose is to express disapprobation or to exact retribution."[18] The sentencing purpose, in the theory of "just desert" differs from the other three major purposes "in that it focuses exclusively on the past criminal behavior of the offender and punishment is given solely to express condemnation of that behavior.[19]

The concept of desert may be a component of various perspectives on the purpose of punishment. It may be used with a utilitarian aim; for example, for the prevention of anomie. Or, it may refer to retribution, to an affirmation of moral values, or to reprobation.[20] But the hallmark of this position is that, as a result of his or her offense, the offender deserves a certain amount of punishment, and the severity of punishment ought to be in proportion to the gravity (seriousness) of the criminal conduct (harm) -- taking into account the culpability of the offender. Thus, the concept generally contains neither utilitarian nor predictive components, thus distinguishing it in principle from deterrence, incapacitation, and treatment purposes.

SENTENCING TRENDS

Until the last few years, U. S. sentencing and correctional structures have been guided by utilitarian principles. Consistent with the treatment ideal, the indeterminate sentence has been the general rule increasingly adopted since the early 1900s. Usually, the actual determination of the sentence has been deferred until late in the term of confinement, when it has been decided by a parole board. The premise at the origin of this common model was that the offender was ill or disturbed, must be diagnosed and treated, and should be released when ready to assume a law-abiding life. Thus, the treatment goal of sentencing -- future-oriented, preventive in design, and focused on the individual offender -- was paramount.

Now this is being changed. One reason, but perhaps not the most important, is a widespread disenchantment with the effectiveness of the design. Increasingly it has been argued that we do not have enough knowledge of diagnosis and treatment to implement this model; in short, it is argued that it does not work.[21] Thus, this utilitarian regime is criticized on utilitarian grounds. The more fundamental challenge, however, rests on moral arguments about justice and fairness; and its basis is in the desert perspective. The shift, which is readily apparent and pronounced, is to determinate sentencing,[22] to an emphasis on desert,[23] and to an assertion of the right not to be treated (or of the "right to be different"[24]). At the same time, there may be an emergence of the concept of a right to treatment.[25]

Determinate Sentencing

Arguments against the indeterminate sentence have been many and varied. Besides addressing the ineffectiveness criticism, they have addressed two areas of perceived basic weaknesses. First, there has been a set of criticisms of procedures on grounds of unfairness. Both sentencing and paroling decisions have been widely faulted as arbitrary, capricious, and leading to unwarranted disparity.[26] Second, the uncertainty felt by the convicted offender has been said to be unfair. (Alternatively, the utilitarian argument that such uncertainty is counterproductive to rehabilitative aims also has been made).[27] These assertions, combined with the decline of support for the rehabilitative model, have been persuasive to many; and recent legislation in a number of states (and proposed federal legislation) has moved generally in the direction of greater determinacy.

Desert

Combined with this trend toward more determinate sentences has been an increased acceptance of desert as the fundamental purpose of sentencing and justification of punishment. Thus, there has been increased support for the view that the sentence should not only be specified more precisely at the time of sentencing or soon after, but that it should also provide penalties commensurate with the gravity of the offense of conviction -- with the harm done by the conduct (and the culpability of the offender). These assertions have been made on ethical, rather than scientific, grounds, but the present lack of firm empirical support for treatment effectiveness has often been cited for good measure.

The central argument has been that it is a fundamental requirement of justice, including fairness, that offenders with similar crimes be punished similarly and that the severity of the penalty be related to the seriousness of the offense. The basic concepts of the theory are, therefore, closely related to the idea of equity, and hence, they are intertwined with issues of sentence disparity -- about which there has been widespread concern.

Discretion

Criticisms of sentencing and parole structures in the United States have focused also on the problem of disparity, or unwarranted variation, in penalties imposed on offenders convicted of similar crimes. Three types of structural changes have been proposed as remedies, and each has been adopted in various jurisdictions. First, there are advocates[28] of mandatory sentencing with specific, unvarying penalties for specific crimes. Second, there are proposals for "presumptive sentencing," according to which punishments would be set for the "normal" case within much narrower bounds than has been customary under the previously prevailing philosophy of indeterminacy.[29] (Some deviation would be allowed for unusual cases involving aggravating or mitigating circimstances.) Third, systems of "guidelines" have been developed, with sentences determined according to an explicit policy intended to structure and control, but not eliminate the exercise of discretion.[30] Specific ranges of penalties would be provided for combinations of offense and offender characteristics, with some discretion permitted within the prescribed range and also with provision for further deviation for specified reasons. Each of these models, including the third although to a lesser extent, reduces the discretion of the sentencing judge or paroling authority--if not eliminating the latter.

The sentencing trends now in progress thus may be summarized as tending toward more definite sentences, according to desert principles, with markedly reduced discretion by the relevant authorities and with decreased emphasis on the traditional utilitarian aims of treatment, deterrence, and incapacitation.

There is, at the same time, an increasing demand that the treatment of offenders, other than deserved punishment, must be voluntary; that is, noncoercive.

Along with that trend and the general movement toward desert as a primary aim of sentencing, there is a transverse trend toward acceptance of the concept of a right to treatment. Thus, in a civil case a federal judge has held that "a person detained under order envisaging treatment is entitled to release on habeas corpus unless a reasonable effort is made to provide such treatment for that person."[31] It may reasonably be expected that the right to treatment may be expanded to include at least those sentenced obstensibly for that purpose (as sometimes is indicated by the sentencing judge). Some authorities argue further that the right ought to be extended to include all sentenced offenders and such a right seems to be implied by the United Nations Standard Minimum Rules for the Treatment of Prisoners.[32]

Thus, although a greater degree of voluntariness in treatment may be expected, we may anticipate at the same time a greater emphasis on the offender's right to treatment services when they are desired.

If a consistent theoretical framework for sentencing may be forged, that may lessen the present confusion. If principles of just desert, equity, and discretionary control are to be emphasized, then the system may be made fairer. If guidelines models assist in that control and also help explicate policy, that policy may be clearer and more open to debate and revision. If the models are a part of a process of repeated review and examination, then an evolutionary system for improving decisions may be achieved. If utilitarian aims of prevention, crime reduction, and effective treatment of the offender are abandoned in the process, however, the system may be emptied of hope . The changes are directed at increased fairness, with good justification; but the traditional utilitarian aim of treatment to prevent future criminal behavior may be, if not merely neglected, rejected in the process. Can treatment be rehabilitated?

THE CHALLENGE

The trends described may be a part of a more general social movement in the United States. As described by David Rothman, "A new generation of reformers -- is challenging the ideal of the state as parent; or, put another way, is pitting rights against needs."[33] Under the prior model, reformers argued that social programs -- including those of correctional agencies -- could serve the best interests of all. Programs of rehabilitation, offered to improve the offender and thus the social order, were unchallenged, and reformers were confident that the treater and the treated were all on the same side. The current reformers argue persuasively that benevolent purposes are not sufficient, that the paternalism of the state is not to be trusted, and particularly, discretionary authority, the limitation of which was not previously seen as necessary or desirable, must be sharply restricted. The basic dilemma is well summarized by Rothman (although he was writing in a larger context). He asks:

> . . .Will we as a society be able to recognize and respect rights and yet not ignore needs? Can we do good for others, but on their terms? Rather than wondering how professional expertise and discretionary authority can be exercised in the best interest of the client, we should ponder how the objects of authority can protect themselves against abuse without depriving themselves of the benefits that experts can deliver--and to turn the matter around in this way represents more than a stylistic revision.[34]

How can justice and fairness be emphasized and improved, the rights of offenders be better protected, unwarranted disparity in punishment lessened, while at the same time protecting and enhancing the utilitarian aims of prevention, crime reduction, and rehabilitation; without lessening the intensity of effort to identify demonstrably effective treatments for offenders; without depriving offenders of services helpful to them and consistent with these aims; and without making prisons more, not less, inhumane?

This is a fundamental challenge to our panel.

Footnotes

1. Appreciation is expressed to the following colleagues who criticized an earlier draft of this paper: M.R. Gottfredson, G.O.W. Mueller, A.R. Record, R.F. Sparks, and A. von Hirsch.

2. Mueller, G.O.W., Sentencing: Process and Purpose, Springfield, Ill.: Charles E. Thomas, 1977, pp. 304.

3. See Ohlin, L. and Remington, F., "Sentencing Structure: Its Effect Upon Systems for the Administration of Criminal Justice," 23 Law and Contemporary Problems, 495, 1958.

4. Weiler, P.C., "The Reform of Punishment" in Law Reform Commission of Canada, Studies on Sentencing, Ottawa: Information Canada, 1974, p. 107.

5. This is an oversimplified distinction. Mueller (note 1, supra, pp. 38-58) distinguished between "utilitarian" and "non-utilitarian" aims. By the latter he means "those aims or methods for achieving crime prevention of which it is usually said that they are not designed at all to achieve prevention -- in fact, that it would amount to a perversion of high ideals to use them in a utilitarian manner" (p.38). As non-utilitarian aims he includes vindication, retribution, and penitence. Some, however, would use the concepts of desert or of punishment in a clearly utilitarian sense -- for example, to prevent anomie or to affirm moral values. Weiler (note 4, supra, p. 122) divides sentencing perspectives as utilitarian versus "neo-Kantian," including in the latter category "he who locates morality in adherence to principles of right, justice, or fairness."

6. Weiler, note 4, supra.

7. See, for example, Hart, H.L.A., Punishment and Responsibility: Essays in the Philosophy of Law, New York: Oxford University Press, 1968; Weiler, note 4, supra, Rawls, J., A Theory of Justice, Cambridge, Mass.: Belknap Press of Harvard University Press, 1971; Feinberg, J., Doing and Deserving: Essays on the Theory of Responsibility, Princeton University Press, 1970.

8. This section summarizing common sentencing aims draws heavily on O'Leary, V., Gottfredson, M.R., and Gelman, A., "Contemporary Sentencing Proposals," Criminal Law Bulletin, 11, 5, 1975, 555-586, at pp. 557-560; the summary presented here benefitted also from discussion with one of those authors (M.R. Gottfredson). Various other sentencing goals not easily classified into these categories could be cited, such as penitence or the control of vigilantes or personal vendettas.

9. O'Leary, V., Gottfredson, M.R., and Gelman, A., note 8, supra, at p. 558.

10. Ibid., p. 558.

11. Ibid., p. 558.

12. Ibid., p. 558.

13. Ibid., p. 558

14. Ibid., p. 558-559.

15. Ibid., p. 559.

16. Ibid., p. 559.

17. Ibid., p. 559.

18. Ibid., p. 559.

19. Ibid., pp. 559-560; see also, von Hirsch, A., Doing Justice: The Choice of Punishments, New York: Hill and Wang, 1966.

20. Ibid., p. 560.

21. See, for example, Martinson, R., "What Works? Questions and Answers about Prison Reform," The Public Interest, 35, 22, 1974; Bailey, W., "Correctional Outcome: An Evaluation of 100 Reports," Journal of Criminal Law, Criminology, and Police Science, 153, 1966; Kasselbaum, G., Ward, D., and Wilner, D., Prison Treatment and Parol Survival, New York: Wiley, 1971; Robison, J., and Smith, G., "The Effectiveness of Correctional Programs," Crime and Delinquency, 67, 1971. Contra, see Palmer, T., "The Youth Authority's Community Treatment Project," Federal Probation, 38, 1, 1974, 3-14, and Palmer, T., "Martinson Revisited," Journal of Research in Crime and Delinquency, 12, 2, 1975, 133-152.

22. For a review and discussion of this trend in the United States, see "Determinate Sentencing: Making the Punishment Fit the Crime," Corrections Magazine. 3, 3, September 1977. Recently, legislation in the direction of greater determinacy has been passed in the States of Maine, California, and Indiana. Similar legislation was passed in Colorado, but vetoed by the Governor of the State. Related proposals, at the time of the Corrections Magazine report, were being debated in 16 other states across the country and in the criminal code, incorporating features of greater determinacy, passed last year in the Senate, but not in the House of Representatives.

23. von Hirsch, A., note 20 supra. See also, Harris, M.K., "Disquisition on the Need for a New Model for Criminal Sanctioning Systems." West Virginia Law Review, 77, 263, 1975.

24. Kittrie, N., The Right to be Different: Deviance and Enforced Therapy, Baltimore: The Johns Hopkins Press, 1971.

25. See for example, the standards (re civil commitments) ascribed to Judge David Bazelon in Rouse v. Cameron, (373 F 2d. 451, 1966) in Mueller, note 2, supra, p. 100.

26. See Harris, M.K. note 24, supra.

27. See Harris, M.K. note 24, supra.

28. See, for example, Fogel, D., We Are the Living Proof: The Justice Model for Corrections, Cincinnati: Anderson, 1975.

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29. Derschowitz, A., Fair and Certain Punishment: Report of the Twentieth Century Fund Task Force on Criminal Sentencing, New York: McGraw-Hill, 1976.

30. Gottfredson, D.M., Wilkins, L.T., and Hoffman, P.B., Guidelines for Parole and Sentencing: A Policy Control Model, Boston: Lexington Books, 1978; Wilkins, L.T., Kress, J.M., Gottfredson, D.M., Caplan, J.C., and Gelman, A.M., Sentencing Guidelines: Structuring Judicial Discretion, Albany, New York: Criminal Justice Research Center, 1976.

