

## ISLANDS OF VIOLENCE: THE CRISIS OF AMERICA'S PRISONS AND JAILS

By John T. Fennell

We tend to ignore prisons and jails until something extraordinary draws our attention to these institutions. The occasion is usually a riot on the order of an Attica or the New Mexico holocaust. Our attention is riveted momentarily and then fades. The subculture of incarceration, however, includes over 500,000 Americans. With the crime epidemic continuing unabated, this subculture is not likely to shrink or become any less costly to maintain. Indeed, since nearly every prison and jail in the nation is overcrowded, the costs will either increase due to new construction or criminals will go free, as has happened in at least six states.

There is a need to clarify our thinking about prisons and jails. What should the correctional system be expected to accomplish? The public discourse is laced with allusions to criminal rehabilitation. Indeed, it is an article of faith in many quarters that rehabilitation is the primary, if not sole, purpose of locking people up. Ramsey Clark, the former Attorney General, made a classic statement of this attitude in *Crime in America*: "Rehabilitation must be the goal of modern corrections. Every other consideration should be subordinated to it."

Unfortunately, criminal rehabilitation is a bankrupt philosophy. The advocates of rehabilitation sometimes point to Sweden as having a model penal system; however, with a recidivism rate of over 70 percent, the Swedish "model" is a failure. A former Swedish Chief Prosecutor, Holger Romander, has said, "Our philosophy of rehabilitation has been shipwrecked. Criminality will not be cured through rehabilitation." (1) America's Director of the Bureau of Prisons, Norman Carlson, admitted in testimony before a congressional committee that "we do not know how it (i.e. rehabilitation) takes place, when it takes place, if it takes place, or why it takes place."

The two most important books written on the issue of crime and justice in the '70s were Ernest van den Haag's *Punishing Criminals* and James Q. Wilson's *Thinking About Crime*. With

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regard to rehabilitation, both reach the same conclusion:

Rehabilitative treatment has not been shown to be effective in reducing recidivism: the recidivism rates of those treated in different programs by different methods do not differ from the rates of those not treated at all, whether in the U.S. or elsewhere.(2)

... the evidence seems quite clear: In general, different kinds of institutions do not make an appreciable difference in the prospects of rehabilitation ... It does not seem to matter what form of treatment in the correctional system is attempted ... Indeed, some forms of treatment — notably a few experiments with psycho-therapy — actually produced an increase in the rate of recidivism.(3) The conclusion is inexorable. We simply do not know how to rehabilitate a criminal.

Yet the myth of criminal rehabilitation persists. Even so astute an observer as Chief Justice Warren Burger has called for turning prisons into “factories with walls.” This is simply one more variation on the old rehabilitation theme. Texas prison official Rick Hurtleys observes, “We already teach basic skills, but the inmate must cooperate — we can’t compel him to learn.” California has over 10,000 inmates enrolled in vocational and work programs with no appreciable impact on recidivism. I have spoken with many inmates who learned several useful trades, while spending most of their lives in institutions; once back on the streets, they soon returned to criminal activity and eventually jail or prison.

I am not arguing that prison work programs should be eliminated. Such programs are important tools for running an orderly institution. One of the reasons for the New Mexico disaster was that there were hundreds of habitually idle inmates with nothing to do. But we should not fool ourselves into believing that programs rehabilitate criminals.

While the correctional system fails to rehabilitate, it does prevent murderers, robbers, rapists, burglars and dope dealers from practicing their professions and hobbies — at least in the community as a whole, if not in the inmate subculture. The most that can be expected from jails and prisons is that they segregate criminals from the rest of us in a humane, orderly and secure fashion. The correctional system is failing, however, to accomplish even this seemingly straightforward purpose.

We should quit deluding ourselves with the cant of criminal

rehabilitation. The guiding principle of the correctional system should be safety and security, not rehabilitation. I will discuss the problem of violence in the correctional system and some of the important policy issues and reforms affecting the control of violence.

### Island of Violence

The most critical problem facing the correctional system is the prevention of violent, assaultive behavior. Prisons and jails are appalling centers of savagery. Simply because they are locked up, predators, whether individuals or in groups, do not stop preying on others.

