A SUMMARY OF ANALYSIS OF SOME MAJOR INQUIRIES ON CORRECTIONS, 1938 to 1977

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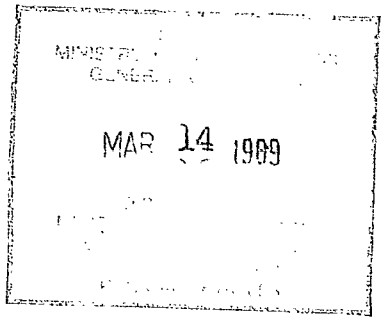

SUMMARY

Since the 1930s there has been a definite movement in correctional philosophy, caused, in large measure, by the teachings of experience. Archambault (1938), Fauteux (1956) and Ouimet (1969) - the three major inquiries into the corrections system - all focussed on the rehabilitative and treatment role of the penal system. All saw it as central, all defended it for the same reasons, all perceived a failure in application, and all assumed the situation to be correctable.

The stress on rehabilitation grew stronger with each report, although the areas of concentration changed. Archambault perceived an almost complete lack of programs to bring about rehabilitation, and recommended importation of British programs which they viewed as successful. Fauteux suggested that these reforms, many of which had been implemented in the intervening two decades, were either incomplete or inadequately applied in practice, and recommended more of the same, again looking to the British for working examples.

With Ouimet, the principal focus on rehabilitation continued, but the expert consensus perceived by Archambault and Fauteux had begun to display cracks. While expressing some nagging doubts about the suitability of prisons as rehabilitative centres, Ouimet seemed to submerge these questions in stressing the systems approach to criminal justice and urging still more efforts in the field of rehabilitation. If Archambault and Fauteux were concerned at the lack of programs, and confident about the workability of such programs, Ouimet was concerned about the application of such programs as had been introduced. The emphasis on the importance of attitudes and on staff training was great.

The thrust to implementation of more and more treatment in the prisons continued into the 1970s, and reports such as Swackhamer and Mohr expressed growing dissatisfaction with the application of programs and principles, and stressed the need for more sophisticated training, staff and programs.

In 1973, the Solicitor General's "Perspectives" Paper, however, seemed to carry the other theme of Ouimet further, in emphasizing the systems approach, stressing the need for more prevention and diversion, and viewing prisons as a sanction of last resort--as expressions of the failure of prevention and diversion. The Community was infinitely

preferable as a milieu for rehabilitation, prisons were artificial societies, and for that reason not well-equipped to facilitate the re-adjustment of offenders to the community where they would eventually return.

This theme was carried much further still by the Law Reform Commission, which came to the conclusion that prisons had failed as deterrents and as rehabilitators, and that society ought therefore to re-adjust its idea of the very purposes of sentencing to incarceration. The prison, and criminal law as a whole, must be employed with great restraint, and be seen as the last resort for the reaffirmation of basic values.

The community was key, and, as much as possible, it must be the focus for dealing with the conflicts which bring offenders into the system in the first place. We should not try to "treat" prisoners in prisons as much as we should try to deal with them in an atmosphere as close as possible to that in the community, with the least possible restriction on freedom and the greatest possible encouragement of the acceptance of responsibility by the offender.

From the belief expressed by Archambault and Fauteux that the "treatment" of offenders required sufficiently lengthy periods of imprisonment, we moved to the Law Reform Commission's blunt assertion that "rehabilitation does not justify resort to imprisonment." (Sentences Report, p. 26)

So, from the 1930s and 1950s, when there seemed to exist a consensus both on goals and on the methods which could be employed to reach those goals, efforts to implement earlier recommendations throughout the 1960s and 1970s led, first, to disappointment with their result in practice and, secondly, to a more fundamental questioning of goals and objectives themselves.

With respect to implementation of specific recommendations, Ministerial records state that 70 of the 88 Archambault recommendations had been wholly or partially implemented by 1969, and that 10 of the remaining 18 had either been overtaken by events or were matters of provincial concern. Of Fauteux's 44 recommendations, 31 were fully or

partially implemented by the federal government as of 1969. Of the 118 Ouimet recommendations, 1973 reports indicated that 58 had been implemented through legislation or practice, 11 were under Law Reform Commission consideration, another 11 had been the subject of federal-provincial consultation, and that the remaining 38 were under active consideration. Forty-eight of the 55 Swackhamer recommendations were recorded as implemented as of 1973.

This record helps to illustrate the point that the problems which were defined, and the solutions which were suggested with such optimism earlier, proved to be much more intractable than had been thought. One reaction was that not enough effort or resources had been devoted to rehabilitation. But another reaction was that there is something more fundamentally at issue than had earlier been thought, and that, in order to accomplish our goals, we might have to think through from the beginning what we are trying to accomplish. Perhaps the prison, as an institution, is really not suitable to the fulfilment of the objectives which had been set for it, and we should therefore rethink those objectives and their implications.

But this points out the possibility that we have not fully assimilated the lessons we have learned; that we are treating new problems with old solutions and outdated rhetoric. Archambault, for example, divided offenders into three categories: the accidental, the reformable and the habitual. Assuming without much question that all three types would be dealt with in prison he, and Fauteux after him, argued for a rehabilitative, treatment-oriented set of programs. With Ouimet, the trend to treatment continued, but doubt was expressed at the same time about the appropriateness of prison for the first two of Archambault's three inmate-types. Here, the two paths began to diverge.

The divergence, however, may not have been given appropriate attention. Since Ouimet, the thrust has been to get those offenders who are in Archambault's first two categories out of prison. They should be dealt with by prevention, by diversion, by alternatives to incarceration - but, above all, outside prison as much as possible. And these offenders are the most "treatable".

Yet, at the same time, Ouimet, Swackhamer, Mohr and others have been urging more attention to treatment in prison, and the question must be asked: are these treatment programs assuming an inmate profile valid in Archambault's

day and Fauteux's day, but less valid now? In other words, are they assuming treatment of an inmate who, more and more, is not in prison? And, if so, what ramifications does that have?

If our prisons are to contain fewer, but ever more difficult, inmates, what programs and facilities should be implemented within them? On the one hand, the hopeful recommendations concerning the prison as "an educational centre in the widest sense of the word, in which not only inmates but staff are being constantly re-educated" (Ouimet, p. 321) expresses our fundamental belief in the "salvagability" of most, if not all, individuals. On the other hand, growing evidence exists that, as educational centres, our prisons have been most effective in educating less experienced, less hardened offenders to be more difficult and professional criminals.