31. Mueller, note 2, supra, p. 100.

32. United Nations Department of Economic and Social Affairs, "Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations," resolution adopted on August 30, 1955, New York: United Nations; reproduced in Mueller, note 2, supra, pp. 145-181. See especially Part II, A, 58 and 59 which assert as guiding principles the utilitarian aim of societal protection which is to be achieved through remedial assistance to ensure return to a law-abiding and self-supporting life.

33. Rothman, D., "Unto Others, But...," The New York Times Tuesday, March 7, 1978, p. 35.

34. Ibid.

Sentencing: Current Controversies

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It is doubtful whether sentencing patterns have any influence upon the type or amount of crime in any community. While a debate rages as to the impact of incarceration on the circulation of offenders, there is justified concern as to the practice of sentencing in its own right. It is possible to inquire whether decisions are made in accord with appropriate philosophical considerations and available information.

While the present state of knowledge may be said to be a crisis of ends, objectives, or goals, it is interesting to note that the "moving and shaking" initially came from persons who studied the information generated by the work of researchers. The research investigated, rather than questioned, the operations of the correctional services, but the results eventually obtained such significance that fundamental questions began to be asked. It was the American Society of Friends (1971) which first popularized the challenge to the previously accepted philosophy of the "treatment of offenders." The only reasonable inference from the increasing research effort was that "treatment" had failed to show even the remotest traces of "cures."

Some persons are not convinced that "nothing works" and believe that effective treatments may be found -- that there is nothing wrong with the treatment model, except that it has not been adequately explored. Others take the view that even if treatment could be made to work, it would be objectionable on ethical (or philosophical) grounds.

It was mainly from those outside (or remote from) the field of criminal justice that the suggestion was first made that the whole underpinning of penal sanctions needed to be changed -- changed on moral grounds, rather than on operational grounds of cost effectiveness. The failure of the "medical model" to deliver according to its promises led to rapid searches for substitute philosophies. Among the influential works taking this view may be noted the report which was prepared by Andrew von Hirsch (1976) of the Committee for the Study of Incarceration and which was funded by the Field Foundation. The claim of this work is forthright. It calls for:

> ... (a) conceptual model that differs considerably from the dominant thinking about punishment during this century. The conventional wisdom has been that the sentence should be fashioned so as to rehabilitate the offender and isolate him from society if he is dangerous. To accomplish this, the sentencer was given the widest discretion to suit the disposition to the particular offender. We reject

> these notions as unworkable and unjust...and conclude that the severity of the sentence should depend upon the seriousness of the defendant's crime or crimes -- on what he did, rather than what the sentencer expects he will do if treated in a certain fashion. (Italics in original.)

THE ISSUE OF DISCRETION

While each disposition was expected to be fitted to the unique needs of the individual offender, it was difficult to compare dispositions by different courts. Furthermore, the treatment was still subject to "individualization" by the decisions of the parole boards or similar bodies. The treatment professionals had a considerable influence upon the period of time any offender served in an institution.

If, however, the disposition of the offender was to be fixed in accordance with his past record, his sentence could be determined at the time he was found to be guilty. This was obvious since it was claimed that no further information of relevance would become available at any later time. The idea of fitting the punishment to the crime renders no longer persuasive many of the responses which could have been made earlier to accusations of uneven justice.

The von Hirsch position has been termed the perspective of "just deserts." The possibility of variations of penalties to fit the offender rather than the crime does not fit with this theory as it is stated by most of its advocates. Thus, it is possible to examine variations in the dispositions of offenders by different courts and to claim that any wide variations represent disparity. Since disparity is not in accordance with the idea of justice, and because disparity is generated by the exercise of discretion by the courts, it is claimed that to get rid of disparity, it is necessary to get rid of discretion.

Many would argue that this is a simplistic view and that the elimination of discretion by the courts will merely ensure that discretion is exercised elsewhere in the criminal justice processes. In other words, while the fixing of penalties through determinate sentencing laws would restrict the authority of the courts -- that is, the authority which is implied by the exercise of discretion in sentencing -- that authority will be taken up by others whose determinations are not so apparent to observers and critics.

For example, if the portion of the sentence which may be remitted as "good time" by the prison authorities is of any magnitude, then we may be reinstituting a method for the exercise of discretion which was rejected decades ago. Indeed, it was this very factor which provided a cogent argument for the origin of the parole system.

DETERMINATE SENTENCING VERSUS STRUCTURED DISCRETION

Whether variation in sentencing for similar offenses is or is not disparity depends upon an assessment of factors and upon beliefs as to justified considerations in aggravating or mitigating circumstances. All

variation in sentencing is not disparity. However, separating variations which are justified from those which are seen as unjustified is no simple matter. Some would propose that this is a matter to be settled by the legislatures. Within any state, penalty structures would be the same, but we might observe considerable differences between states. This would be acceptable since the legal structure is statewide, but variations between, say, urban and rural communities within any state, by this argument would not be justified; moreover, they would be illegal.

For the moment, these questions must be left aside, since for certain systems of proposed sentencing policy they are not relevant. It seems impossible, however, to support the idea and practice of unbridled discretion in sentencing by each individual judge.

If we must assume that the present situation is untenable -- and it seems that we must -- then we have a choice between two major classes of sentencing reform. Each class of reform has a number of variations on its own particular theme. The two major classes may be identified as:

- Those which attempt to abolish discretion in sentencing
- Those which accept the necessity of the exercise of discretion in decisionmaking and seek to provide a means for its structure and control.

The latter class of reforms has some attraction in that it provides a compromise between the two extreme positions of complete discretion as to disposition and fixed penalties in law. As a British advisory council (1978) recently noted:

> The system of sentencing guidelines, now making headway in the United States as a compromise between indeterminant sentencing and rigid penalty structure of more or less fixed penalties, was of special interest to us, both because the philosophy of steering a middle course between a narrow and a wide discretion in sentencing was one which most appealed to us, and because the practical solution of adopting a penalty system based on the existing practice of the courts was that which we ourselves ultimately decided to recommend.

The "structured discretion" approach comes in many varieties. I will indicate, briefly, the general method and some of the major variations currently under consideration or in practice.

GUIDELINES: THE ORIGINAL MODEL

The general term "guidelines" has been attached to the class of methods which work with the idea of reducing disparity while at the same time retaining discretion with the judiciary. The original work which resulted in the adoption of a guideline system was carried out by a research team in collaboration with the U.S. Parole Commission (then the Board of Parole) early in 1972. Decisions made by the Parole Board in the past were studied and an estimate was made of the underlying policy which set the time which offenders were required to be detained.

The decisions of the Board were such that a model consisting of an assessment of the seriousness of the crime committed, taken together with certain background characteristics of the offender (mainly the prior criminal record) fitted a large portion of the determinations made within close limits. While this model provided a "fitting" to the previous decisions of the Board, it did not claim to provide an explanation of the methods whereby the Board had reached those decisions. The model was, however, adequate to show that a policy had been implicit in the decisions (i.e., a pattern could be identified).

Hence, any case coming before the Board in the future might be allocated a "presumptive" term, based upon the model. The term so identified would be expected to hold if there were no considerations other than those which might have been reflected in previous policy -- even though this policy was not explicitly stated. Whatever had been or was currently the policy could be estimated by use of the model insofar as the outcome of the decisions was concerned. (It should be emphasized that the process of decision-making may or may not be directly related to the items of information taken up in the model.

The Board decided to make its policy -- as estimated in the model -- explicit by publishing the "guideline charts" in the Federal Register and requesting comment on them. Linked with the guideline charts, which indicated the presumptive term of incarceration, were several procedures which are as important as the basic guidelines themselves. Some of these procedures are specific to the parole decisions of the federal system; however, two matters are of general importance. While the decisionmaker may refer to the chart, this does not tell him what he ought to do about the particular case before him. The chart summarizes past experience in cases with similar characteristics and states the policy. The decisionmaker must consider whether the particular case presents characteristics which would indicate that policy (i.e., previous decisions in like cases) should be set aside on this occasion. If he so decides, he must give reasons for his decision, particularly noting the characteristics or circumstances of the individual case which lead him to believe it should not be fitted into the mold of the past.

For example, there may be characteristics which are regarded as mitigating or aggravating in the case which are not included in the model. The reasons given for individualizing the decision outside the range suggested by the guidelines are collected and analyzed and provide data for the continuous review of the system. The Board meets at half-yearly intervals to consider these data and how the analyses may relate to its policy. The Board, guided by these data, may make changes in its policy.

To ensure that each case is considered for any unique factors, the number of cases which it is expected will fit the range specified is limited to not more than 85 percent. Thus, decisionmakers who are keeping too close to the set of rules, as well as those who depart too frequently, will be able to know this and to consciously consider why this is so. How much

control is to be exercised over those who too seldom or too frequently depart is a matter for the Board to decide. The system provides a means for policy control, but does not specify its form.

GUIDELINES FOR SENTENCERS

The original model for guidelines for the U.S. Parole Commission has been adapted in a variety of ways for use by courts. The systems range from those which do not provide any presumptive disposition and merely provide data on sentences handed down with respect to cases fitting clusters of characteristics, to those which are quite detailed. In New Jersey, for example, judges are provided only with information concerning the number of occasions similar offenders were dealt with in the past -- what proportion were awarded probation or what terms of imprisonment were imposed.

The judge may, if he so wishes, consider the model disposition as the one which might be given most weight in his own disposition, or he may interpret the data as he thinks best. Thus, in this kind of model, there is no identification of policy, and there can be no requirement for giving reasons for departure from the indicated sentence, because there is none. In New Jersey, however, reasons are given by the judges for all decisions. (In the original model, it was considered that if every case were to be accompanied by reasons, the reason-giving process would be less effective and also costly. Reasons were to be given only where the information contained in the reasons was of policy significance for monitoring the guidelines or for their revision.)

In other cases, such as in Denver, the guidelines provide presumptive dispositions, but divide these into categories in accordance with the categories of offenses in the penal code. Thus, there are separate guideline charts for each of the categories. In addition, the disposition indicated is derived not only from consideration of the severity of the penalties awarded in the past for the particular offense, but the general pattern of penalties is taken into account. The judges in Denver have control over the ways in which they use the guidelines.

In this case, the method is somewhat similar to that of the idea of the "sentencing panel." Panels were thought to be useful in reducing disparity in the dispositions, without restricting the discretion of the judiciary. And to some extent this has been the case. However, if every case is considered by a panel, we have an expensive procedure which may not be necessary for all cases -- many may be straightforward and the expertise of the panel would be an unnecessary luxury.

The guidelines provide a form of "paper panel" for the majority of cases (those included within the "policy" range), and the panel approach may then be limited to cases where there are the difficulties of individualizing the decisions. This is the same as saying that where the individual judge wishes to give a sentence other than that indicated, he may well wish to consider the views of his colleagues and to inform them of the reasons for his varying from the apparent prior determinations in like cases.

Thus, the degree of control over discretion which follows from the provision of guideline charts may vary from very little to much. The guidelines provide information, and the information may serve to guide control by others or for self-control by the individual decisionmaker. No mechanism of control is proposed by the research teams who have prepared the information systems of guidelines. Indeed, the designs of the basic research have been modified to accommodate the views of the judiciary in the areas concerned.

Not only do the methods whereby guidelines are put into operation differ, and the methods of presentation in the variety of areas currently involved differ, but the underlying philosophy has been modified in some cases. Whether, for example, there should be different standards for urban and rural areas within a state is a matter of jurisprudence, rather than a matter for scientific determination. It has been suggested that crimes in rural areas are embedded in a different environment from the same crimes in urban areas and that this should be taken into consideration as a mitigating or aggravating factor. The guideline system could, of course, accommodate this idea by either: (a) providing different charts for urban and rural courts, or (b) indicating "modifiers" to the weights given to items of information to take account of the locality in which the crime was committed.

There are many such basic and philosophical considerations which in the very attempt to provide guidelines rise to the surface. Previously, such questions could be ignored because they were taken care of within the ranges of discretion available to each individual judge. While the guidelines -- as distinct from mandatory sentences -- do not actually restrict the possibility of variation (such as urban/rural), the procedure of giving of reasons brings such issues into the light of day and forces consideration of them.

PHILOSOPHIES OF GUIDELINE CONSTRUCTION

The idea of guidelines implies a philosophy in itself. We noted, for example, that the British advisory council report (1978) commended the method of building the presumptive dispositions upon the past experience of the courts. Apart from the question of the range of coverage of any samples of past experience and other matters of degree, some have stated a very different perspective. Some have stated that the assumption that guidelines for future dispositions of offenders should be based on the past patterns of dispositions is inherently wrong. ("If there is one thing we know about the past, it is that it is not right!") It is argued that rather than consider what has been done, we should begin by considering what ought to be done. This appears at first sight to be a view which is diametrically opposed to the original model which began with a descriptive approach. Only after careful consideration of this descriptive formula was a conscious transition made to a prescriptive model in precisely the same form as that originally derived descriptively.

The difference between the suggestion of a totally prescriptive model from the start and the descriptive base is not, however, as great as is claimed. It might be thought that the persons who are most qualified to make prescriptive statements are those who have had the most experience.

It does not seem unreasonable to claim that each individual judge, when exercising his complete discretion, is doing precisely that which he considers ought to be done. If not, what else is he doing? We may then seek ways for combining the general pattern of that which has been done individually because, individually, it was thought that it ought to be done that way. This is an appeal to the democratic principle and assumes that the best judgment is not that of any individual, but is the best estimate that we can obtain from the consensus among experienced persons.