Gangs dominate many institutions. These groups control drug trafficking, homosexual prostitution, gambling and protection rackets. California's Mexican Mafia, also known as EME, is perhaps the most powerful prison gang in America. EME, organized in the early '60s, has over 300 members. They have perpetrated dozens of murders both in and out of prison.(4)

Even veteran observers of the correctional system were stunned by the barbaric nature of the New Mexican State Prison riot that claimed 33 lives; many of the men dying only after the most ghastly torture. Wilbert Rideau and Billy Sinclair, accomplished inmate writers serving life terms at the Louisiana State Prison, have outlined the primary need for order, control and safety in the correctional system:

The criminal ethic is a vicious set of values spawned out of an insidious drug culture and the back-alleys of urban housing projects. The 18 to 25-year-old inmates who control today's prisons grew up on the criminal ethic and they have turned prisons into islands of violence . . . The average prisoner lives in a world of fear and intimidation . . . . Correction and change are impossible in this compressed atmosphere where survival is the only priority.(5)

Despite the fantasies of the ACLU, the average inmate is much more concerned about his peers than an institution's guards and staff. A man who has spent most of his 40 years behind bars told me that "As long as you go along with the program and follow the rules, you never have to worry about the officers. All the pressure comes from other inmates. They're the ones who will try and rip you off and punk you." ("Punking" is jailhouse jargon for homosexual rape.) Tommy Mason, considered a "model inmate" by Louisiana prison officials,

gives talks to groups of young people. Sinclair and Rideau quote Mason on prison violence: “‘Damn the paper programs and unrealistic bureaucratic notions. What about protecting the inmates who can’t do it themselves! How the hell you gonna tell an inmate . . . to rehabilitate himself when he had to give up his manhood just to survive?’”

### Overcrowding

America’s crime epidemic began in the early ’60s; yet between 1960 and 1970 the number of prison inmates actually fell from 213,000 to 196,000. As the ’70s wore on, however, it became apparent to even the most ardent liberal that the crime problem was of frightening proportions. Public outrage gradually led to more people being sent to prison for longer terms. Accordingly, by 1981 the prison population had exploded to 369,000. Another 150,000 or so people held in local jails brings the total number of prisoners to over 500,000 — virtually as many inmates as police officers. But the construction of new jails and prisons has not kept pace; the prison system alone is 100,000 above capacity.

A severely overcrowded institution is an invitation to increased violence, disorder and even rioting. The resources of a correctional staff are stretched to the limit and adequate supervision becomes difficult or impossible. One can feel the tension and stress rising as a prison becomes progressively more crowded: The quality of food and medical care deteriorates; shortages of clean clothes and bedding develop; sanitation systems break down; and people sleep on floors, if they can find the space.

Every properly run institution has an inmate classification system. Such a system identifies, houses and assigns work to inmates based on gang affiliation, criminal sophistication and history of violence. As officers run out of room to move inmates around, classification procedures become paralyzed. Consequently, inmate predators find easy prey in jammed cell-blocks.

Three alternatives to conventional incarceration have been adopted to help relieve overcrowding. California and Massachusetts have gone for training implementing such alternatives. The first, a pre-trial release program, involves freeing newly arrested people, who meet certain criteria, simply on their promise to appear in court. A person is moved through the jail

system more quickly, because the time-consuming process of contacting a bondsman or relatives and friends to raise bail is avoided. When properly managed, the rate at which people participating in such a program fail to appear for court is no greater than when a posting of bail is required.

Second, work furlough centers can be established. These centers allow selected sentenced prisoners to work at jobs in the community during the day, while spending the weekends and evenings in a minimum security facility which is relatively inexpensive to maintain. The inmates continue to support their families and can also be charged for the cost of their confinement.

And, finally, there are pre-release or halfway houses. Massachusetts has 20 such facilities. Approved inmates, approaching the end of their terms, are moved into community-based centers in order to increase space in maximum security prisons.

### **Opposition to New Construction**

Although such measures can ease the problem, they will certainly not resolve the crisis of overcrowding. America simply needs to build more maximum security jails and prisons. In some parts of the country, however, new construction is opposed for several reasons.

First, politicians generally get little credit from their constituents for spearheading a campaign to build a new prison or jail. Individuals and pressure groups spanning the political spectrum often oppose public spending on such projects. At one extreme, there are inmate rights and rehabilitation zealots who do not think anybody should be locked up. Instead, they want money spent on programs designed to get at the "root causes" of crime. On the other side are those who ignore inhumane, violent conditions: "the criminal is only getting what he deserves," and "tax dollars should not be wasted on new buildings merely to ease overcrowding." And of course no one, regardless of his political persuasion, wants a jail or prison in his neighborhood.