One attempt at resolving the dilemma has been made in the recent Federal Corrections Agency task force report, in which the hints in Ouimet, the concerns in the "Perspectives" paper and the findings of the Law Reform Commission are built upon, and the conclusion reached that the "treatment" model in favour since 1938 or before should be shelved in favour of a "correctional opportunities" model. This model would recognize that no one who does not want to be rehabilitated can be rehabilitated, and replaces the assumption that corrections can "cure" the offender by a program of "treatment" with the assumption that corrections can only provide opportunities, an environment, in which offenders who wish to change their behaviour and attitudes can be given incentives requiring them to make increasingly responsible, and always accountable, choices. This shift, argues the report, allows corrections to be rid of the unrealistic public expectation that it can "magically" transform individuals, an expectation all the more unattainable when the trend is to keep out of prisons those who are most "rehabilitatable" in the traditional sense.

That this shift in goals will be controversial is undoubted. That it provides a thoughtful approach to a difficult problem is surely to be welcomed. For there is a fundamental problem at issue, as experience over almost four decades has taught us, and the assistance of groups and individuals in society in defining solutions to the problem is essential. That is why the report of the sub-committee on Penitentiaries is anticipated with such eagerness. It represents the most recent in a long series of attempts to come to grips with these difficult and vital issues of freedom and justice in society generally, and within corrections in particular.

1. ARCHAMBAULT REPORT (1938)

Since the Legislature of Upper Canada commissioned a report recommending the construction of Kingston Penitentiary in 1832, studies, investigations and inquiries on prisons and corrections in Canada have come thick and fast. Just 17 years later, in 1849, another committee was asked to look into conditions at the Kingston prison, and, in 1876, a federal commission investigated prison labour and the remuneration of officers.

The "1913 Commission" and the "1920 Committee" were two more major attempts to come to grips with the continuing questions of philosophy and management which plagued the prison system, and they were the forerunners of the Archambault Commission, which was appointed in 1936 "to inquire into and report on the penal system of Canada...." This report, published in 1938, was a landmark in Canadian corrections, making 88 recommendations in the course of its 364 pages of text. Much of its philosophy remains influential today.

The Commissioners admitted early in their Report that "the difficulty in laying down principles on penology is increased by the fact that it is still the subject of profound and scientific inquiry, and of much controversy, and that, at the present time, many of its problems appear to be practically insoluble." (pp 7-8)

Despite this difficulty, the Archambault Report did lay down some principles, arguing that "we are on safe ground in stating that no system can be of any value if it does not contain, as its fundamental basis, the protection of society". (p.8)

Furthermore, "in seeking this fundamental basis, the following principles should be observed:

I. means should be devised, and adequate policies adopted, which would tend to prevent crimes from being committed;

II. a system should be evolved, and put into force, which would prevent the repetition of crime, bring about the reformation and rehabilitation of those who have committed crimes, and take care of those who have been released from prisons;

III. measures should be enacted that would debar habitual criminals from the opportunity to continue the commission of crimes". (p.8)

This emphasis on prevention and rehabilitation, and this concern about what to do with "habitual" criminals, has echoed down through the years, and has found approval and repetition, as a statement of principle, in several reports since 1938. As will be seen, however, it was one thing to state the aim, quite another to develop the policies to accomplish it. And an examination of what this repeated frustration led to in subsequent years, and subsequent reports, tells us some interesting things about corrections.

Speaking of rehabilitation, the Archambault Commissioners went all the way back to the 1851 and 1869 Canadian legislation in an attempt to demonstrate the state's self-acknowledged responsibility to ensure that inmates released from prison are not worse than when they entered it. They also make a common sense argument for rehabilitation, an argument which is often heard today. "Entirely apart from humanitarian grounds," they argued, "and from a purely economic point of view, and for the eventual benefit of society, the task of the prison should be, not merely the temporary protection of society through the incarceration of captured offenders, but the transformation of reformable criminals into law-abiding citizens, and the prevention of those who are accidental or occasional criminals from becoming habitual offenders." (9)

The Commissioners observed that this responsibility to reform and rehabilitate, although recognized for nearly a century, had not been effectively carried out, and their recommendations were designed to make up for this deficiency.

Their diagnosis of the ills of the penal system revealed an underlying optimism that the system was curable, its maladies identifiable, and that specific remedies could be prescribed.

Firstly, Archambault submitted the management of the penal system to a scathing indictment. Many of the

problems which had befallen the system since 1932, they found, were directly traceable to the Superintendent of Penitentiaries, who has been appointed in that year. Among other faults, the Superintendent was "arrogant" and "neglectful", he employed "extreme dictatorial methods" and "displayed a callous attitude and a clear neglect of duty." His annual reports to the Minister of Justice had been "gravely misleading in important matters affecting penitentiary management." (pp 26, 27, 46, 49)

In a system containing only seven institutions, the Superintendent insisted on exercising "a centralized control of minor and even trivial matters of administration in individual penitentiaries", thus "destroying the authority, the power of initiative, and the effectiveness of the wardens and inspectors." (26) The staff was subject to arbitrary and unexplained dismissal, and, in fact, 303 of the 767 staff in the service in 1932 had been released five years later. (38)

So, if one major cause of the malaise in the system was the man at the top, the solution was evident and simple, and the Archambault Commissioners recommended the "immediate retirement" of the Superintendent for the "good management of the penitentiary service." (51)

Secondly, there was a series of specific policies which could be implemented in the effort to have the penitentiary system fulfill its mandate of correction. If there was insufficient trade training and satisfying work, if there was an unsatisfactory education regime within the system, if there was inadequate recreation in order to offset the depressing effects of too much cell-time, all of these programs could be improved, and the systems then in effect in the United Kingdom were seen by the Commissioners as providing an excellent example.