The distinction between what ought to be done and what in fact was done under conditions of no constraints is an unrealistic distinction. Thus, the claim that previous practice should be ignored and that we should begin with a prescriptive model reduces merely to the claim that somebody else (not the judges) should determine this. This is not a methodological difference, but a difference of belief as to the appropriate authority. The method which claims to be "descriptive" is descriptive only in terms of method of analysis in the first stage. The method implies that those who should say what ought to be done are the judiciary as a collective, rather than as individuals exercising their individual discretion.

The methods used in the construction of guidelines based upon the assumptions of either kind are, or could be very similar. The basic reference for who (what authority) is appropriate as the standard-setting power is a matter which is independent of the methods of analysis and the kinds of guideline construction eventually put into operation.

It is convenient, nonetheless, to consider three forms of basic reference for construction. These may be colloquially termed: (a) the "is base," (b) the "believed is base," and (c) the "ought base." Type (b) is a subjective basis related to perceptions of situations as they are believed to be and may be seen as closely related to (a). The distinction may be most obvious if we refer to the idea of the probability of an offender committing further crimes if he is, say, placed on probation. Method (a) would assess this probability in terms of observed frequency of recidivism in the past, whereas method (b) would use the subjective probability as assessed by the judge or other decisionmaker.

SCIENTIFIC VERSUS POLITICAL (ETHICAL) CONCERNS

We have already noted in passing that the attempts to construct guidelines in almost any of the present forms, as well as in many of the proposed forms, brings to light issues which cannot be determined empirically. Most of the factors which may be considered as modifiers of the presumptive determination, whether aggravating or mitigating, require moral judgments. If we are to provide guidelines or to fix penalties, then we have to consider which of these factors we are to take into account and in what ways.

If the guidelines approach is taken, we have one major difference from a mandatory model. The guideline method separates decision rules (i.e., the charts) from procedures (i.e., the giving of reasons and other actions

required if the sentence indicated is departed from). Other methods do not separate the decision rules from procedures because they attempt not to structure discretion, but to eliminate it.

If it is assumed that the proper authority to determine the dispositions of offenders should be the legislatures rather than the courts, there are difficulties which may be regarded as of some scientific concern. It is not possible for any authority (legislatures or courts) to imagine in advance all possible varieties of crime which may be committed. It follows, therefore, that no one can determine in advance the appropriate disposition for an act which cannot be described in advance. The degree of control which may be exercised by any authority can only extend to the limits of the available information. Since all varieties cannot be imagined in advance, mandatory sentencing would seem to be contraindicated on these grounds.

If the variety of offender behaviors is not specified in detail in advance, then only broad categories may be specified, and there will be considerable variation within the specified categories. The question then arises as to how this variety is to be matched against appropriate specifications of punishment. Either it will be necessary to constrain the variety to fit the limitations of the definitions, or some accommodation must be found, which means that discretion will again appear somewhere in the system as a reaction to this unaccounted for variety in the specification of penalty. If this can be accepted, then it seems that we cannot eliminate discretion, but rather must seek ways to deal with it and to ensure that it is used appropriately. If the guidelines approach is not an attractive solution, then some other solution, at present unknown, must be invented.

The guidelines method does not require any change in the allocation of power to determine sentence. The power remains where it has always been -- with the judges. However, in saying this, we are not saying that the power rests totally and completely with the individual judge. The concept of the power resting with the judiciary is one thing; the idea that this means individual, unbridled discretion for each member of the judiciary is an altogether different matter.

In other words, the problem of disparity in sentencing is seen as a matter which the judiciary should remedy within its own profession and practice -- it is not a matter to be taken out of their hands. Guidelines methods provide the tools whereby the judiciary -- as a body of professional, experienced, and humanitarian people who may also be assumed to have political sense -- work out a means to sort out the problem of disparity for themselves. For this action they may be held accountable.

There is a doctrine of separation of powers, and the removal of discretion from the judiciary must be seen as eroding this separation concept. It seems unnecessary, and perhaps even undesirable, to move toward procedures which will have this effect. The legislature should, doubtless, require that the task be well done, but this does not mean that they must do it themselves.

There is another area of interaction between political and scientific concerns. It is related to the problem of great variety, which underpins the position taken above. We live in times of rapid change both in values and technology. If we are to do justice in a changing world, we must have procedures which may be changed rapidly to accommodate changing situations. The whole body of a legislative assembly is not a highly flexible machine, and again it would seem, for this reason, preferable to delegate the operational factors to a body which can devote more time to detail and can accumulate expertise on the basis of sophisticated information systems and research. In the original model, this would be a body consisting of members of the judiciary in the area concerned with the development of its own guidelines. An alternative suggestion has been made, and is incorporated in draft federal legislation; namely, to establish a sentencing commission for this task. There are probably other, equally or more desirable systems which might be worked out.

The postulate of changing values has one further effect on concern for the type of machinery of government to implement systems for the control of discretion. It is not possible, at this time, to see what in 10 or more years, will be the opinions of the authorities concerning the seriousness to be attributed to particular offenses. If we have fixed penalties, however determined, which allocate long sentences of imprisonment, we should leave ourselves with an opening to consider modifications of the terms at some future time. Thus some body which functions something like a parole board as a releasing authority may seem necessary. This is not because, as may now be believed, the prisoner will change during his term of incarceration, but because views as to the just sentence may change. Perhaps the attitudes toward certain "soft drugs" will indicate the importance of this concern.

ESSENTIAL CHARACTERISTICS OF STRUCTURED DISCRETION

It would be presumptuous to say what ought to be the essential elements to be built into any revision of sentencing practice which might deal with problems of "disparity", but perhaps a selection of questions might serve to summarize the experience of research in this area.

1. Does the method distinguish policy elements from case elements in the decisions and accommodate these by providing both decision rules and procedures? (The latter apply when the former do not fit the particular case.)

2. Is the system an evolutionary ("learning") system? Does it have an information feedback loop to provide the incentive and basis for change? Is the information derived from the working of the system itself, and is it of sufficient power and relevance?

3. How closely are individual judges who carry out the sentencing policy involved in policymaking? Are they continuously involved in policy revision?

4. To what degree and in what ways is prior judicial (or parole) decisionmaking experience used in the construction of the methods?

5. What methods are to be used to deal with divergences from policy (e.g., presumptive sentence)? How remote are the "controllers" from those "controlled"? (This point addresses both the feasibility and the desirability of the control system.)

6. How easy is it for research findings to be incorporated into the methods of operation?

7. How closely is the model tied to any particular theory of crime and its control?

The nature of the answers preferred by the writer relate to one category of model, and while derived from experience and theoretical considerations, value judgments are implied. These judgments may not be accepted by others, but to facilitate a focus to any disagreement, perhaps a concluding statement briefly defining the preferred class of models may be acceptable.

PREFERRED CLASS OF GUIDELINES MODELS

The issue of disparity in sentencing should be addressed. This is a problem for the judges to resolve for themselves. Guideline methods provide one tool for their use in this task.

No method should require judges to relinquish any of their authority, rather they should share the responsibility for setting a sentencing policy among themselves, with assistance from other experienced decisionmakers, such as parole board members. Any method should provide for the establishment of both decision rules (i.e., general sentencing policy), and procedures (to be followed when "policy" is not applied in any specific case); moreover, the processes must have the capacity to change in relation to data which the system itself generates. Discretion cannot be abolished, but in its exercise there is an accountability to colleagues and, perhaps to a lesser degree, to the democratic processes in society at large.

Information generated by the procedures is necessary in order to provide the means for review of the working of the system and for the system to evolve or adapt as a continuous process. If the public is informed as to sentencing policy, the sentencers may be expected to be less vulnerable when a dramatic case causes them to depart from precedent -- the system may be less likely to be "steered by trippings"!

To emphasize the most important element of the guidelines method, it may be stated that those systems which do not have a feedback of information linked with procedures for review and modification are not recommended. Control may best be exercised by those who are controlled -- that means the collective wisdom and experience of the judges can become effective in sentencing policy. The legislatures cannot be effective in specification of detail and should concentrate on broader issues of policy. If this is done, sentencing might become a bipartisan issue in politics. But this also may be a partisan point!

A P P E N D I X

DIAGRAMS ILLUSTRATING THE LOGIC OF GUIDELINES METHOD

(1) Construction of Guidelines From Past Decision Data

Notes: The heavy vertical line indicates the decision to move from descriptive to prescriptive model. It is possible to carry out more than one descriptive phase. Cases which do not fit into the first model may be discussed with the judges concerned and the data further examined. When the fitting is adequate, it is still desirable to use the first formulation as a basis for policy discussions, and changes may be made at that stage. No claim is made that the fitted model actually describes the decision processes, but only that it provides one fitting to the data base. It is a model which could fit in the future, subject to the expected degree of "shrinkage." No more is required.

(2) Use and Continuous Revision of Guidelines

Notes: Modifications of policy result from reasons given by judges for decisions which do not conform to the presumptive sentence. The cases decided upon appeal also provide further information for consideration of the policymaking body. However, unusual cases and dramatic incidents should not influence policy since such cases can be dealt with by the procedures, rather than by decision rules.

In situations where guidelines are in operation at this time, the judges who use the guidelines for their information as to the presumptive sentence when disposing of individual offenders, also come together as the policy-making body at 3- or 6-month intervals.

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Sentence Reform and Prison Violence

Determinate Sentencing: Toward a Degree of Certainty In Criminal Justice

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This paper deals with the effects of indeterminate sentencing on the prison population, prison life, and public credibility in the system. Although sentence reform and prison violence may appear rather narrowly drawn for this discussion, it is of crucial importance to those who live and work in the prison.

A few caveats:

- All reforms eventually fail.

- The criminal justice system has very little to do with crime rates.

- Prisons as penal sanctions represent an abomination (inmates are less safe than free citizens).

- Nothing I have to say is meant to convey my support for mandatory sentencing. I oppose the concept. I support determinate sentencing.

- I do not believe that the current movement toward determinate sentencing represents a "pendulum swing."

- The arguments I advance in favor of determinate sentencing are in the service of advancing the debate about the purpose of our system of justice and not intended as a panacea for its current woes.

In addition, I would like to list a few peripheral issues first that account for the violence and mindlessness of the prison experience:

- Administrators as a group are notoriously ahistorical and are therefore not likely to benefit from their predecessors' tragic experiences.

- The field of corrections is insulated, isolated, and suffering from a fatal mix: high discretion and low visibility.

- Role confusion among prison staff and parole officers is rampant. Guards remain professional fossils: bitter, radicalized, and both undertrained and underpaid. While parole officers go on their daily appointed rounds with Freud in one hand and a .38 in their other, guards still work at salaries generally lower than zookeepers and garbagemen.

- Over the last two centuries, panacea after panacea has been propounded for the criminal justice system; none has delivered as promised.

- The physical environment of the fortress prison itself contributes to violence. The nineteenth century legacy of cellular confinement undermines ameliorative efforts to humanize the prison experience. Inexorably the fortress prison degrades both the keeper and the kept.

These have been peripheral issues. I find the central issues related to prison violence to be (1) how you get in and (2) how you get out of prison; both however rest on some sort of theory of the purpose of the criminal law. My reading of the purpose of the criminal law is that it is intended to punish. When the punishment becomes a prison sentence, then all that is intended is that the prisoner be deprived of his/her liberty for a specified period of time.

Sentencing or How You Get In

Clarity and precision have not been in large supply in the debate over sentencing and treatment in prison. Because the subject evokes such strong emotional responses from frequently polarized interests, objectivity is also elusive. Thus, I will set forth a series of postulates and will narrowly confine my arguments to them. The first requirement is to define key terms.

When I speak of terms of imprisonment, several variations are possible but I would like to use two rubrics under which all the others might be subsumed. These are the indeterminate and the determinate sentencing structures. In a purist indeterminate jurisdiction, all sentences would simply be zero to life. Most frequently (at least in the United States), one finds fixed minimum and/or fixed maximum sentences. A parole board actually determines the prisoner's release date between the minimum and maximum. In some jurisdictions, the minima and/or maxima may be fixed by statute and are not left to a judge's discretion. In the past few years in America, determinate sentencing has seen a resurgence. In the purist sense, a determinate sentence would be one that is fixed for each crime. We have no such purist arrangements anywhere. Rather, we have classes of crimes categorized according to an order of magnitude from most to least severe. The crime of murder usually stands alone. Each class could have a presumptive sentence attached to it with slight increments or decrements to permit a judge slight discretion to consider factors (usually statutory) of aggravation or mitigation in the particular offender's behavior such as age, prior record, duress, use of weapon, etc. Under the new California law, one set of crimes could yield a three-, four-, or five-year sentence, with four as the presumptive sentence absent aggravating or mitigating circumstances. In Illinois, a similar law has passed (1978) which for 90 percent of prisoners yields the same results but each class (except the most heinous) of felony has a very narrow range of years, i.e. one to three, two to five, three to seven. Without stating an actual presumptive sentence, Illinois judges do have to use aggravating and mitigating factors in imposing a sentence. Thus, a one- to three-year range means in effect a two-year presumption--as the two to five means a 3.5 presumption, while a three to seven effectively yields a five-year presumptive sentence.* In both the California and Illinois situations, the actual imposed

* Indiana and Maine have also passed new legislation which, although yields determinate outcomes, is quite different from those discussed and their analysis is outside the scope of this paper.

sentence is now stated in a single, definite, fixed number of years. A prisoner on the way into prison now knows when he is due out. Only "good time" credits will reduce the judicially set term of imprisonment. Illinois has the most liberal good time law in America--day for day, one day coming off the sentence for each infraction-free day of imprisonment. There is also an up to 90 day meritorious good time allotment available for extraordinary events. Unlike California's case, where a portion of the good time is allotted for prison program participation, Illinois' good time is strictly in recognition of lawful behavior. Both states have abolished their parole boards (except for the residual offender sentenced under the indeterminate law before the effective date of the new legislation), but have retained postrelease parole services.