Second, jail and prisons are very complicated structures to build. Since local pressure groups and all levels of government usually get involved, seldom do any two look alike. For example, strong disagreement can develop over the philosophy of incarceration that will guide the design of a new facility. There are two basic alternatives: the "soft" approach, which emphasizes rehabilitation, and the "hard" approach, which empha-

sizes security.

A “soft” jail, the model favored by the National Institute of Corrections, might have carpeting, plumbing fixtures like those found in homes and inmates with keys to their own “rooms.” The correctional officers are locked up with the inmates in a common dayroom, and meals are prepared together and shared. This close interaction between staff and inmates is supposed to encourage rehabilitation. However, this writer worries about the mental, not to mention physical, health of the officers. It is quite possible that an officer, particularly if young and inexperienced will have his own values distorted by such intense exposure to the criminal substitute — a kind of rehabilitation in reverse.

The “hard” approach features concrete or linoleum floors, special security plumbing, electronically operated doors and a lot of safety glass and steel. Contact between staff and inmates is minimized.

The third and most important reason for opposition to new construction is money. A new institution housing 600 inmates can take up to 5 years to complete and cost \$50 million. But, to paraphrase the TV commercial, “we can pay now or we can pay later.” Warren Burger, addressing the American Bar Association in 1980, warned of the “folly” of an elaborate justice system casting “the guilty into 19th century penal institutions ... It is wrong. It is expensive. It is stupid.” With the crime epidemic continuing unabated, we can either pay for new penal construction, or we can pay by having the courts set criminals free to ease severe, inhumane overcrowding, as has happened in Michigan, Maryland, Virginia, Georgia, Alabama and California.

### Holistic Corrections

Innovative research and experiments are being conducted in a “holistic” approach to controlling institutional violence. The holistic philosophy includes the use of diet, color and orthomolecular analysis to modify inmate behavior. At first blush, the holistic philosophy may seem like “voodoo corrections.” Certainly, the medical profession is skeptical of holistic concepts, but many correctional officials have become believers. Holistic corrections is particularly popular in the West. Its principal spokesman, Alexander Schauss, is a former Washington state probation officer, who now teaches and conducts

research at the City College of Seattle. Schauss's seminars on "Body Chemistry and Offender Behavior" are very popular with jail and prison administrators.

Painting temporary holding cells a bright, hot pink is an amazing example of a holistic concept. A short stay in a "pink room" frequently has a calming effect on a tense, uncooperative prisoner. The Santa Clara County Jail, serving California's Silicon Valley, has such a cell. Prisoners, particularly when first brought in off the street, who are belligerent and verging on violence are left in the pink room for up to 15 minutes. Jail officials report that "the calming influence of pink has reduced altercations . . . by 30 to 40 percent." Other jails, including the U.S. Naval Corrections Center in Seattle, have experienced similar results.(6)

Certain foods, food additives and vitamin deficiencies and imbalances "can trigger violent behavior or aggravate a pre-existing tendency toward violence in people."(7) Since at least 1917 there have been sporadic and isolated studies associating criminal behavior with biochemical or metabolic factors, but only within the last decade has systematic attention been given to this area.

A holistic approach to nutrition purges processed sugar, caffeine and white flour from the inmate diet; whole grained flour, honey, fruit, nuts and vitamin supplements are added. For example, after implementing a holistic oriented diet, Seattle's Naval Correctional Center reported "a definite decrease in the number of confinees at sick call and on medication . . . and disciplinary reports are down 12 percent . . ." Over a dozen California adult and juvenile jails have had similar experiences.

There may be a link between hypoglycemia and violent or criminal behavior: "there is a great likelihood that a very large number of inmates suffer from some degree of hypoglycemia, which aggravates and perpetuates criminal behavior."(8) Many habitual criminals consume large quantities of sugar, alcohol and drugs, eat poorly, sleep irregularly and lead very stressful lives. Such a lifestyle is conducive to promoting hypoglycemia. Asaro and his associates conducted an experiment in the treatment of hypoglycemia at the Morris County, N.J., Jail in 1975. Twenty-five inmate volunteers stopped consuming caffeine and processed sugar. They were given high protein diets, vitamin supplements and dietary educational information. After eight weeks, the researchers observed an "improvement in morale, mood and self motivated behavior."