If the classification of inmates was done with "very little intelligence or effectiveness" (104) despite repeated stress on its vital role in regulations made in 1889, and reports made in 1909, 1913, 1920 and 1933, then principles for classification could be outlined, and (again) the British practice emulated. Insane prisoners should not be in prison, habitual offenders should be kept apart from the rest in a separate institution, those under 23 should be given special attention, apart from older inmates, the

mentally deficient should be segregated and treated, intractable and incorrigible inmates should be segregated in one institution so as not to adversely affect the rest. As for inmates who fell into none of these categories, they should be classified on the basis of their previous record, their social habits, their physical condition, their education, and their training for future employment. (105)

The Commissioners were concerned about the growing crime rate, the increasing recidivism rate and the 20 more or less serious disturbances which had taken place in institutions since 1926 (16 of them since 1932). This record, and especially, the recidivism rate, demonstrated that the system was neither reforming the inmate nor protecting society. But here again, Archambault believed a solution was at hand, and here again the British system offered a model. Recidivism was the result of five, correctable, faults: the absence of an adult probation system, the failure to properly emphasize reformation, inadequate staff training for other than "mere custodial duties" and the antagonistic attitude of society toward the ex-offender, and the jailing of young offenders alongside "degenerate and experienced criminals." (217)

Reforms in all of these areas were recommended. The penal system, jurisdictionally divided between the provincial and federal governments, should come under one, central authority, in Ottawa. "There should be a thorough and complete revision of the penitentiary rules and regulations based on the principles contained in this report, with special regard to (a) the protection of society, (b) the safe custody of inmates, (c) strict but humane discipline and (d) the reformation and rehabilitation of prisoners." (355) With regard to staff, there should be a "complete reconstruction of personnel on entirely new lines." Training standards should be raised to the British level (or that of the RCMP), salaries should go up, arbitrary hiring (and firing) should be eliminated, and university students should be recruited in an attempt to improve morale and attitude of staff in accordance with the British system (where it was reported that 12,000 applicants went after 120 available posts). Within the institutions, "wardens should be reinvested with the authority of executive management of the penitentiaries in conformity with the provisions of the Penitentiary Act." (354)

Rights of staff and inmate alike should be upgraded, the former against arbitrary dismissal, the latter against arbitrary punishment. A Board of Visitors should be appointed by the central Prison Commission and should report to it, as in Britain, in order "to eliminate the veil of secrecy and provide the necessary outlet for prisoners' grievances." (340)

In summary, the Archambault Commission was asked to look at a prison system they found not to be working. They were confident, however, in recommending specific measures which they felt would enable that system - a victim of mismanagement - to fulfill its acknowledged goals. The program examples were available, in use in Great Britain, and could be imported and applied to the Canadian system. Insufficient attention had been paid to rehabilitation, and evidence of the Commissioners' optimism that rehabilitation was possible is contained throughout the Report. Speaking of young offenders in particular, the Report recommended that those sent to prison should be incarcerated for at least three years, since any sentence shorter than that would not provide a "sufficient term to ensure proper treatment." (197)

2. FAUTEUX REPORT (1956)

While many of the Archambault Commission's recommendations had been adopted, by December of 1953, the government felt the need for another investigation of the correctional system. It appointed the Fauteux Commission to "inquire into the principles and procedures followed in the Remission Service of the Department of Justice," in connection with the exercise of clemency. The Commissioners, however, put a very broad interpretation on their mandate, and, in April 1956, submitted a 90 page report containing 44 recommendations on everything from the philosophy of corrections, to the goals of the court at one end of the system right through to parole at the other.

In citing the seven reports on penal management which had been commissioned in Canada between 1933 and 1954 the Commissioners did not seem to be overly alarmed at any

lack of progress. Indeed, they appeared to take Archambault as their starting point, and worked from there to push Canada further along the fairly well-lighted path to reform. Fauteux and his colleagues, like Archambault and his colleagues, travelled widely in Canada and abroad, and found "a remarkable uniformity of informed opinion throughout the country." (3)

They soon settled on a basic definition of the goal of the system - "correction" - which is the "total process by which society attempts to correct the anti-social attitudes or behaviour of the individual" by means of the punishment, treatment, reformation and rehabilitation of the offender. (5)

Like the Archambault Commissioners before them, the Fauteux Commission were optimistic about their ability to define the principles of the system, and to find (mostly in Britain) examples of how the goals could be achieved. They acknowledged that some programs may not be easily importable across national or cultural boundaries, but were nonetheless confident that "there are other features...based on sound principles that are applicable to any country, including Canada." (87) These sound principles were eight in number, and consisted in the need for:

"a) a high degree of integration between all parts of the correctional system;
b) a well developed and extensive system of adult probation;
c) a concentration of effort on treatment by way of training, rather than the mere imposition of punishment....;
d) specialization of institutions and...methods of treatment, with a concentration of professional staff in the areas where it is most needed;
e) the development of small, open, minimum security institutions;
f) a planned policy of recruitment and training of professional staff, and;
g) a willingness to make full-scale experiments in all phases of the correctional system." (87)

Punishment still had its place, but there was no room for punishment based on retribution. Instead, punishment was to perform two tasks: the reformation of the offender and the deterrence of others. The offender was to be reformed by either or both of the following

methods: changing his outlook on himself, his life, and society; and/or making him fearful of further punishment.

While revenge as the basis for punishment is still accepted "in some measure in the public mind," there has been quite a turnabout in public thinking, and "those who have spent a lifetime in prisoner rehabilitation work have informed us that public opinion has never been more understanding than it is at present. The people of Canada are beginning to realize that the penal reforms of the past decade in this country have been worthwhile." (78) Indeed, "society appears to realize that if it is to be protected to the greatest possible extent, an increasing number of offenders must receive such treatment in the institutions as will promote their reformation and rehabilitation. Such a process assists the offender to resume a normal, self-directed, law-abiding life in free society." (46)

The Fauteux Commissioners wanted it understood that "in general terms, it may be said that persons who violate the criminal law are persons who have been 'damaged' in life process of growing up." (71) Hence the need for treatment.

But we must be wary of the penal system as well, because experience has taught us that "something additional happens to them in the penal institutions that sears them and leaves upon them, ultimately, the stigma of 'ex-convict.'" These persons are "doubly damaged". (71)

Having laid this foundation, the Commissioners moved to an examination of the edifice - the correctional system - which then rested upon it. They found some structural flaws, some unfinished wings, and many repairable cracks.

The system, jerry-built and split as it was - and is - between levels of government, may have been unsightly, but the Commissioners did not recommend its complete demolition and replacement by a new, modern, unified federal system, as did Archambault. They did suggest, however, that the provinces be moved off into a smaller section, and that

the federal government, presently responsible for inmates serving sentences of two years or more, be charged with all those serving six months or more.