As a result of the vast amount of discretion available in the criminal justice system, sentencing disparities emerge, particularly in indeterminate sentencing jurisdictions, and prisoners begin to develop a gnawing sense of injustice. Convicts simply speak to each other and draw invidious comparisons. Further sentencing, in unreformed states, is lawless in the sense of being procedureless (see Marvin Frankel, "Criminal Sentences"). In this nation, sentences are Draconian in length.

Our rate of imprisonment is about 200 per 100,000 prisoners. Other Western nations similarly situated to us in social and economic development get by at 25 percent of our rate of incarceration. Sentences in indeterminate jurisdictions arelargely unreviewable. With plea bargaining at the front end of the criminal justice system and parole boards actually determining when a prisoner is to be released, we find that traditional judicial power in sentencing has badly eroded. Where judicial discretion abounds as to minimum sentences, games are possible. For example, a liberal judge believing that he/she is dealing with a conservative parole board may give prisoner A a one year minimum sentence with the thought in mind that A will be denied at his first parole board appearance and perhaps be paroled in two or three years. But you might also have a conservative judge believing he/she is dealing with a liberal parole board likely to parole A at his first appearance and therefore sets a minimum at two or three years.

Some states hand out 5000 years sentences, or quaint numbers like 494 years or a 1000 minimum to a 3000 maximum, multiple life sentences or even life plus a day.

Parole or How Do You Get Out?

Up to this point, we have developed a client group doing its prison time under two different regimens-indeterminate and determinate. The reason for this lengthy definition lies in its centrality to the issue of treatment. I will elaborate this point after defining prison treatment. Everything that happens to a prisoner is treatment--for good or ill--but such a cosmic definition does not permit precision. It is of course axiomatic to say that the entire psycho-ecological atmosphere of a prison and thus all of its resources (physical and human) may be considered in the service of an emotional life support system or, conversely, destructive of it. But here I am focusing on clinical treatment in the more traditional sense. Our common frame of reference, then, is what is widely referred to as the rehabilitation model (also known as the medical or treatment models).

The three key goals of the rehabilitation model (in prison work) are: (1) classification of clients into a limited number of types with prescriptive treatments for each (diagnosis); (2) continued evaluation of the client's prescribed treatment to determine the point of recovery called "parole readiness"; and (3) parole of prisoners within an indefinite time sequence lest a sentence expire before the optimum therapeutic time for release arrives.

In the United States, every prison system has developed a treatment and a custody staff. A national commission surveyed prison staff deployment in 1968 finding clinical resource pauperized when compared to custody. 1/

Table I

Position	Number	Ratio of Staff to Inmates
Social Workers	167	1:846
Psychologists	33	1:4,282
Psychiatrists	58	1:2,436
Custodial Officers	14,993	1:9

One might plausibly argue that given this state of affairs, we have not really ever tried the rehabilitation model. It has remained, in America at least, what one observer called an "underfinanced moral gesture." This may be true, but it is at least equally true that the prospect of improving the clinical staff to inmate ratio is quite remote. In the handful of agencies where the ratios were as high as 1:5, the results, in terms of recidivism, or even higher levels of humane care were not encouraging. But understaffing or even discouraging results are not the central issues. The central issues turn on our conceptions of criminal behavior and the purpose of the criminal law.

Much of criminologic theory development has concerned itself with the search for a "unified theory" of criminality. It has been in the tradition of demonology, albeit seeking more "scientific" unifying themes such as the (male) physique, mental aberrations, glandular dysfunction, genetic disabilities, atavistic behavior, social ecology, cyclic variations in the economy or the weather, and associational patterns. The notion of responsibility is frequently downgraded. Although it is not clear to me that a sentence of imprisonment or any other criminal sanction deters (generally or specifically), I am in agreement with Morris and Hawkins in observing that this endless debate seems to have deteriorated over the years: "Discussions of this ancient antimony which have consumed gallons of jurisprudential ink turn on examination to resemble nothing so much as boxing matches between blind-folded contestants."2/

1/ James P. Campbell, et al, Law and Order Reconsidered, Task Force on Law Enforcement, National Commission and Causes and Prevention of Violence, Washington, D.C. Government Printing Office, 1969, p. 575.

2/ Norval Morris and Gordon Hawkins, The Honest Politician's Guide to Crime Control, Chicago, University of Chicago Press, 1969, p. 119.

Employing a perspective suggested by Stephan Schafer in his "The Political Criminal-The Problem of Morality and Crime," I derive the following group of postulates to guide us in the search for the proper rule of treatment in a prison setting[3]:

- The criminal law is the "command of the sovereign."

- The threat of punishment is necessary to implement the law.

- The powerful manipulate the chief motivators of human behavior--fear and hope--through rewards and punishments to retain power.

- Socialization (the manipulation of fear and hope through rewards and punishments) of individuals, however imperfect, occurs in response to the commands and expectations of the ruling social-political power.

- Criminal law protects the dominant prescribed morality (a system of rules said to be in the common and best interest of all), reflecting the enforcement aspect of the failure of socialization.

- In an absence of any absolute system of justice or "natural law," no accurate etiologic theory of crime is possible nor is the definition of crime itself historically stable.

- Although free will may not exist perfectly, the criminal law is largely based upon its presumed vitality and forms the only foundation for penal sanctions.

- A prison sentence represents a punishment sanctioned by a legislative body and meted out through the official legal system against a person adjudged responsible for his behavior. Although a purpose of such punishment may be deterrence or rehabilitation, it is specifically the deprivation of liberty for a fixed period of time.

- When corrections become mired in the dismal swamp of preaching, exhorting, and treating, it becomes dysfunctional as an agency of justice. Correctional agencies should engage prisoners as the law otherwise dictates--as responsible volitional and aspiring human beings and not conceive of them as patients.

This is what I have called the justice perspective to distinguish it from the rehabilitation perspective. The implication of my argument is not that rehabilitation should be abandoned in prisons but rather that it should be made voluntary.

The rehabilitation model of corrections relies on two powerful tools: (1) the indeterminate sentence and (2) the parole board as a release mechanism. In theory the judge plays a minor role establishing the minimum and maximum sentence, say 1 to 10 or 1 to 20 or 5 to 15 years. In some states, the judge simply sentences "to the term prescribed by law," which might be 1 to 20 or zero to life. The prison authorities then diagnose the convict, prescribe a

3/ See Fogel, We Are the Living Proof-The Justice for Corrections Cincinnati, Anderson Publishers, 1978, chapter IV, for an elaboration of this discussion.

treatment course of action, and periodically assess the convict's progress for the parole board. The board evaluates the reports to assess the convict's "clinical progress" and/or "parole readiness." Sounds fine, but in practice it lends itself to enormous injustices and distortion.

- Parole boards are comprised of political appointees heavily loaded toward law enforcement or former prison officials.

- They cannot predict.

- Parole release authority has become a tool for increasing terms of imprisonment and enforcing prison discipline.[4]

- The uncertainty, the disparities especially for minorities and women, the whim, the caprice, the increased prison time and the injustices of the indeterminate sentence and parole release system have been convincingly documented.[5]

- Until quite recently parole boards were largely invisible and until the early 1970s were not (in one large state) required to even let a prisoner know why parole was being denied.

- Parole boards have to assess something in order to justify a release decision. Some prisons have fuller programs than others. For example, one might have a semblance of clinical services (group therapy, Alcoholics Anonymous, drug counseling, religious programs). Here you will typically find convicts flocking to whatever they believe the parole board wants of them in attendance. Another correctional facility might have only a farm and a piggery or a shoe or a glove factory. Obviously, the parole aspirant must show diligence in whatever is available.

- A late colleague of mine, Hans W. Mattick, said that the rehabilitative model generally but parole release in particular transformed American prisons into great drama centers with the convicts as actors and parole boards serving as drama critics handing out "Oscars," "Emmys," and paroles. The McKay report investigating the Attica rebellion found religious class attendance was a reliable ticket out of prison. In Nevada, it was a Sunday religious service attendance. In Minnesota for a time, AA was your way out whether you drank or not. In Patuxent, it was through group therapy.

4/ Also see John Hogarth, Sentencing as a Human Process, (Toronto, 1974), p. 13. Sol Rubin, The Law of Criminal Correction, (St. Paul, 1973).
In case anyone believes that we are breaking new ground, the reader may want to review Edwin H. Sutherland's classic first edition of Criminology (New York, 1924, p. 516-17).

5/ Alan M. Dershowitz, Fair and Certain Punishment, New York, McGraw-Hill, 1976; American Friends Service Committee Report, Struggle for Justice, New York, 1971; Richard A. McGee, "A New Look at Sentencing: Part I and II," Federal Probation, June and September, 1974; Attica the Official Report of the New York Commission on Attica, New York, 1972; Andrew Von Hirsch, Doing Justice: The Choice of Punishments, New York, 1976.

- There are other ways out. In California under Ronald Reagan the prison population was driven down, largely through accelerated parole release, by 7,000 people in the 1956-72 period for reasons of "economy" and up by 4,500 people in the 1972-74 period as a "get tough" step in preparation for a presidential bid. Properly read, parole statistics may be better understood as a function of parole board members' behavior rather than as individual convicts parolability.

- There are more exotic ways of release, witness the creativity of Ex-Governor of Tennessee Ray Blanton's parole and pardon process. Yet the department of corrections rhetoric will still speak to the rehabilitation of convicts.

Sentence Reform

Simply put, we need to reduce the rhetoric, narrow the purposes of criminal law, and structure the discretion.

Initially, we need to abandon the fruitless search for a unified theory of crime or the criminal. The criminal law should be, as it was intended, the community's collective outrage against certain kinds of unacceptable and/or unlawful behavior. The law is at any time the "command of the sovereign." A criminal sanction is simply punishment. When the punishment becomes a prison sentence, it is meant to be a deprivation of liberty not to be executed retributively. It needs to be executed reasonably, fairly, humanely, and constitutionally. Elements of sentencing fairness include reduced disparity for similar criminal acts, procedural regularity, and reviewability through an appellate process.

We need therefore to create much greater degrees of certainty. The prison experience needs to be put on the continuum of justice. Uncertainty about release has been found (by a California legislative commission and the Attica Commission) to be a festering sore which leads to hostility and potential violence in the prison.

Volition has to be carried all the way. Our laws demand it as necessary as a basis for incarceration in a prison. The criminal act and intent must be in union. One without the other will not equal a prison sentence. In other words, not only did you do what was charged but you meant to do it-you are responsible, you are volitional. Only then can a judge sentence you to prison. Once there, the volitional and responsible nature of the defendant-now convict-leave him.

A way of returning to responsibility-under-the-law is to unhook treatment (clinical progress) from the release date. This is called determinate sentencing. A fixed sentence is imposed rather than a minimum and maximum. The judge is still permitted discretion within a permissible narrow range to aggravate or mitigate a sentence.

When the prisoner leaves the courtroom he/she knows exactly how much time has to be done. The imposed sentence is said to be flat time. In Illinois, we allow the sentence imposed to be mitigated only by the prisoner who we assume to be volitional as the court itself found. This mitigation is done

through a mechanism called vested day-for-day good time. The sentence is reduced one day for each lawful day the prisoner spends in prison. No clinician assesses the "good day." It is given as under a presumption of lawful behavior in the absence of on-the-record evidence to the contrary. When good time is in jeopardy, then the procedure for taking it away is due-process protected. With flat time sentencing, prisoners "max out" of prison; thus, the parole board can be abolished except for the residual prison population.

The proponents of sentencing reform need to clearly state their intention. New laws should unambiguously state the intention of the criminal law and just as unambiguously state the principle that sentencing authorities should have to affirmatively exhaust all nonincarcerative outcomes before a prison sentence may be imposed. This means making larger investments at the front end of the criminal justice system in probation, fines, work release, restitution, community service orders, and a host of other creative sentencing alternatives to incarceration.

Most of what I have stated has to do with justice in sentencing but the justice rather than rehabilitative model is also intended to deliver justice-as-fairness inside the prison as well. Programmatically this includes some of the following prison programs:

- Ombudsman;

- Access to the courts through well-established law libraries and civil legal assistance prison programs;

- A semblance of inmate self-governance to keep the thread of personal responsibility intact;

- Conjugal visiting;

- The right to refuse treatment and, conversely, the right to choose programs of self-improvement. If offenders are truly volitional, then programs for their own improvement can with some assistance be freely chosen by them.

Properly understood, this is not an abandonment of rehabilitation, but rather a transformation of its coercive and seductive elements (the promise of earlier release), to a voluntary course of action by the inmate. Where clinical coercion ends, individual responsibility by the convict may begin. After all, what greater calling can prison work have than to teach law breakers to be law abiding through treating them lawfully and as aspiring volitional actors.

This sentence reform movement has developed odd political coalitions. Normally warring factions have coalesced under the banner of greater certainty, straight talk, reduced rhetoric and claims, justice-as-fairness, and simply punishment.