Barbara Reed, a Washington probation officer, has conducted remarkably successful dietary experiments with her probationers. The Reed program eliminates processed sugar; flour, coffee, alcohol, prepackaged items, and, as far as possible, foods with additives, preservatives and artificial coloring. She urges the consumption of high protein meals, salads, whole grained products and lightly cooked vegetables. Reed outlines the results of one experiment:

Thirty-one probationers were tested in a medical clinic and all 31 came up hypoglycemic. All but three of them followed our nutrition program. Of the three, two got back into trouble and the third is about to. The other 28 people did not get back into trouble.(9)

Orthomolecular analysis is another important aspect of holistic corrections. Chemist Jeffery Bland, of Puget Sound University, argues, "all behavioral dysfunctional individuals have in part related to their problems a psychosocial component and a biochemical component, and many times the psychosocial component develops in response to the biochemical component." By this he means that the presence of excessive amounts of certain toxic chemicals and metals in the body are associated with aberrant, violent and criminal behavior. For example, it is well established that high concentrations of lead in the blood will cause hyperactivity and aggressiveness. Other substances that may trigger similar reactions include aluminum, zinc, cadmium, arsenic, herbicides and mercurial pesticides.

We do not know, however, the prevalence of these toxic chemicals in the general and criminal population. Although Schauss, Bland and others are conducting experiments in detecting biochemical imbalances through hair analysis, a valid and reliable means of biochemical evaluation has yet to be developed.

Holistic corrections is an area crying out for more research and practical application. Only a handful of penal institutions have experimented with holistic concepts. Our prisons and jails need to start taking a much closer look at how environmental and biochemical factors, particularly diet, affect inmate behavior.

### **The Imperial Judiciary**

An important dimension of the controversy swirling around



our jails and prisons involves judicial intervention and inmate constitutional rights. The XIII Amendment to the Constitution, all but forgotten in our time, proclaims: "Neither slavery nor involuntary servitude, *except as punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States . . ." (Emphasis added) Thus, in the 19th century the issue of inmate rights was quite simply resolved: They did not have any. Even in the 20th century an attitude of benign neglect persisted into the '60s, as the courts adopted a hands off attitude toward the conditions of incarceration and the operation of penal institutions. The duty of the courts was to insure that a man was not imprisoned illegally. Beyond that the administration of prisons and jails was left to corrections personnel — and there was considerably less violence and turmoil in the penal system.

The dramatic changes, upheavals and stresses that began to affect society as a whole in the early '60s also had a dramatic impact on the nation's custodial institutions. America has always been a litigious nation. Tocqueville observed 150 years ago that "Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate . . ." However, in our time, the Imperial Judiciary has become virtually omnipresent and actively intervenes in nearly all aspects of American life. The penal system has been no exception, with the courts becoming increasingly involved in the day-to-day affairs of jails and prisons. The XIII Amendment was ignored, but a whole panoply of inmates rights was discovered to exist within the language of the I, IV, V, VI, VIII and XIV Amendments. The courts began issuing decisions and orders on all aspects of inmate life, including housing conditions, religion, discipline, searches, mail, hair length, legal services, etc.

Judicial intervention is a two-edged sword. Corrections officials sometimes welcome law suits and court orders that force public spending for sorely needed renovations or even new jails and prisons. But when a judge — in the interest of protecting inmate rights — begins to virtually run an institution it is very counterproductive. Expanding the sphere of inmate rights limits the discretion of corrections officials and makes running a secure, orderly jail or prison more difficult.

Alexander Solzhenitsyn, in his famous Harvard Commence-

ment Adress, observes: "The defense of individual rights has reached such extremes as to make society as a whole defenseless against certain individuals. It is time, in the West, to defend not so much human rights as human obligations." His analysis is a trenchant for the penal system as it is for so many other areas of our culture. Fortunately, the U.S. Supreme Court recognized the problem in *Bell v. Wolfish* (1979). This 5 to 4 decision, reversing the two lower courts, was a victory for advocates of judicial restraint.

The case directly involved the New York Metropolitan Correctional Institute, a "model" federal jail used primarily to hold unsentenced inmates awaiting trial. The inmate suit was based on the principle that the jail's "detainees," awaiting the outcome of their respective trials, were "innocent until proven guilty." Accordingly, they should not be subjected to the same restrictions as sentenced prisoners. Only those minimal rules consistent with guaranteeing that the accused would be present for trial were alleged to be constitutional. Based on this rationale, a number of institutional security procedures were challenged, e.g., cell searches, "skin searches" and mail restrictions. The U.S. District Court and the Court of Appeals ruled in favor of the inmates on all of the major points in question.

In the reversal, the lower courts were severely castigated for becoming "increasingly enmeshed in the minutiae of prison operations." Justice Rehnquist, author of the majority opinion, emphasized that there must be more of a balance between inmate rights and the need to run a secure and orderly facility:

... maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of constitutional rights of both convicted prisoners and pretrial detainees.