Prisons would not simply be for custody ("human storage") but should be places of "worthwhile and creative activity," with programs focussing on the "attempt to change the basic behaviour attitudes and patterns of the inmate." (47)

Since there was to be such emphasis on treatment within the prison, it followed that there should be more specialized and flexible institutions, greatly extended vocational training facilities, pre-release and after-care programs and, above all, more and better-trained professional staff to make all these programs work. With regard to staff training, the Fauteux Report noted that Archambault's recommendations had not been implemented, and stressed again the need for professional, pre-service training at the university level in such fields as social work, psychology and psychiatry, criminology and law. They recommended a federal government-sponsored conference to prod university officials in this direction, and federal and provincial funding as a follow-up. (85-6)

Pre-release and parole, then handled by the Remission Service, should be recognized as an integral part of the rehabilitative process, and an independent, quasi-judicial Parole Board was recommended. For purposes of integration, a consolidation of the various legislative and administrative provisions should be undertaken, certainly at the federal level at least.

In summary, the Fauteux Report seemed to be basically optimistic and hopeful. It perceived a widespread consensus among experts, and a growing support among the public at large, for a series of principles focussing on treatment and rehabilitation. It thought these principles were achievable, and suggested the application of programs then operating in other countries to the Canadian system. In short, it agreed with the basic thrust of Archambault some twenty years earlier, and, while pleased that some progress had been made in implementing the Archambault philosophy, pressed for more speedy and more thorough application of those fundamental principles.

While recognizing as inevitable the continuing presence of crime and recidivism, Fauteux concluded on a hopeful note: "The failure of a relatively few offenders to respond to the hopes of the courts, the penal institutions, the Remission Service, and after-care agencies affords no justification for a failure by society to attempt to salvage, reform and rehabilitate the majority of those who have offended the laws of the country. In the achievement of such a purpose we think that our recommendations, if implemented, will be of assistance." (90)

3. OUIMET REPORT (1969)

If the Archambault and Fauteux Reports shared a sense of optimism about the prospects for rehabilitation within the prison system, the Ouimet Report showed the first signs of doubt about its possibility. Many of the recommendations of the previous reports had been implemented, in full or in part, and some problems associated with their implementation had begun to surface. It was not simply a matter of taking working programs from Britain and other countries and applying them to Canada, as Archambault and Fauteux seemed to assume.

Furthermore, there had begun to appear some cracks in the facade of expert consensus on goals, and growing public acceptance of rehabilitation, which had been perceived in the 1930s and 1950s. Where Fauteux noted with approval evidence of growing public support for the reforms then in the process of being implemented, Ouimet was forced to express his doubt that "members of the public are fully aware of the issues involved or fully accept modern concepts and services in law enforcement, sentencing and corrections." (32) Where Fauteux had expressed surprise at the extent of expert consensus on principles, Ouimet remarked on the "considerable disagreement among the authorities we consulted as to both the appropriate theoretical base for prison programs and program details" (316), and concluded that "one of the problems facing the corrections field in Canada today is the conflict as to the aims in dealing with convicted offenders. This is paralleled by a disagreement over the purpose of the criminal law itself." (274)

Despite these dark hints, however, Ouimet was very much in the tradition of the two major reports which preceded it. Set up in June 1965 "to study the broad field of corrections, in its widest sense, from the initial investigation of an offence through to the final discharge of a prisoner from imprisonment or parole..." and to "recommend, as conclusions are reached, what changes, if any, should be made in the law and practice relating to these matters in order to better assure the protection of the individual and, where possible his rehabilitation, having in mind always adequate protection for the community" (1), the Ouimet Commission submitted its report in March 1969. The report was 432 pages long and contained 118 recommendations.

Like Archambault, the Ouimet Commission saw the basic purpose of criminal justice as the "protection of all members of society, including the offender himself, from seriously harmful and dangerous conduct." This first principle was followed by seven others. The Committee on Corrections agreed that the "basic purposes of criminal law should be carried out with no more interference with the freedom of individuals than is necessary", that "recognition of the innocent must be assured by proper protection at all stages of the criminal process", that "no conduct should be defined as criminal unless it represents a serious threat to society, and unless the act cannot be dealt with through other social or legal means", that "criminal justice can protect society only by the deterrent effect of sanctions, social rehabilitation, and control over the offender", that "law enforcement, judicial and correctional processes should form an inter-related sequence", that "discretion in the application of criminal law should be allowed at each step in the process: arrest, prosecution, conviction, sentence, and corrections", and that "the criminal process, including the correctional process, must command the respect and support of the public according to prevailing concepts of fairness and justice, and that it should, as far as possible, command the respect of the offender." (pp 11-18)

From this it can be seen that the Ouimet Commission was as concerned with the limitations of the law, as it was with the scope of the law. The criminal law was a powerful force, with widespread effects, not all of them beneficial. Because of this, the sanction of criminal law should "be applied only as an unavoidable necessity." (13)

Rehabilitation was, in the end, the best means of affording protection to society, but "it cannot be assumed that such treatment methods are necessarily more humane and more effective in practice than moderate penalties." (15) Thus those who, in following the recommendations of Archambault, would sentence youthful offenders to a minimum term of three years in order to provide sufficient time for treatment to be carried out, or who would follow Fauteux in suggesting that no sentence under six months was of sufficient length to enable treatment programs to have their effect, had better keep in mind the principle that these rehabilitation measures should not go beyond the bounds of justice, that they should not be more punitive than other, explicitly recognized "punishments".

The system must be rationalized, and recognition must be given to the fact that it is a system. Previously, the criminal law aimed at retribution, deterrence, segregation, denunciation of evil and support for moral principles, whereas corrections aimed at rehabilitation. This split in purpose masked the overall, jointly shared aim of protection of society, and recognition of that fundamental goal requires that the "necessity for (the law enforcement, judicial and correctional) processes to work in harmony will be accepted." (16)

This was not to say that punishment was not justified, in some cases, as a sanction for those persons "so dangerous as to justify their segregation from the community for periods up to the whole of their lives." (18) But, "where punishment is imposed for deterrence reasons, penal facilities must be made available. If correction rather than punishment is to be the goal, then both institutional and community-based correctional agencies must be created and maintained." (19)

Having traced some "impressive" progress in the field since Archambault and Fauteux, the Ouimet Committee still felt it necessary to say: "The greatest obstacles to the development of a unified system of criminal law and corrections have been the absence, to date, of any clearly articulated sentencing policy and the inadequacy of the services and facilities available to a judge responsible for the key operation in the whole process." In order to help along this process of articulating a sentencing policy, the Committee summarized its view: "segregate the dangerous, deter and restrain the rationally motivated professional criminal, deal as constructively as possible with every offender as the circumstances of the case permit, release the harmless, imprison the casual offender not committed to a criminal career only where no other disposition is appropriate.