Prisons will better serve a democratic society by operating under lawful constitutional standards of humaneness and prisoner involvement than by seeking their guidance from the latest psychological, medical, and/or religious fad. Much of the progress of the planet can be laid to the unregenerated convict whom we could not rehabilitate - Christ, Ghandi, Mrs. Pankhurst, Joan of Arc, and Malcolm X are some examples.

Illinois: A Case History of Sentence Reform

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In pursuing greater certainty in sentencing, I have grown certain about two things:

- Vested interests in criminal justice are alive, well, and are flourishing, and
- normally warring factions can come together when superordinate goals emerge.

As a result of my involvement in sentencing reform in nine state legislatures, Congress, and particularly in the Illinois General Assembly, I have formed some opinions about the politics of sentence reform. I believe these opinions have some generic implications regarding social policy that may be worth sharing.

I will address policy problems as I encountered them with different "publics."

Parole Authorities

With a few notable exceptions the parole authorities have reacted negatively to suggestions of abolishing parole as a release mechanism. Beginning at the American Correctional Association convention of 1975, they began to pass resolutions against such a move. Following closely was an ACA official statement supporting the continuation of parole boards, parole supervision, and the indeterminate sentence.

Not surprisingly, a sizable group of academics involved in consultation with corrections and parole began to write in support of the continuation of parole, finding increasingly that it "works." A smaller group of academics involved in parole research also supported the continuation of parole, finding it "successful."

Perhaps the most interesting process that has unraveled in the last three years (roughly paralleling the growing parole abolitionist movement) is the increasing flexibility of paroling authorities. Having been a largely hidden arm of government for almost a century, parole boards are becoming more visible, unbridled discretion is yielding to published guidelines and a structured, explicated process (albeit with not so gentle prodding of the courts); the boards' traditional, final-work decisions are being made appealable. However, none of this loosening happened (except perhaps at the federal level) until the call for abolition was taken seriously. Thus, current paroling authority collective behavior might more properly be understood as survivalist, rather than as reasoned reformist.

The Kept and Their Keepers

From the point of view of offenders, the movement toward greater degrees of certainty in sentencing is seen quite favorably by short-termers; with equanimity by those facing middle-range prison sentences; and with feelings ranging from indifference to hostility by those who face very long sentences. Since most prisoners fall into the first two categories, convicts can be said to favor certainty in sentencing whatever form it takes. I know of no prisoner organization which has come out in support of the indeterminate sentence and/or the retention of the parole board. The ones taking stands have opposed both. Neither do I know of any professional corrections group (ACA or any of its affiliates) which has opposed either as a group. Unions, as opposed to professional associations, have remained largely silent about sentencing reform, contenting themselves to press on with purely self-aggrandizing issues.

Another outcome of the reform movement is notable. Some wardens, even staff of correctional systems never noted for their attachment to rehabilitative practices, have recently become vociferous supporters of the rehabilitative model (though not necessarily its practice) and parole boards. They claim, among other justifications, that determinate sentencing and an end to parole boards will leave their staffs with an undignified mission--namely punishment. The assumption is that past and current practices in these institutions has been rehabilitative and that the sentence reform movement brings them to the brink of a punishment abyss. For these entities, the pursuit of justice, rather than the far more elusive notion of rehabilitation, is rejected.

Odd Political Coalitions Emerge

Having participated in the political evolution of the Illinois determinate sentencing law and in similar attempts in ten states and Congress, I can offer some observations which may assist states currently considering such legislation.

A. There are no panaceas for achieving reform; there are only guides toward certainty.

B. Not every state may need to reform.

C. Each state's history is unique, so taking the California, Indiana, or Illinois model may prove catastrophic in Iowa or Georgia.

D. You can expect normally polarized constituencies to coalesce. In Illinois, the chiefs of police association and convicts were the first to react positively. Liberal groups opposed it initially (for example, the Illinois American Civil Liberties Union opposed it but, the ACLU's National Prison Project supported it). The John Howard Association opposed it for 18 months and then softened its position. Prison reform and

service groups first opposed it then went silent. Very few prosecutors and only a handful of judges spoke against it, but even they were neutralized by their defense attorneys who approved the move. The organized bar fought the bill all the way.

E. Almost unanimous editorial support statewide emerged.

F. Legislators divided along a liberal-conservative continuum rather than party affiliation. The most liberal fought it strongly until the votes were apparently available for passage. Black legislators in the beginning supported the move on merit, but voted almost unanimously against the final version of the bill, stating with justification that it would disproportionately affect black offenders.

G. The bill had a legislative life over the terms of two governors. The governor under whose administration it was introduced had strongly supported it. The incumbent had mildly criticized it during his successful campaign, but blocked its parliamentary progress from an overwhelming victory in the House to burial in a Senate Committee. But the new governor needed a crime bill he could call his own in a second election year. The speaker blocked the governor's bill in the House after it passed heavily in the Senate. A special session was called as both leaders hung to their own versions. Finally, the governor's bill was grafted onto H.B. 1500 and a new sentencing law was created. (Nobody was really happy with the new bill, but the spirit of compromise prevailed.)

Legislators were attracted to the tough rhetoric of certainty in the new law. Convicts liked it for the same reason. In the politics of the General Assembly, everyone knew that the actual time in prison would not be changed much (a bit more for the heinous offenses, a bit less for the serious ones), but the big-bark, small-bite nature of the legislation satisfied most people. The police organizations supporting the legislation repeatedly erred in their assumption that flat time equated with mandatory sentencing. But many in police leadership purposively traded in retributiveness for certainty. They had as many complaints about parole boards as did convicts and exconvicts. Correctional leaders in the State remained silent although the Parole Officers Association was strongly opposed to the bill. The chairman of the parole board was neutral to favoring it. The other board members (all appointed by the governor) were publicly silent.

The new law's balanced goals of certainty and punishment were cited in almost all editorial comment. The public was promised a sentencing structure it would be able to understand; no longer would they read of a sentence imposed (just before the new law became mandatory) of 1,000 to 3,000 years with parole eligibility in 11 years.

From a State Planning Administrator's-Governor's point of view, several components of the criminal justice system must be dealt with simultaneously; also several issues must be balanced. From this system-wide perspective, the goal should be to develop a plausible (not perfect) checks and balance process:

- o We are in the time of backlash, shrinking resources, and public frustration about rising crime rates.

- o A balanced system can defuse, neutralize, and/or remove the ferocity of the backlash.

- o Certainty and fairness are not elusive guesses. A plain-spoken but balanced program understandable to the public, the legislature, convicts, and potential offenders can bring rationality to the public debate. In the absence of tackling the problem system-wide, states are apt to pick up "get tough" fragmented bills which are generated by vote-addicted candidates trying to outdo each other.

One stinging criticism of what I have called the justice model--that is, the pursuit of justice as fairness, the reduction of rhetoric about either locking everyone up for longer periods or curing the incarcerated, and the development of a modest but constitutional correctional process--is that discretion will still abound. Norval Morris, who generally supports certainty, visibility, and structured discretion, likens discretion to energy--"it changes shape but never disappears." Al Altshuler in a brilliant article states that we can never eliminate disparity while we have charge, plea, and sentence bargaining because of prosecutorial discretion. He is right. But wide disparity in sentences has a qualitatively different meaning to prisoners invidiously comparing each other's sentences than to academics debating system-wide reform. It is the stuff out of which riots are made. Sentencing reform, because of the nature of the residual discretion which will necessarily be retained, can narrow, but probably cannot eliminate, disparity. No mean task if it can be delivered. However, many of you proponents of sentencing reform are involved in the State houses and legislatures; I would thus caution you to go after prosecutorial discretion <u>after</u> you pass a sentencing bill, otherwise the sentencing bill may never see the light of day. I must say I am not entirely clear on how to do away with prosecutorial discretion. In any event, prosecutors are needed to pass a sentencing bill, at least their silence is needed in order not to kill it.

Those of you contemplating a move toward determinate sentencing can expect criminal justice subsystem responses not unlike those encountered by halfway house planners. "It's a great idea but not in my neighborhood" transposed in the matter of determinate sentencing. "Sure," a judge might say of the parole board or the parole board member of the court, "we've got to reduce discretion in criminal justice, but not mine." Few criminal justice "actors" will welcome determinate sentencing, but not everyone will fight it automatically. Yet the resistive arguments from each subsystem are predictable and with good planning (which involves the subsystem leaders) can be anticipated and responded to.

Perhaps the most important element in developing a superordinate piece of public policy such as sentencing reform is to clearly state that at present each criminal justice subsystem is too narrowly involved at its own decision point: police arrest; prosecutors and defenders prosecute and defend; judges find fact and sentence; legislators frequently respond to spectacular crimes by upping penalties; prison officials make extraordinary claims about success rates; and parole boards still have little more to go on than past history, their own intuition, and political pressure, while most offenders calculate the relative risk of their behavior. Transforming all of these elements into a superordinate goal of each subsystem is a major task.

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Introduction and Outline Of Some Problems In Court Delay

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INTRODUCTION

What follows is a preliminary outline of some approaches to reducing court delay. This outline is intended only to be an overview of the problem and should be viewed in conjunction with conference presentations on the current state of the art in court delay reduction techniques and alternative dispute resolution mechanisms. Pre-Trial Delay, a book published by the National Center for State Courts in 1978, provides an extensive, annotated bibliography in addition to a review of the state of the art and ongoing research. This volume has been used extensively in preparing this skeletal profile of court delay and would be instructive to those interested in pursuing the problem.

Delay in appellate courts is not as widely discussed or written about as trial court delay. While the problems, effects, and definitions of appellate court delay are inherently different from those found in trial courts, there are some similarities. While most of this outline will relate to trial court delay, appellate delay will be discussed where appropriate.

DEFINITION OF DELAY

It is appropriate to note at the outset that the concept of delay is not a simple one. Used in the trial court context, the term suggests case processing time in excess of what is considered normal, appropriate, or necessary. Delay is frequently confused with court congestion or backlog, both of which deal more precisely with the number of cases or appeals filed but still pending, or is confused with statistics detailing the average age of cases which have been filed or appealed, but have not yet reached disposition. While these may be correlates of delay, they do not measure it directly.

Modern research defines trial court delay as a phenomenon which is best measured by "case processing time." Even this, though, has some subtleties. For example, depending upon one's view, cases which are not yet ready for trial or appeal are not cases which should be factored into a measure of the existence of delay. For other observers, however, courts are in the business of resolving disputes, and lapses between the filing of a dispute and its ultimate resolution, whether or not by trial, are an appropriate measure of delay. Thus, case processing time can variously be measured from several

points in the early stages of litigation to several other points in later stages of litigation. This model is most apt for civil and criminal cases; as in many things, however, each definition of delay alternatively masks or uncovers various aspects of the problem. In criminal matters, trial court delay may be relatively simple to measure if the state legislature has established speedy trial standards which define the maximum acceptable length of time between arrest and trial, for instance.

The definition of delay in appellate courts is equally complex and subtle. It, too, depends on the philosophical perspective used to define the role of a court as an active or passive forum for dispute resolution. In an appellate setting, delay can be variously measured as the time between the final trial court judgment (denial of a motion for a new trial) and the rendering of an appellate court decision. Other intermediary points are the filing of a notice of appeal, the perfection of the appeal, the setting of the case for argument and/or conference, and the publication of the final opinion.

NATURE AND DIMENSIONS OF THE PROBLEM OF DELAY

> The law's delay in many lands and throughout history has been the theme of tragedy and comedy. Hamlet summarized the seven burdens of man and put the law's delay fifth on his list. If the meter of his verse had permitted, he would perhaps have put it first. Dickens memorialized it in Bleak House, Chekhov, The Russian, and Moliere, The Frenchman have written tragedies based on it. Gilbert and Sullivan have satirized it in song. Gray v. Gray, 6 Ill. App.2d 571, 578-79, 128 N.E.2d 602, 606 (1955).

Delay has been characterized as both a crisis for the courts and a serious problem for the nation. The late C. William O'Neill, former Governor, Speaker of the House, and Chief Justice of the Supreme Court of Ohio stated:

> Delay in both criminal and civil cases in the state trial courts is presently the most serious problem in the administration of justice. It is to be remembered that the courts are created not for the convenience of judges or for the benefit of lawyers, but to serve the litigants and the interest of the public at large. When cases are unnecessarily delayed, the confidence of all people in the judicial system suffers. The confidence of our citizens in the ability of our system of government to achieve liberty and justice, under law, for all, is the foundation upon which the American system of government is built. 18 Judges Journal 6, 8 (1979).

Professor emeritus Hans Zeisel, in his foreword to the second edition of the popular Delay in the Court, indicated some examples of the problem's impact on the public.

> Back in 1969, a plaintiff in Chicago for instance, if he insisted on a jury trial, had to wait five years until his case reached trial; in two of the New York City boroughs, the delay was more than four years, in Los Angeles it was three years. Today, these great peaks have been partly removed, but the average delay of the civil calendar in some of our metropolitan courts is still measured in years and may be rising again. Concern over delay has spread to other parts of the system, to the disposition of criminal cases, to the appellate courts, the U.S. Supreme Court, and even to the quasi-judicial regulatory agencies. H. Zeisel, et al., Delay in the Court (1959), Foreword to the second edition (1977).