The nation's judges should start listening more to the professionals who run correctional institutions:

... the problems that arise in the day-to-day operation of a corrections facility are not susceptible to easy solutions. Prison officials therefore should be accorded wide-ranging deference in the adoption and executions of policies and practices . . . Such considerations are peculiarly within the province and professional expertise of corrections officials.

Hopefully, in the wake of *Bell v. Wolfish*, the professional administrators of the nation's jails and prisons — the real

experts — will be allowed to get on with their difficult jobs with less judicial interference.

Controlling institutional violence and creating an orderly, secure and humane environment is the most formidable task confronting the correctional system. I have discussed several of the obstacles to reducing the level of savagery that characterizes most prisons and jails. The first is a confusion over purpose generated by the discredited philosophy of criminal rehabilitation. The second is severe overcrowding — a national problem of staggering proportions. Finally, there is often too much interference by the courts in the day-to-day operation of jails and prisons. The existence of a problem, however, does not guarantee the existence of a solution. And, indeed, there may be no solution to the crisis of America's prisons and jails.

## FOOTNOTES

- (1) *New York Times*, September 5, 1977, p. 4.
- (2) Ernest van den Haag, *Punishing Criminals* (New York: Basic Books, 1975), p. 188.
- (3) James Q. Wilson, *Thinking About Crime* (New York: Vintage Books, 1977), p. 189.
- (4) EME's activities extend to the streets where huge profits are reaped from a wide range of criminal activity, including the infiltration and looting of federally funded rehabilitation programs. The gang is so dangerous that the Cosa Nostra was forced to form an alliance with EME in the early '70s.
- (5) Wilbert Rideau and Billy Sinclair, "Prison Riots and the Criminal Ethic," *San Jose Mercury News*, February 1, 1981, p. 5C.
- (6) Caution must be observed, however. Some jails have made the mistake of painting *permanent* housing cells pink. Prolonged exposure to a pink room may have a reverse effect and cause an increase in aggressiveness. Only temporary holding cells, according to holistic advocates, should be painted pink.
- (7) *An Ounce of Prevention: Toward an Understanding of the Causes of Violence* (Sacramento, California: California Commission on Crime Control and Violence Prevention, 1981), p. 44. This landmark report is the most comprehensive compilation of research available on the causes of violence.
- (8) D. Asaro, G. Goesbeck and C. Nigro, "Diet-Vitamin Program for Jail Inmates," *Journal of Orthomolecular Psychiatry*, Volume 4, No. 3, 1975, p. 221.
- (9) Martin Zucker "Crime and Diet," *Let's Live Magazine*, May, 1979, p. 61.

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## PANAMA CANAL: MARINE PROBLEMS AND THE SOLUTION

By Captain Miles P. DuVal, Jr., U.S. Navy, Ret.

The Central American Isthmus, with its well known transportation routes, together with the Caribbean Basin has been long recognized as forming the heart of the Western Hemispheric security and as serving as the center for the Monroe Doctrine. A focal element in that strategic region is the Panama Canal, one of the major crossroads of the world.

As foreseen by U.S. canal authorities many years ago, this vital waterway has reached the point of capacity saturation, which during traffic peaks periodically causes unacceptable delays for vessels using it, thus attracting demands for increased canal capacity.

The overall Isthmian Canal question has a history of more than four centuries and is one of substantial complexity. In addition to the diplomatic, economic and political problems involved in the crucial struggles over site and type there are other important factors in the canal equation. Among them are the effect of the modernized Tehuantepec Railway for transporting container cargoes between the oceans, the influence of the recently completed pipeline in western Panama for the transfer of Alaska oil to the Atlantic, and the consequences of that "hardy perennial" ideal for a canal of so-called "sea-level" design coupled with the environmental dangers that marine biologists state would be caused by a salt water channel between the oceans.

The operations of the new oil pipe line and the Tehuantepec Railway have served to reduce the pressure on the Panama Canal temporarily. For the first four months of Fiscal Year 1983 tolls paying transits totaled 4131 as compared to 4554 for the same period in 1982.

Japanese interests are now supporting a feasibility study in regard to the "sea-level" proposal, and will later participate in the current U.S.-Panamanian studies of this scheme now in progress.

Much has been learned from the prolonged operation of the existing Panama Canal in both peace and war. Its major marine operational problems have been extensively studied and the