In every disposition the possibility of rehabilitation should be taken into account." (185) The Committee recommended the establishment of a sentencing code, that reasons for specific sentences be given by the Court, that absolute and conditional discharges be available, that imprisonment not be used for inability to pay fines, that intermittent sentences be established, that corporal punishment be abolished, that more use be made of pre-sentence reports, and that judges hold sentencing conferences and visit penal institutions on a regular basis.

Where Archambault and Fauteux took pains to assure the reader that rehabilitation and correction were, and had been for a century, central purposes of the prison system, Ouimet was not so sure that acceptance of this fact was widespread enough. "There can be little doubt that the emphasis on correction, rather than punishment, is of comparatively recent origin. Any attempt to assess early positions on sentencing policy can only result in the conclusion that it was vindictive, retributive, or at the best, negative." (186)

Now, they stressed, the purposes of the prison system should be seen to be twofold: 1) to carry out the sentence of the court and to hold the inmate in custody, and 2) to take "whatever course of action is calculated to return the individual offender permanently to the normal community as a contributing member of society, according to the limits of sentence, law, and professional practice, and according to guides." The guides to be applied again stressed the nagging doubt that prison was not a particularly good place for rehabilitation to be carried out: the inmate should be rehabilitated within the community unless there were valid reasons to the contrary. Situations which would require the imprisonment of the offender would be limited to those where "the safety and security of the community is seriously threatened by the presence of the offender, where the offender himself needs help to control dangerous impulses, or where sanctions are needed to support the community treatment services such as probation or parole." (274, 307, 278)

Further, the Committee noted "mounting evidence that treatment in the community may frequently be much more effective" than the old philosophy that prisons (more exactly, "penitentiaries" existed in "order to provide an opportunity for reform", for penitence. (187)

A good example of the adjustments in viewpoint made necessary by experience is afforded by a brief look at the question of the dangerous offender. Where Archambault had recommended indefinite sentences for "habitual" criminals, and where Fauteux had generally approved - while expressing some concern about the way the law was being applied - Ouimet saw the need to repeal the habitual and dangerous sexual offender legislation and replace it with provisions dealing with "dangerous" offenders. Thus the experience gained in the three decades since Archambault had proven the problem to be much more difficult than had originally been foreseen.

Since the continued existence of prisons will remain an unfortunate necessity, though, we must look to the treatment and training programs and facilities which should be put into them. For all but the most dangerous and incorrigible inmates, prisons should be small, specialized, community-centered, and professionally-staffed institutions resembling hostels or camps. (308) Prison populations should be kept small, both within individual institutions, and in the system as a whole. Adequate classification techniques and facilities are a priority. Program involvement and social service counselling should be introduced on a much wider scale to reduce tensions. This would have the additional benefit of reducing the desire to escape.

All in all, "treatment and training are closely related and, together, they constitute a series of progressive re-educative experiences for the inmate which promote his identification with non-criminal society and with goals sanctioned by the community." (316) In fact, "a prison should be an educational centre in the widest sense of the word, in which not only the inmates but the staff are being constantly re-educated." (321)

When it came to filling in the details of these general principles, however, the Committee found itself back in the dilemma of unresolved conflicts and unarticulated goals. After expressing general approval of such programs as education upgrading, prison industries, pay for inmates, work release and home leaves, and after recommending much more community program involvement and after-care, the Ouimet report argued that "it is not the function of this Committee to set out in detail what constitutes a good prison treatment and training program. Indeed, there was considerable disagreement among the authorities we consulted as to both the appropriate theoretical base for prison programs and program details." (316)

If staff were to play the crucial role required by the "therapeutic community approach", then training of a very sophisticated and professional nature was required, but, here again, "part of the difficulty in staff development for the correctional services is the lack of a clear-cut statement of the aims and purposes of many of these services. This is particularly apt to happen in prisons, where the conflict between custody and treatment is unresolved." (321, 416)

With these conflicts in mind, the Committee recommended that top priority be given the development of an integrated and comprehensive program, based on good classification and a clearly-stated theoretical position, and subject to routine research and testing, and that adequate treatment facilities be provided to carry out that program. (318) Speaking of staff development, Ouimet recommended that the required training start at the senior, not the junior levels, that staff be trained in a number of settings within the correctional service in order to get a broad view, and that special administrative training for correctional services be set up within the universities.

For the non-professional staff, too, continuous trainir is important and custodial staff must be trained "to the level where it carries the same competence, status and self-confidence as the instructors and maintenance supervisors" who work to a greater or lesser degree with the inmates directly. Salaries should be adjusted upward to reflect this increasing competence, a training cadre should be installed at every institution, working conditions should be improved to make a correctional career competitive with other career opportunities. The Ouimet Report repeated Fauteux's recommendation that universities be encouraged, and financially assisted, to develop more correctionally-oriented courses for future professionals.

Fianlly, Ouimet saw a great need for much more research, especially since the research so far carried out had been effective in debunking long-standing assumptions about the value of traditional approaches, but had done precious little to suggest clinical techniques to replace what it had discredited. (426)

In summary, Ouimet marked a change in tone, if not in general philosophy. Where Archambault and Fauteux had seen a consensus on goals, and a failure in practice, and where they had suggested specific, thought-to-be workable measures to fulfill those goals, Ouimet noted a disappointment over the fact that some of the implemented suggestions of the earlier

reports had not proved to be the panaceas they were thought to be. This failure had shaken the confidence of certain of the experts in the field, and Ouimet saw a consequent lack of consensus on goals. Despite this, Ouimet shared most of the same assumptions expressed in the earlier reports, and despite its growing doubt about the efficacy of prisons as treatment and rehabilitation centres, it pressed on with suggestions to carry the philosophy of rehabilitation within the walls to its logical conclusion.

4. MOHR REPORT (1971)

The Mohr committee was asked, in February of 1971, to "determine the needs of inmates that the working group define as maximum security, determine the programs and staffing requirements necessary to satisfy these needs, and finally to determine the ideal institutional design and locations to facilitate implementation of these programs." (7)

This working group, then, was given a fairly limited and specialized job to do, and in their November 1971 report, their 22 recommendations reflected this mandate. Within this context, however, the main thrust of the group's report reflected the overall philosophy of the three major studies of the corrections system commissioned in Canada since 1936.