It is clear from a recent national survey conducted by Yankelovich, Skelly & White under contract with the National Center for State Courts, that the public is aware of and concerned about the problem of delay. Two-thirds of the respondents in a national survey asserted "strong" support for the expenditure of tax dollars in an effort to "try to make courts handle their cases faster." (Public Image of the Courts, Table VI. 1, p. 52.) Fifty-seven percent of those polled believed "efficiency in the courts" to be a serious national problem. (Public Image of the Courts, Table IV.1, p. 29.)

While delay may be useful or beneficial depending upon one's perspective (consider the defendant convicted of a serious crime who has yet to be sentenced, or the defendant in a civil tort action who wishes to "wait out" the plaintiff), there is evidence that delay has costly and severe consequences. While defendants remaining in jail are usually brought to trial more quickly than those on pre-trial release, even a short delay may be extremely costly to defendants cloaked with the presumption of innocence. Similarly, there is a cost to society when swift and certain punishment is not meted out or when delay results in a likelihood of less severe punishment or no punishment at all.

Similarly, plaintiffs in civil cases who have been damaged and are awaiting compensation may encounter severe pressures to settle their cases because of the use of delay as a stalling tactic. While some have suggested that reducing delay may increase case filings as a result of increased availability of judges, there is some evidence that suggests that this has not been a problem in those courts where delay has been reduced.

EXECUTIVE AND LEGISLATIVE APPROACHES TO DELAY REDUCTION

Table I contains an outline of some approaches to the reduction of delay. Conceptually, there are really only two methods by which

TABLE I
Some Approaches to Delay Reduction

Reduction of the Number of Cases	Executive	Legislative	Judicial
Jurisdiction	Alteration of Enforcement Policies and Prosecution Policies such as pre-filing screening programs.	Reduction of Mandatory and/or Discretionary Jurisdiction.	Transfer of cases to other judicial forums.
Settlement or Guilty Plea	Prosecution Policies.	Rational & realistic Penal Code and Sentencing Procedures.	Settlement programs. Pretrial interventions.
Diversion to non-court forum	Provision of alternative dispute resolution forums.	Mandatory Arbitration for certain actions.	Transfer of cases to non-judicial forums.

Reduction in judge time per Case	Executive	Legislative	Judicial
Increased Judicial Manpower	Budget - More Judges.	Budget - More Judges.	Assignments of "Senior" Judges.
Caseflow Management	Budget-More Administrators/Staff.	Speedy trial Legislation.	Individual Calendars etc.
Non-Court Efficiencies	Provision of adequate legal services.	Abolition of antiquated statutes/rules of procedure.	Abolition of Rules requiring full transcripts etc.

delay can be reduced. These are: (1) by reducing the number of cases handled by the courts, or (2) by reducing the amount of judicial time which must be devoted to each case.

Methods of reducing the number of cases might be subclassified into three distinct, though related, techniques. The first technique involves altering the jurisdiction of the court which is experiencing a problem with delay. This can occur formally through legislative action such as decriminalization, "no-fault" legislation, or other methods by which the number of cases of action filed in or appealed to a particular court is reduced. Administrative adjudication of traffic cases would be an example. It may also occur by rule of the court transferring cases to other judicial forums, such as the case with two state supreme courts which transfer cases they do not wish to hear to a lower, intermediate court of appeals. The executive branch can, by informal means, alter enforcement and prosecution policies thereby bringing fewer cases to the point of being filed. This can occur by screening cases before filing, rather than dismissing them after filing.

The second general technique involves encouraging settlements, guilty pleas, or other dispositions prior to trial. These are effective because they take less time than trials. These are believed to respond to prosecutorial policies and the availability of pre-trial interventions, such as liberal discovery rules and settlement conferences. However, several such programs (e.g., Omnibus Hearing) have been investigated empirically and have not been shown to be broadly effective. Furthermore, there is great constitutional and public concern with plea bargaining.

In the appellate court area, a series of judicial experiments with settlement conferences and other pre-argument interventions is currently ongoing; that research may prove these programs to be more effective.

The third technique for reducing the number of cases tried in court involves diversion to non-court forums. The provision of alternative dispute resolution mechanisms can take place either by simply making these alternatives optionally available to the public, or by legislatively or judicially mandating their use. The ability to mandate alternative dispute resolution mechanisms is, of course, limited constitutionally in criminal matters and, to a lesser extent, in civil matters.

The second major method of delay reduction focuses on lessening the amount of judicial time per case. Typically, this has been implemented by using techniques through which judges handle their caseload more efficiently, including the use of modern court administration methods, such as automated calendaring systems, and such management devices as the individual calendar. The recent study of pre-trial delay by the National Center for State Courts indicates that courts using individual calendaring systems tend to show speedier dispositions than those using a master calendar system, although the overall finding is that the most critical element in trial court delay reduction strategies is the degree of management or control exercised by the court over its own caseflow, especially at pre-trial stages.

A second technique for reducing judge time per case involves implementation of efficiencies that are beyond the purview of the court. Examples include the provision of adequate legal services when the problem of delay is primarily related to, for example, overworked public defenders offices. Other examples involve speedy trial legislation which affects not only the judiciary, but also the prosecution and defense counsel. Most of the evidence, however, from the studies of such legislation indicates that it is ineffective unless accompanied by sanctions for the violation of speedy trial rules, and strict limitations on waiver by defense counsel. For example, in Bronx County, N.Y., where a time limit of 180 days between arrest and trial is mandated statewide, approximately 75 percent of cases exceed that limit. There are other causes of delay in appellate as well as trial courts, involving antiquated statutes or rules of procedure mandating steps not necessary to the perfection of an appeal. One suspects the lobbying of special interest groups, for example, when one sees statutes requiring a full trial transcript to accompany each appeal. This is particularly true since research indicates that full transcripts are frequently neither necessary nor read by the appellate courts.

The final, and least politically acceptable, solution to the problems of delay involves increasing available judicial resources. Strictly speaking, this does not reduce the amount of time each judge spends per case; it does, however, increase the available resources to be brought to bear on a court's caseload, thereby decreasing delay and increasing output. Typically, this involves a larger budget for more judges and/or the assignment of retired or "senior" judges to the court's docket.

The above typology is intended to be neither exhaustive nor exclusive. Rather, it is intended to be a conceptual construct by which one can approach the problems of delay and its reduction. Other presentations at this conference will discuss alternative dispute resolution mechanisms and administrative adjudication, in particular.

The judicial branch of government is constantly involved in a variety of delay reduction programs; therefore, it is perhaps appropriate that I conclude by focusing on those activities where the executive and legislative branch may be most effective.

It is true that not <u>all</u> good ideas cost money, and perhaps some of the best ones do not cost anything; nonetheless, the need for increased resources in the judicial branch is notorious. In 1969, a study by the Institute of Judicial Administration indicated that total expenditures for the state judiciary comprised less than 1 percent of all state budgets. In only five states did the judiciary's budget constitute more than 1 percent of the state budget. Courts in this country are clearly in need of more judges, more administrators, better and more modern management techniques, and better staff support, all of which are costly. Nevertheless, there are alternatives which are within the control of the executive and legislative branch.

Perhaps the most important alternative to providing more money to more courts, is the possibility of altering the jurisdiction of the courts and thereby reducing the number of cases and controversies brought before them. As previously noted, the legislative and executive branches of government can have an impact upon delay by alteration of the criminal and sentencing codes, by passage of such measures as "no-fault," or mandatory arbitration or administrative adjudication. Alterations of enforcement and prosecution policies can dramatically affect the courts' criminal caseload through screening and other such programs.

It is admitted that there is public pressure to prosecute more crimes. However, the executive and legislative branches of government must convey an essential conundrum to the public. It is similar to the situation in modern day corrections: on the one hand, there is pressure to increase the frequency and severity of sentences; and on the other hand, there is pressure not to expend tax funds for prison construction. Similarly, in the courts area there is pressure to define new legal rights and new crimes and to mandate speedy trials legislatively, but those reforms do not come without cost. The failure to provide for an adequate and available forum for the resolution of civil disputes and criminal prosecutions will ultimately result in less respect for courts in particular and government in general.

Another area in which the executive and legislative branches can effectively and intelligently assist the courts in the resolution of the delay problem is by ensuring that antiquated statutes and rules of procedure are revised in a way that permits maximum efficiency. This might involve, for example, simplified rules of civil and criminal procedure, minimization or elimination of duplicative routes or methods of appeal, and limiting some classes of appeals to those which the courts can accept (or reject) in their discretion.

CONCLUSION

> Only one major controlled experiment, however, has been conducted in the field of delay research.... It was designed to find out whether obligatory pre-trial of personal injury cases brought about more settlements than optional pre-trial if one of the litigants demanded it. In a bold move, the courts allowed random (lottery) assignment of all filed claims to one of the two systems and were properly rewarded: obligatory pre-trial did not result in more settlement, hence was in part a wasted effort.
>
> The aftermath of the New Jersey experiment in the U.S. was less encouraging. Not one other state was willing to learn from the experiment. When prodded, one would hear "What does New Jersey know about pre-trial?" -- even though New Jersey had pioneered the institution.

> One cannot but regret the reluctance of our courts to conduct controlled experiments, and their parochial unwillingness to accept experimental findings from other states. Try-out "experiments" without controls are no substitute, especially when they are conducted with built-in bias. H. Zeisel et al., Delay in the Court (1959), Foreword to the second edition, 1977.

Perhaps one of the most significant roles that governors, executive branch and state planning agency personnel, and others can play in the area of delay reduction is to encourage and even insist upon the use of controlled experimentation and rigorous evaluation in the conduct of delay reduction programs. It is only by this method that we will ever truly understand the nature, causes, consequences, and solutions for the problems of court delay in the state and local courts of the United States.

Community Crime Prevention: An Introduction

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The purpose of this seminar is to acquaint state officials and decision makers with the state of the art in a new policy area we have called community crime prevention. While there is a recent upsurge of interest in this area, the area itself can hardly be called new. Indeed Burgess, Lohman and Shaw over forty years ago spelled out the reasons for developing this approach.

> First, crime is a neighborhood problem; second, it is a group experience (delinquents in association with other delinquents); third, crime appears to be initiated during the early years of life; and fourth, incarceration, probation, and parole appear to have serious limitations in the treatment of delinquents and criminals.

Community crime prevention, then, is the attempt to prevent crime at the neighborhood level by introducing constructive changes in the neighborhood as a whole. While practitioners have differed on precisely what changes should be brought about, the place where action is to take place is clear--in the local community.

Prevention strategies employed can for discussion purposes, be divided into two categories: those activities aimed at preventing people from becoming victims and those activities which are aimed at preventing people from becoming offenders. While the latter type of prevention strategies have been with us for generations (especially in working with adolescents), interest in the former type has developed over the last decade. You all have seen programs of this type--

Project Identification
Security Surveys
Crime Reporting Programs
Various types of civilian patrols.

The "victimization prevention" programs have been fostered in many ways at the national level by LEAA and have received a warm if somewhat cautious reception when implemented at the local level. They seem to make sense--especially given the lack of confidence most of us have developed in identifying and controlling those factors which caused individuals to perform criminal acts. We haven't had much luck in convincing offenders not to offend; perhaps we will have more success teaching potential victims how to avoid victimization.

Community Crime Prevention, then, consists of the programs and activities meant to reduce crime at the neighborhood level by preventing both potential offenders and potential victims from engaging in behaviors which will have serious negative consequences for them. Since the local community is the focus of attention, the expertise of groups outside the traditional criminal justice framework has been recruited to join in the crime prevention effort. The reason for this is simply that organizations with rapport in and knowledge of local people and institutions are in a good position to implement prevention programs. This is especially true in situations where prevention activities hinge upon organizing local citizens into collective activities:

-- Block watches
-- Escort services
-- Physical restoration programs

All are activities where civilian or citizen groups are in an excellent position to operate activities. Indeed, in minority and poor neighborhoods where relations with the police are less than trusting, local organizations are better suited for implementing new programs. This brings us to another important characteristic of community crime prevention--the use of volunteers. Getting people involved in community crime prevention means getting citizens to work together as citizens not as professionals. In the era of Proposition 13, this is no insignificant issue. Local and state officials should be interested in reducing the impact of crime without increasing their budgets. Activating citizens in the fight against crime may be the most effective move government officials can make in an era of increasing austerity. Increasing local security through the voluntary action of neighbors may not only reduce crime, but it may do so at a relatively modest cost to the taxpayer.

This brings us to an important point. What in fact do we know about the successes and failures of community crime prevention strategies? What has research and evaluation to teach us about the effectiveness of these programs? Well, there is some good news and some bad news. The good news is that well planned, intelligently executed evaluations can be useful to decision-makers in assessing old programs and planning new programs. The bad news is that well-planned, intelligently executed evaluations are very difficult to do. Good evaluators are expensive, time-consuming and often report findings which are not always perceived as being in the best interest of the leadership of the community crime prevention program. It takes good researchers, tough skinned public officials and well-financed efforts to produce quality results. You will notice I said quality results and useful results. Bad research can often beneficially serve public officials in the short run. That research can justify both public expenditures and public confidence. But you can be setting yourself up for a fall, for as the program moves into its second and third years, its inadequacies will become more apparent and inadequate research will be of little help in counteracting the criticism.