The Mohr committee agreed that "the primary purpose of prisons has been to carry out the sentence of the court which demanded that the offender be kept in safe custody until his sentence was satisfied." (9) Given this first priority, however, the emphasis within the walls of the maximum institutions had to be rehabilitation, "since the satisfactory return of the offender to the community should be the final outcome, implying the ability to live with a minimum of external controls...." (10)

These basic assumptions dictated the framework within which the Mohr committee could develop principles of institutional design, staffing, and program. They began by defining maximum security inmates as those who 1.a) actively try to escape and will be dangerous to the public if they do, 1.b), those who are actually or potentially dangerous to staff, to other program participants or to other inmates, and 2. those who are not primarily psychiatric cases. (10) Having said this, the Committee admitted that the problem of classification of inmates--key to the whole system--was one which they had grappled with at length, and, ultimately, unsuccessfully.

Compounding the problem within the institutions was the fact that the prison system had no guidelines from the courts as to the reasons a particular sentence was given a particular offender, and, like Ouimet, they urged that the Court "should set out concisely the aim--retribution, incapacitation, deterrence or rehabilitation--that guided the Court in its sentence." (13)

From this it can be seen that the Mohr Committee generally accepted the fundamental statement of principles outlined in reports from Archambault to Ouimet. In making their detailed recommendations as to the functioning of their "ideal" maximum security institutions, they pushed the assumptions to their logical conclusions.

Maximum security institutions should be run in such a way that inmates receive the "greatest possible motivation to work toward transfer to medium, and high on the list of motivations is the availability of release to the community on parole when he is ready, rather than when some arbitrary time period has been served." (14) There is a fundamental contradiction within the philosophy and goal of the maximum security institution, and this poses the stiffest of challenges to the administrators and staff of such institutions. If maximum security inmates are those who have the most difficulty controlling themselves and their own anti-social impulses in the first place, the imposition of maximum external controls in the prison is not helpful in correcting that failing. "Unfortunately, a paradox develops since the imposition of maximum external controls tends to diminish the development of internal ones on the part of the inmate. Almost every consideration of program and design had to be tested in terms of this polarity." (14)

The main thrust of staff and program, then, must be to work with the inmate through "therapeutic community" techniques, in order to help the inmate develop his "concept of self-worth and personal capacity...in his changing role in the relationship to other inmates and society." (15) While, to be sure, community opportunities for maximum security inmates will not be plentiful, the role of the community is essential, and incentives and motivations must be aimed at moving the inmate through the system by gradually reducing external controls and gradually increasing internal controls, in order to develop his ability to live in society upon release. "The specific techniques available (to carry out this program), according to individual needs, would include individual, group and behaviour therapy." (16)

For programs of this sort to be effective, the stress on security should be on perimeter security, not rigid security within the walls. The Mohr Committee therefore drew a distinction between "static" and "dynamic" security, with the stress being put on making the institutions "escape proof" on the perimeter, and as free as possible on the inside.

Since programs, treatment, "therapy" are key to the success of the whole approach, staff is of vital importance. "Competent staff will work effectively in inferior facilities; incompetent staff will fail even in the midst of abundant facilities." (18) The Committee members saw their suggestions as differing markedly from the traditional approach, and recommended accordingly that staff in their ideal institution "should be selected on a different basis and will require a different kind of training." (18) The maximum size of the institution should be 144 inmates, divided into living unit groups not to exceed 12 in number. Each living unit would have a staff assigned to work closely, personally, individually with it in order to carry out the program.

In all this, "the importance of the Director cannot be overstressed, and the Penitentiary Service should give major attention to developing potential directors for the future. This can best be accomplished by making the Service truly a career service. There should be a system of routine assessments of senior staff with the purpose of upgrading competence. There should also be career diversification, with institutional staff having an opportunity for employment or training in other situations, such as probation or parole or universities." (18) Salaries should go up all down the line, and all positions should be widely advertised and be made "open to the applicant who is best qualified." (18) In all these recommendations, Mohr was following, and elaborating, the recommendations made by Ouimet.

Further, staff should be divided into two groups, "one group being primarily responsible for security, the other primarily responsible for the living-unit program and other duties of a program nature." (19) The division between static and dynamic security has application here, and while "security remains an important responsibility of all staff", the "Security Officer" group would discharge their responsibility "through distant supervision and control", while the "Correctional Counsellor" would work "through direct contact and human relations." (20)

"Recruitment for new correctional officers should be at the highest requirement for the two tasks in matters such as education and personality. Depending on his individual performance and preferences, the recruit would go into one stream or the other, and transfer on either a long-term or short-term basis would be possible." (20) The Committee stressed the need for flexibility in program assignment of these necessarily "highly sophisticated staff", and urged recognition of this need on the PSAC and the Public Service Commission alike.

The institutions, small, sophisticated, and staffed by highly trained professionals, should be located as near as possible to major urban centres, where most of the criminals come from, and where program and staff facilities are more available. The importance attached to staff by the Committee is revealed by the fact that six of their 22 recommendations dealt specifically with the subject.

5. SWACKHAMER REPORT (1972)

The Swackhamer Committee was assigned the task of reporting on the specific causes and effects of the "disturbance: at Kingston Penitentiary and Millhaven Penitentiary between April 14-18, 1971. Appointed just five days after the events, they submitted a 63 page report containing 55 recommendations, a year and a day later. Thus their study overlapped in time the work of the Mohr Committee, and, in putting a "liberal interpretation" on their terms of reference, they came to many of the same conclusions as did Mohr. They dealt with the specific questions they were asked, then moved on to consider the more basic questions they found relevant, in order to "assist the Canadian Penitentiary Service in lessening the frequency and severity of penitentiary disturbances and devising techniques for management, control and settlement of such disturbances when they do arise." (4)

What they found in the course of their exhaustive investigation was that Kingston Penitentiary authorities had placed too much stress on custody, not nearly enough on rehabilitation, and that the penitentiary harboured small cliques and self-contained groups isolated one from the other to the extent that the "twin objectives" of security and treatment came to be regarded as "irreconcilable opposites." (36, 38)

"In the area of treatment and rehabilitation, there was at Kingston a serious 'communications gap' between custodial and non-custodial staff. This meant that the two essential service arms of the institution functioned in isolation one from the other." (40) In addition, "the polarization between inmates and custodial staff, between custodial staff and professional staff, led inevitable to the destruction of the program and deterioration in the life of the institution." (37)

As a result, "few suggestions that can be made for improvement for the life or programs inside the institution, or the security of the inmates and staff will be useful until this formidable obstacle, the apparent traditional schisms and divisions within the prison, are removed or ameliorated. One cannot propose realistically or embark upon any reasonable rehabilitation program if it is suspect or illegitimate in the eyes of certain groups, either administration or inmate, that live or work in the prison environment." (37)

The tragedy of all this, in the eyes of the Committee, is that "various studies indicate, and almost all senior staff who gave evidence agreed, that an aggressive rehabilitation program emphasizing all the potential opportunities of the prison situation effectively reduce the risks posed by custody and security. The so-called 'prison dilemma' created by the presumed inconsistent demands of security, custody and rehabilitation may, in fact, by an illusory dilemma." (42)

That this "dilemma" was allowed to disrupt the working of the institution to such an extent is indication of the fact that the philosophy and principles enunciated in reports from Archambault to Ouimet had not been carried out in practice, even if they were paid homage in theory. And Swackhamer did not question the validity of those principles. Far from it. The report urged that dedication to those principles be re-affirmed, that several un-implemented recommendations dating as far back as Archambault be put into practice, and that those recommendations implemented on paper or in theory be better implemented in practice.

This was essential because the need for custody, and the need for rehabilitation--the "twin objectives" of the penal institution as pointed out by Ouimet--were "each of equal authority and importance." But also, the need for custody and security must be viewed as a function of the rehabilitation program, not as a separate and contradictory goal.

In keeping with this fundamental re-statement of principle, Swackhamer made several observations and recommendations for improvement of the system. A more precise definition of authority and jurisdiction with respect to the duties and obligations of the Regional Director and his departments was seen to be necessary, since the lack of such definition had "led to a substantial degree of confusion in the minds of senior officers of the Penitentiary Service present in Kingston at the time of the disturbances." (11)

Even more importantly, an entire re-alignment of staff functions should be undertaken in order to achieve the twin goals of the Service. The over-emphasis on custody, indicated by the fact that the ratio of custody officers to inmates was triple that in the United States, must be corrected. To do this, the staff and role of what the Committee called a"department of Inmate Training" must be vastly upgraded. This department should have control over work, academic, recreational and social programs, and it should also be responsible for the control of matters "associated with discipline, inmate control, and maintenance of good order within the penitentiary building." (42) The department of custody, on the other hand, like Mohr's "security officers", should be responsible for keeping the inmates inside the institution--in short, for perimeter, or "static", security.

This organizational change would be aimed at ensuring that "internal security and maintenance of good order and discipline is viewed by staff and inmates alike as part of the treatment program, and, generally speaking, a therapeutic function." (43)

The central role of treatment requires professional staff, who in turn require "intensive, full-time training programs to provide an understanding of prison psychology and to equip them in the techniques of group counselling and staff-inmate interactions." (44) In saying this, Swackhammer endorsed Ouimet's contention that the prison be viewed as an "educational centre in the widest sense of the word for both inmates and staff."

The living unit approach was supported, regular staff meetings "of all ranks with full and frank discussion of

programs" were recommended, the abolition of staff uniforms was suggested, and regular refresher training courses urged. It was foreseen that many staff, presently performing custodial duties, could be suitable candidates for training and become inmate training officers.

In fact, "we are confident that if the maximum security prison is re-oriented with a correctional emphasis, it will be able to obtain the services of many persons who are strongly motivated by the desire for community service." (44)

With this highly-trained staff, improved programs focussing on work, academics, training, physical recreation, non-physical recreation and hobbies can help to "occupy the inmate's time positively and creatively - providing a useful adjunct to the rehabilitation program and reducing the tension which idleness, a sense of hopelessness, and the dehumanizing characteristics of life at Kingston Penitentiary frequently imposed." (60)

Inmate committees, public participation and Visitors' Committees (à la Archambault) should be established and given responsibilities. On this general subject, the Swackhamer report revived, and endorsed anew, several recommendations contained in the Ouimet and Archambault reports. On the subject of Visitors' Committees, however, they differed in detail, recommending that these groups not be charged with hearing appeals from matters of institutional discipline.

In summary, the Swackhamer report thoroughly endorsed the rehabilitative ideal within the walls of the institution, and traced the root causes of the Kingston riot to a failure to implement earlier proposals in this regard. This report seemed to return to the optimism of Archambault and Fauteux, and did not make mention of the doubts concerning the suitability of the prison as a rehabilitative milieu which were expressed, if fleetingly, in Ouimet.

6. THE CRIMINAL IN CANADIAN SOCIETY: A PERSPECTIVE

In December of 1973, the first federal-provincial ministerial conference on corrections in fifteen years was held in Ottawa. In preparation for that conference, the Solicitor General issued a discussion document offering a

"perspective" on corrections, an attempt to situate corrections within the overall framework of the criminal justice system. This report was not a specially-commissioned study of the system, such as Archambault, Fauteux or Ouimet, nor was it a response to a specific area of concern, such as Swackhamer or Mohr. But it does illuminate the thinking of the Ministry on some of the fundamental questions of principle concerning corrections in Canada.

In doing so, the perspective seemed very much in tune with the thinking of the Ouimet Report, published just four years earlier. "The criminal justice system," said the paper, "has one basic aim: to protect individuals and members of society by reducing the level and effects of crime and delinquency. This paper stresses the importance of the social and human value of the individual who comes into conflict with the laws of our society and the need to protect him, and society as a whole, by keeping him from falling into a life of crime. What this means is essentially that the first and most important function of the criminal justice system is to prevent individuals from entering into criminal activity. Second is the diversion of offenders from criminal careers prior to sententencing, third is the reduction in the level and seriousness of recurrent criminal activity." (Preface)

The paper, like Ouimet, stressed the importance of viewing the systems nature of the problem, and suggested that corrections, while essentially concerned with the third of these priorities, has something to contribute to the first two as well. "Correctional activity cannot be looked at in isolation from the total criminal justice system, of which it is an integral part." (4)

Furthermore, correctional authorities are called upon to deal "in large measure with offenders who appear to be entrenched in their commitment to criminal activity." (7) Indeed, the statistics on recidivism suggest that "the federal corrections process is the last resource in the criminal justice system and frequently comes into play only after the collective efforts of other agencies and jurisdictions have failed to divert the offender from criminal to socially acceptable activity." (18)

What this implies is that the job of corrections, as Ouimet had suggested, is a very tough one. In being asked to rehabilitate offenders, the correctional authority is being asked to do a job the other parts of society as a whole, and the criminal justice system in particular, had failed at. Also, since "keeping individuals out of criminal activity is the best way to reduce the level of activity in corrections", we must pay much greater attention to the issues of prevention and diversion than we have in the past. The criminal justice system is a powerful one, and the power must be constrained according to certain principles. Only the most serious acts should be codified as criminal, interference with freedom must be kept to the minimum necessary, discretion should be exercised at every stage, and the system must reflect prevailing concepts of fairness and justice to command the respect and the support of the public. (1) This formulation, as can readily be seen, follows the principles set out by Ouimet very closely.