There are however some general findings about Community Crime Prevention. There is growing consensus among practitioners and researchers that prevention strategies should combine a number of programs. The important work recently completed in Hartford gives considerable credence to the notion that police activities, community organizing and environmental alterations in combination prevent crime--in that case--burglary. Reliance by criminal justice agency on one strategy in isolation, for example Project I.D., has provided extremely limited results. Many police departments see these programs as services provided to enhance community relations rather than planned programs designed to reduce crime in a geographic area. There are exceptions to this as evidenced in Seattle's fine exemplary program in burglary reduction. This service orientation is by no means all bad--indeed from a community relations perspective, a great deal of good will can be generated by single-issue activities like security surveys. Citizens see this free advice as the Department taking a personal interest in the safety of local citizens and are appreciative of the efforts. Police departments find crime prevention programs low cost ways of providing positive interactions between police and citizens.

Increasingly we are learning more about who is participating in community crime prevention activities and what factors motivate that participation. In neighborhoods throughout the country, crime prevention is a natural part of community life. This is especially true of activities aimed at preventing people, especially adolescents, from becoming offenders. Youth oriented programs sponsored by church, civic and social service organizations abound in neighborhoods. Focusing on recreational activities and role modeling, these organizations aim at providing positive experiences for youths hoping to steer adolescents away from criminal activities. Neighborhood people see these programs as primary crime prevention. Citizen participation in these programs varies considerably, but on the average around 15% of the adults in a community involve themselves in crime prevention programs. It is also interesting to note that black neighborhoods generally have more citizen involvement than white areas. Black areas are particularly organized around block clubs. Overwhelmingly citizens see crime prevention as primarily about preventing potential offenders from getting involved in crime rather than the victimization prevention which has become so prevalent among policy makers.

There is also some evidence that participation in crime prevention programs is less a matter of the individual's concern about crime and more a function of the community organization's interest in crime prevention. That is, people get involved in crime prevention because they already belong to an organization which decides to begin a crime prevention initiative, not because their concern about crime leads them to join a program. Consequently the general opportunity to participate in organizations may be far more important than individual concern about crime in raising the level of participation in crime prevention programs.

It is also becoming increasingly clear that the general quality of life in the neighborhood is more important than crime per se to neighborhood people. Citizens feel they are doing something about crime when they attempt

to reduce the general level of incivility in the area. Abandoned buildings, kids hanging around and vandalism raise more community concern than burglaries and muggings. Crime prevention programs aimed at reducing these signs of incivility may strike a much more resonant chord than crime-specific programs. Indeed the fear of crime may be reduced more by cleaning up the neighborhood than by attempting to reduce victimizations.

Community crime prevention is still in its infancy. Our knowledge about it as well as our acceptance of it as an important policy initiative is just beginning to be felt in the last few years. Hopefully this seminar will expand both our knowledge and acceptance of this approach to reducing the impact of crime in our society.

Crime Prevention Programming: The Art of the State

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Perhaps the greatest challenge facing state crime prevention efforts today is the development of comprehensive programs which tap nontraditional resources. More than most criminal justice programs, crime prevention provides the opporutnity to integrate concern about crime into the activities of nonlaw enforcement organizations and the community at large. To achieve this integration is the challenge confronting state crime prevention programs.

Many states presently are engaged in a variety of crime prevention activities, some of which will be discussed here by representatives from the States of Washington and Kentucky. But rather than chronicle the activities of individual states, I want to bring attention to key categories of state action which comprise a comprehensive approach to crime prevention. Some of these actions will be familiar to audience members, while others will present new possibilities and generate further ideas.

Most states, through their LEAA programs, have funded crime prevention projects, most often located within the police departments. Some of these programs are excellent; some, not so good. Unfortunately, many of these programs take a shotgun approach to prevention. For example, some programs are shaped by speaking invitations to staff or the latest crises; some consist of an uncoordinated set of prevention programs. Too often, these prevention efforts are not integrated into the entire police departments let alone into other city departments and functions. Many programs have trouble demonstrating effectiveness and, therefore, winning administrative support. Furthermore, reflecting the failure to win active administrative support, many of these programs do not survive after the grant period. As budgets become tighter, crime prevention officers are the first to be reassigned to other enforcement duties. Funding of individual grants, while worthwhile, is a limited and often ineffective role for states to play in crime prevention. States can take other steps which affect crime prevention in a more comprehensive manner. Let me note some of these steps.

As mentioned above, one of the problems with crime prevention is its isolated role within police departments. By incorporating crime prevention training into statewide police training requirements for both recruit and refresher training, states can hasten the time when crime prevention is part of every police officer's philosophy. This training should emphasize the need to onvolve resources outside of law enforcement to prevent crime.

A key to crime prevention is the public's understanding of their role. Police cannot do the job alone, but the community must be made aware of its responsibilities before it can be expected to assist police. State agencies such as the SPA are in a unique position to educate citizens in crime prevention. A number of states have developed media programs to educate its citizens in this regard. I am proud to say that Minnesota, through its Crime Watch program, pioneered this effort, producing award-winning public service announcements for television and radio and providing materials and advertising for police to use locally.

The advantages of state-level media programs are obvious. First, this undertaking is expensive and beyond the financial resources of most localities. Through the economics of scale, the state can undertake this effort while reserving local funds and resources for more localized and personalized crime prevention efforts. Second, such an effort avoids duplication and ensures that citizens of all communities receive equal treatment. The uniformity of materials, messages, and symbols associated with a statewide program produces much greater educational impact than that of local efforts, which are unequal in their funding resources, unequal in the degree of professionalism, and different in message and content.

Clearly there is more to crime prevention than public education and more to public education than a mass media campaign. But the media are the most efficient means of transmitting simple messages to large numbers of people. Media effort must be followed up locally to encourage specific crime prevention activities and behavior. The mass media campaign is an important statewide contribution to what must be a locally implemented program.

Another effort which can be directed from a state level is that of providing direct technical assistance to localities wishing to implement crime prevention programs. Even though localities may have law enforcement officials trained in crime prevention, they often lack the manpower and administrative support and expertise necessary to implement wide-scale programs. Expertise at a state level can be shared with municipalities and counties which lack the resources and skills to implement their own programs or which wish to implement the techniques sucessfully employed elsewhere.

Similarly, the state can serve as a resource center transmitting program information to the local crime prevention programs--information about other programs within the state, as well as programs in other states.

Furthermore, state resources can be used to guide research in the area of crime prevention. It is better that we ourselves ask and answer the question, "Does crime prevention work?" than to leave this heretical question unanswered. States must research what crime prevention strategies work best under what circumstances, if we are to avoid dispensing crime prevention programs like aspirin--a cure-all for all maladies.

These five areas--grants, training, media, technical assistance, and research --are fairly traditional approaches to crime prevention programming. This tradition, however, is testimony to their value in developing a comprehensive statewide crime prevention program. But there are additional roles a state can play which transcend the bounds of tradition and which today are being demonstrated in only a few states. To have a truly <u>comprehensive</u> crime prevention program, we must expand beyond these important traditional roles.

States must use all existing resources, particularly nontraditional resources, to develop a comprehensive approach to crime prevention. These resources are of two kinds: official governmental agencies and nongovernmental organizations which have statewide scope.

Through its official administrative actions, a state can develop a number of crime prevention programs--which are outside the traditional focus of most crime prevention efforts. These administrative actions fall in several categories, and there are numerous examples.

One obvious example is that of security requirements in the state building code. Security-poor homes and apartments constructed today contribute to the crime rate of tomorrow. Security standards can be incorporated into the state code so that the additional cost to new construction is kept to a minimum while offering security against the amateur burglar. After 18 months of research, planning, and negotiating, Minnesota has just recently adopted such a code with the support of unions, fire and police officials, and the construction and insurance industries. A program of training local building inspectors to enforce the new code is presently underway.

Still in the area of housing and security, state housing finance agencies award millions of dollars each year for local development. Yet few of these state-funded projects have security requirements built in. Failure to ensure effective and adequate security results from lack of awareness by these agencies, rather than hostility to the concept. Most such agencies are willing to incorporate reasonable security standards and security design reviews into their application process, if provided with guidance and assistance. Going a step further, the Tennesssee SPA, through local units of government, has provided technical assistance to local housing authorities on security matters.

Other state departments provide still additional opportunities for incorporating crime prevention into daily government decisions and programs. Increased attention to school violence has caused many departments of education to attempt to assist local school districts. The state crime prevention program can ensure that this assistance consists of more than additional hall monitors and guards or the traditional police-school liaison officers. Statewide programs which train school officials in crime prevention and which provide direct assistance to schools can do much to help local officials deal with the problem of school crime in a positive way.

The development of school curricula in crime prevention is an important long-range strategy for ensuring that the coming generation understands its responsibilities in crime prevention.

Much has been written about the problem of crime against the elderly. A good deal of information suggests that the problem is as much fear of crime as it is crime. But fear of crime also deprives the elderly of quality living. People who work with the elderly are acutely aware of the concerns of the elderly, yet they are not crime prevention experts. State crime prevention programs can help state agencies concerned with elderly develop training and technical assistance programs in crime prevention for local staff who work with the elderly. These local staff trained in crime prevention can do much to assist the elderly create a safer, less fearful environment.

Most people are aware of the growing problem of rural crime. Often, rural enforcement agencies are more strapped for manpower than are urban enforcement agencies. Yet we often fail to use resources which can relieve the burden on law enforcement agencies. For example, state departments of agriculture, through their rural development councils, are a source of funding for crime prevention programs which help farm families. Furthermore, these departments have extensive contacts with rural organizations and groups, such as agriculture extension agents groups. These agents are in continuous contact with rural families and communities. Their agency--the Agricultural Extension Service--is one of the most successful organizations in America in communicating change. Extension agents trained in crime prevention could supplement significantly the crime prevention resources of

rural law enforcement. Other rural resources--from letter carriers to co-op managers, from farm implement dealers to 4-H members--abound, waiting to lend assistance. The key is working with existing agencies and organizations that have extensive contacts with the population and an intimate understanding of their problems. Working with these groups, the state can assist them in developing their own solutions and programs.

The linkage between insurance and crime is becoming increasingly clear. Some insurance companies have offered premium discounts to policy holders who adopt crime prevention practices. The industry regularly applies these requirements to underwriting for commercial buildings. While the mechanisms for validating compliance with these practices are complex, discourse among the state crime prevention representatives, the insurance commissioner, and the industry representatives can reveal areas of cooperation.

One such area in which cooperation would be effective is arson. State and Federal agencies are just now beginning to improve fire reporting requirements to gain a more accurate picture of the arson-for-profit problem. Training programs for proscecutors and police/fire investigators are under way in several states. But we just now are learning enough about arson to discover how to prevent it. These efforts to profile the problem, educate officials and the community about this profile, and develop ways to address the problem must continue.

Still other state agencies have the opportunity for contributing to crime prevention. State departments of commerce and economic development play an important role in local efforts to revitalize commercial areas of our cities. Crime and the fear of crime have an impact on the rejuvenation of these areas. Approximately 30 percent of small businesses in the country fail because of crime. Furthermore, an area's reputation as being unsafe deprives it of needed pedestrian traffic and community business. State economic development agencies can advance revitalization efforts by seeing to it that crime and its prevention are taken into account from the initial feasibility studies through the site design and implementation state. It is up to the state's crime prevention program to assist the appropriate agency or department in this task.

Several states, including Pennsylvania and Indiana, have neighborhood assistance programs in which tax credits are given to businesses which contribute to revitalization efforts of neighborhoods. Through the use of tax credits, corporations can sponsor their own programs or contribute financing, personnel, and materials to community and/or private nonprofit organizations. Crime prevention should be one program option. State crime prevention programs, in concert with neighborhood assistance programs and other local neighborhood programs, can ensure that local crime prevention efforts are well designed and carefully implemented.

The state's role in neighborhood revitalization does not mean that the state would necessarily bypass local governments to deal directly with neighborhood groups. Instead, an appropriate role for the state is one of providing incentives to cities for working directly with their neighborhoods, as well as direct technical assistance and support. Neighborhood groups are a vital resource which, with proper assistance, can do much to control their own crime problems.

Finally, the state can play a role in crime prevention by involving organizations outside official government. Many nonlaw enforcement resources have

statewide organizations. State-level support by these organizations of crime prevention can generate much support at the community level.

These groups are too numerous to enumerate, but several examples can illustrate the point. With state level support, members of labor unions can participate in important crime prevention activities. In Minnesota, we have trained letter carriers to be the eyes and ears of the police. Members of other unions who are regularly in the community can serve in a similar role.

The farm bureau, Farmers Union, farm co-ops, farm implement dealers, and 4-H are just a few of the statewide associations whose resources and ideas can be used to develop and implement a rural crime prevention program. Associations of city planners, particularly planners who work directly in the community, can be made aware of crime prevention programs which they can apply in local settings. Architects and designers, through their associations, must be made aware of the role which design plays in increasing criminal opportunity.

Of course, numerous service organizations can be counted on to assist local programs with manpower, equipment, materials, and funding. Development of interest at the state level can do much to foster support among local chapters of these various organizations. The key to the involvement of these volunteers is to identify specific crime prevention tasks they can fund or in which they can participate. Further, efforts to mobilize statewide support must be coordinated with local law enforcement officials. It is at the local level that these programs are implemented. Persons who direct local programs must be kept informed and involved so they can be prepared to respond to interest generated by the staff at the state level.

Undoubtedly, the state can play other roles in promoting crime prevention. The area is expanding as practitioners discover new decision points within state government that affect crime. People interested in advancing the discipline of crime prevention must seek out other state organizations and inquire into their activities to see how their programs impact crime and, better yet, how these organizations can use their resources to incorporate crime prevention into their areas of concern.

The Comprehensive Crime Prevention Program

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Westinghouse National Issues Center

Introduction

The Comprehensive Crime Prevention Program, which is sponsored by LEAA's Office of Community Anti-Crime Programs, is a broad, national effort begun in fiscal year 1978. Currently, 15 jurisdictions of varying size and geographic distribution are participating. The Office of Community Anti-Crime Programs intends to define and document the CCPP Program concepts through several years of demonstration activities in the 15 participating jurisdictions. It is hoped that the results of this demonstration and the lessons learned may be packaged for replication elsewhere in the United States.

CCPP Program Objectives

Although there are many specific objectives of the Comprehensive Crime Prevention Program, the overriding concern relates primarily to two areas. First, through the national demonstration program, LEAA is interested in testing the effect of establishing well-planned, comprehensive, multifaceted crime prevention programs in medium-sized local jurisdictions. Secondly, an overall desire is to gain increased knowledge about the management of crime prevention strategies and implementation techniques. These seemingly broad and all-encompassing activities really relate to an attempt to identify and define a process that can be established for integrating the crime prevention activites of the major elements of any urban community--the citizens, industrial/commercial establishment, criminal justice agencies and other noncriminal justice governmental services organizations. An historical perspective of this program will show its importance and its high degree of difficulty.

CCPP--Background and Need

Why is the identification of a comprehensive crime prevention process necessary? The following provide a partial answer to this question:

1. There has been a proliferation of programs in the crime prevention field. These programs have been supported and conducted individually by different organizations and institutions--private groups, citizens organizations, governmental agencies, and police departments--which have spent much time and effort promoting a variety of crime prevention techniques. Most of these have been, unfortunately, more public-relations oriented than problem focused.

2. Many theories exist regarding what works and does not work in crime prevention. Some of these are based upon actual research findings. Others are strongly formed opinions founded more on history or politics. The net result is that the diversity of opinions promotes competition between approaches rather than compatability.

3. Perhaps one of the most important shortcomings of current crime prevention approaches is that there has been only lip-service, if any, attention given to citizen involvement. This is not to say that the public and private agencies have intentionally excluded citizens or citizen's groups from participation. On the contrary, both the sponsoring organizations and the citizens' groups themselves have not been able to overcome the problems of organizing, coordinating, and communicating that must be overcome in order to integrate their activities.

The result of the lack of citizen involvement is a complete lack of coordination in crime prevention efforts. The many crime prevention programs that may have been attempted in any one community have clearly not been additive in terms of their attack on crime.

The overall need addressed by the crime prevention program, therefore, is to integrate successfully government criminal justice and noncriminal justice resources with private business, industry, and citizen resources in a comprehensive and coordinated approach to crime prevention. The desired outcome of the CCPP demonstration and general hypothesis to be tested is as follows: combined strategies, plus simultaneous implementation, equals greater total effect on prevention of crime and criminal incidents, reduction of fear and concern about crime, and the stimulation of citizen action.

The CCPP Process and Requirements

It is logical that if the overall purpose of the CCPP process is to establish a mechanism for managing crime prevention efforts and resources in a community setting, then a basic step-by-step and well-documented procedure must be established for organizing the participants and the activities in the program. The overall steps in the CCPP process are as follows:

- Identify the problems.
- Develop mechanisms for coordination.
- Obtain commitment.
- Design a wide range of programs for specific problems.
- Implement these programs throughout public and private sectors.

It is critical that efforts aimed at developing a comprehensive crime prevention program be based upon a rational assessment of the needs in the community. Crime problems need to be specifically identified, as well as

all other problems a community might have, to integrate the various groups and organizations that must be involved in the program. Clear lines of communication must be established and mechanisms developed to achieve the high level of coordination that is necessary. Commitments must be obtained from the various elements of the community--both short-term and long-term in scope. A multiplicity of strategies and tactics needs to be devised for attacking specifically identified problems. Perhaps the most difficult coordinative aspect of the total program approach is to obtain consensus on those problem areas where a community-wide, simultaneous implementation of strategies needs to occur. Haphazard or poorly thought out implementation could result in completely obviating the underlying concepts of the comprehensive crime prevention process.

The comprehensive crime prevention program process has five basic requirements.

1. CCPP requires the careful and effective coordination of crime prevention activities of all major public and private elements of the community.

2. Decisions must be based upon crime analysis and be problem focused.

3. Mechanisms must be established for the routine communication of information about crime problems and concerns. This requirement relates both to the dissemination of official crime data to citizens groups and public agencies, as well as to the structuring and the articulation of crime problems and concerns as perceived by citizens and community organizations.

4. Mechanisms have to be established for the automatic and routine maintenance of the comprehensive crime prevention process. The continuous coordination of crime prevention efforts and maintenance of the integrated process must be viewed by the various individuals and organizations as a routine function as opposed to one that is ad hoc or extracurricular in nature.

5. Cooperation between the sometimes competitive and adverse organizations and groups is an essential prerequisite to the carrying out of all aspects of the program, in the short- and long-term. The processes of coordination, crime-analysis-based decisions, communication, and maintenance of effort all must rely on the willingness of people to cooperate on an individual and organizational basis.

The Role of the Community-Based Organizations in Community Crime Prevention

W. Victor Rouse

It would be very easy to provide documentation from the literature on the importance of the participation of community-based organizations in community crime prevention activities. Among the reasons cited would be the closeness of community-based organizations to the level of interest, their special sensitivity, their appropriateness as a delivery mechanism, and their special ability to perform nonuniform tasks. I would offer another reason. Unless community-based organizations are actively involved in crime prevention activities, crime will not be prevented.

I do not expect that this position will be easily put into operation in the criminal justice systems of this country. In fact, there continues to be skepticism about the effectiveness, if not, indeed, the value, of resident involvement through community-based organizations. Few practitioners in the field of criminal justice would be willing to ignore citizens, but equally few would actively seek their involvement in the planning and decisionmaking processes of organizations. Many examples of confrontation, poor performance, and lack of sophistication would be given as reasons to keep citizen involvement limited and controlled. Usually, the bureaucratic response to organizational participation is, at best, tolerance.

For years I have objected to this behavior and regarded it as another example of the unwillingness of large-scale bureaucratic organizations to allow the citizens they supposedly represent to share in decisionmaking. On many occasions I have attributed this attitude to arrogance and racism. In many instances, these reasons continue to prevail.

I have, however, because of extensive and simultaneous involvement with community-based organizations and bureaucratic structures, come to recognize that both large organizations and community-based groups have a responsibility and a role in crime prevention. I would further argue that there are a variety of tasks which, because they require resources and knowledge that can be gained only from day-to-day socialization in the community, must be performed by community-based organizations.

This is equally true for a variety of critical crime prevention tasks for which technical knowledge provides no advantage--those that involve unpredictable events or situations where experts cannot be brought to the scene in time to make a difference. Or, they may involve situations requiring constant monitoring or physical proximity and the ability to anticipate emerging issues. Further, and of critical importance to the area of crime prevention, large-scale bureaucratic organizations--characterized by specialization, rules, and the handling of uniform events--are in no position to respond to highly unpredictable events. Certain crime, as it occurs in urban environments, must be regarded as predictable only in its aggregate.

It is also true that crime in the urban environment is extremely complex and leaves the expert--the police officer--in a position for which no amount of training

could prepare him or her for all tasks in all contingencies. It is also true that the specialized knowledge of police officers and the major response capabilities of formal bureaucracies are not applicable to the unexpected.

If bureaucratic organizations must respond to events, the only way to realistically develop effective crime prevention programs is to involve citizens as active and parity participants, with appropriate roles and with appropriate tasks.[1]

The point that I am attempting to make is simply that community-based organizations should participate in community crime prevention activities not because it is a good thing to do and not because it is a way to avoid confrontation, but because community-based groups are a vital link in the chain of crime prevention activities. If difficulties have existed in the past with the interactions among community-based groups, police departments, state planning agencies, and the like, it has been due, in part, to a lack of definition of roles, to a lack of experience and training on the part of all parties, and to a lack of mutual respect and confidence between mutually dependent parties.

I would not want to argue that bureaucratic organizations cannot concentrate technical knowledge and organize large-scale efforts, often resulting in the achievement of goals, in an efficient and effective manner. In fact, planning agencies and police departments exist because we need highly specialized organizations that can handle uniform events effectively. I simply object to the position of those who might be represented by Wilensky and Lebeaux (1958) who argue that the sooner formal organizations take complete control of social problems, the better off society will be. These writers saw no role for primary groups and saw indigenous populations as only the recipients of service and never the providers.[2]

When one considers the impact of programs such as the Law Enforcement Assistance Administration (LEAA) Community Anti-Crime Program, one recognizes that this type of program is providing vital training and development for community-based groups as they seek to define better their role in crime prevention. The state planning agency, municipal agencies, the police department, and local organizations are groups along an organizational continuum. Where the full continuum is both informed and actively involved, formal and community organizations will collectively realize more alternatives for effective action than would be possible, given independent action.

As an indication of the level of effort of which community-based oragnizations are capable, let us take the CAC example once again. To date 150 CAC projects have been funded in FY 78. Of these, 146 were action grants to community organizations and four were technical assistance grants. Two additional technical assistance

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[1] Litwak, E., and Rothman, J. "Toward the Theory and Practice of Coordination Between Formal Organizations," W. R. Rosengren and M. Lefon (eds.), Organizations and Clients. Columbus, Ohio: Charles E. Merrill, 1970.

[2] Wilensky, H. L., and Lebeaux, C. N. Industrial Society and Social Welfare. New York: Russel Sage Foundation, 1958.

grants had already been funded in FY 77. The 146 action grants were selected from over 1,000 applications. Three of these have been deobligated by the CAC program. This is a low deobligation rate for programs of this nature. Twenty-six million was spent on the 141 action grants for which we have complete financial data. Grants range between $41,117 and $250,000 with the average award being $183,721. The 138 projects for which complete data were available indicate that collectively 1,506 crime prevention activities are planned for implementation. This is an average of 10.7 per project. Some of these activities fall readily into the traditional categories of crime prevention efforts. Table 1 indicates the number of projects planning to implement specific categories of activities.

TABLE I

Patrols	47	(34%)
Block Watch	92	(67%)
Escort Services	83	(60%)
Target Hardening	100	(73%)
Physical Improvements	24	(17%)
Recreation	64	(46%)
Manpower Development	49	(36%)
Emergency Social Services	36	(26%)
Victim/Witness	45	(33%)
Criminal Justice System/Community Relations	73	(53%)
Public Information	111	(80%)
Community Resource Development	118	(86%)
Social Services	68	(49%)
Community Revitalization	21	(15%)

This is not an unsignificant level of effort! Further, this level of effort is consistently high, regardless of whether one is talking about community groups that have been around for a long time or new groups or coalitions.

One of the CAC program objectives was to encourage a variety of organizational approaches to community crime prevention. We wish to report briefly on differences in the kinds of activities that projects of differing organizational types proposed to undertake with their grant monies.

The organizational typology we are using is comprised of single organizations that are not only the recipients of CAC funds, but are also responsible for making the programmatic decisions as to how funds will be expended, existing coalitions of groups that have worked together in the past, and new coalitions coming together specifically to apply for CAC funding.

% OF PROJECTS PROPOSING TO UNDERTAKE
CRIME PREVENTION ACTIVITIES BY ORGANIZATION TYPE

	Single Organization	Existing Coalition	New Coalition
patrols	29%	41%	39%
block watch	65	6	72
escort service	62	55	61
target hardening	67	81	72
physical improvements	18	19	11
recreation	43	52	56
manpower development	35	43	17
emergency social services	24	24	39
victim/witness	28	41	33
CJ system/community relations	53	37	39
public information	77	83	83
community resource development	81	88	94
social services	43	50	72
community revitalization	11	21	17
	n=79	n=42	n=18

The percent of single organizations proposing to undertake escort services, manpower development, and criminal justice/community relations activities was higher than for the other organization types but lowest for patrols, block watch, target hardening, recreation, victim/witness, community resource development, social services, and community revitalization.

Existing coalitions were most likely to be involved in patrols, target hardening, physical improvements, victim/witness public information, and community revitalization yet least likely to propose activities in the area of criminal justice system/community relations.

New coalitions had the highest percent of groups proposing block watch recreation, emergency social service, community resource development, and social service activities. They had the lowest percent proposing physical improvements and manpower development activities.

The important point to note here is not only that community organizations are capable of planning and carrying out large numbers of crime prevention activities, but more important, that they represent a more direct link to the community than does the formal organization. It is this linkage that makes the community organization capable of the services to be provided by formal organizations.

An historical assessment of the relationship between formal and informal organizations would demonstrate that there has been a clear and distinguishable partnership between these actors. A look at history will also tell us that where social problems have been handled effectively, there has been continued and constructive interaction between the bureaucracy and primary groups. Such an interaction has often been advanced because of improved technology and scientific developments; but where success has been achieved, the primary group was not the loser and the bureaucracy the winner.

If crime prevention is to be effective in this country, bureaucratic organizations must encourage and support the increased advancement and development of community-based organizations. We will find that--as in the case of bureaucracies--community-based groups vary in skill and capability. Some, in fact, can move far up the continuum of skill and sophistication, while others can perform only limited activity successfully. It is a fact that must be recognized: that without the active involvement of primary groups, bureaucratic organizations will not achieve success in crime prevention.

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