In looking at sentencing, "the court must take into consideration the need to punish the offender to establish a deterrent that will discourage similar crimes; the need to protect society from the criminal through incarceration; the need to return a corrected individual to society; and the possibility of restitution to the victim." (28)

Like Ouimet, the paper had some questions about the purposes of sentencing, and whether incarceration is a suitable method of achieving some of those purposes. "Improving the effectiveness of sentencing will require a review within the criminal justice system of basic assumptions that impact upon the choice of sentencing alternatives, and a search for answers to many challenging questions. For example:

- In what ways can sentencing better contribute to the correction of the offender?
- Are custodial sentences necessarily more effective than fines or probation in keeping certain kinds of offenders from engaging in further criminal activities?
- Should restitution by the offender to the victim be used more often to replace or augment institutional punishment?

- Are current laws that deal with the habitual criminal, the dangerous sexual offender and the dangerous offender adequate to provide the necessary protection of society?" (28)

Having set out some of these concerns, the paper turned to a consideration of the specific job of corrections, the reduction of "the level and seriousness of recurrent criminal activity", and concluded that the fulfillment of this aim "will require the ongoing commitment of correctional authorities to four priority areas: necessary control, humane treatment, sound correctional programs and a strongly coordinated effort." (29)

Control and custody rank first, both because the job of corrections is to carry out the court's conscious decision "to suspend the full freedom of the individual for a definite period of time" and because you can't rehabilitate somebody who isn't there. (29) Like Ouimet, the report saw the humane treatment of the offender as the second priority of corrections. In third place as the provision of "appropriate correctional opportunities"--of rehabilitation. Again citing Ouimet, the report stated that "experience has shown that some offenders cannot be rehabilitated. However, most offenders appear to have the potential to be corrected, and actions to this end should be encouraged whenever possible. Even partial success with an offender--such as less frequent involvement in crime or the commission of less serious forms of crime--is an end worth pursuing." (29)

The report noted with approval the fact that "in the corrections field the past 15 years have been a period of expansion, experiment and change". New facilities, new institutional rehabilitation programs, the expanded use of parole and probation, and the doubling in the number of residential and community centres were mentioned.

But further advances should be pursued as well. With respect to control and custody, the report mentioned the Mohr and Swackhamer conclusions on static or perimeter security being emphasized to allow programs to function more effectively on the inside. Staff training and the living unit approach were also cited with approval in this connection.

With respect to humaneness, the report pressed for advances in classification techniques, while recognizing that the prediction of individual behaviour has been found to be "no simple task." (33) Still, acknowledgement of the principle that offenders are to be treated as members of society compels correctional authorities to "seek to curtail (inmates') freedom to the minimum degree necessary, and to respect their human dignity to the maximum degree possible." (32) Study must be made of the rights and responsibilities of inmates for this reason, and there is much controversy over the subject. Also, the role of the community in supporting the ex-offender is crucial to the success of treatment, and in pursuit of rehabilitation "correctional authorities should extend their work with the ex-offender beyond the corrections field, and begin to understand and cope with the problems he faces in employment situations and in the community generally." (34)

Like Swackhamer, the report viewed the objectives of control and rehabilitation as being complementary, not contradictory, although, unlike Swackhamer, it viewed custody as clearly outranking rehabilitation on the priority list, not as an "equal" in importance and authority. The importance of rehabilitation was easy to defend on simple grounds of common sense. Since 93% of inmates were on determinate sentences, and even some of the 7% on indeterminate sentences could expect to be released some day, it is obvious that "the correctional process must in large measure be directed towards getting the offender back into society as a responsible citizen, while complying with society's demands for protection, and ensuring that the offender is dealt with humanely." (34)

But, again, it should not be thought that this task is an easy one, one which can be fulfilled by the simple application of well-known techniques and programs. Just as Fauteux saw the offender as "damaged", the Report noted that most inmates have "personal deficiencies which make it difficult for them to function as responsible members of society." (35) For this reason, "institutional programs are tailored, where possible, to correct personal deficiencies and to anticipate the pressures in the individual, and reinforce him against them." (35) This is attempted through counselling, vocational training, alcohol and drug rehabilitation, psychological treatment, academic upgrading, work programs, and so on. But, like Ouimet, the Report sounded a note of caution, if not pessimism, about the prospects for success of this massive dedication to treatment. "These programs, in themselves, will not solve the problems of the offender. A true work environment is hard to maintain within an institution, and released offenders often do not use the job skills they have acquired. A true change in behaviour can in the end be achieved only by the individual himself. The primary purpose of the institutional program is, therefore, to provide an environment for encouraging behavioural change." (35)

While it is "urgent" that work continue on the development of these programs, and on specialized methods to meet the needs of young and young-adult offenders, female and native offenders, it should be recognized that "new correctional programs have... challenged institutional management. In the last five years, revolutionary concepts such as living units, therapeutic groups and separate psychiatric units have been introduced. Planning such programs is in itself a difficult taks, and introducing them into a chain-of-command organization is a considerable undertaking. Such concepts must be obtained to implement them effectively." (38)

In summary, the Report set out the thinking of the Ministry of the Solicitor General on corrections, and the role of corrections within the overall criminal justice system. The importance of recognizing the interrelatedness of the elements of the system was emphasized, and the need to greatly increase cooperative efforts both within the fragmented correctional system, and across jurisdictional boundaries, was stressed.

The tone of the report, which was not designed to offer recommendations as were other reports summarized here, seemed very close to that of Ouimet, both in stressing the need for more and better rehabilitative programs, and, at the same time, cautioning those who would believe that the success of rehabilitation programs was merely a matter of implementing existing programs and principles. While it did not overstress the point, the report hinted that some of the high hopes of earlier reports and recommendations in this regard may have been misplaced, and that the realization of those hopes was proving much more difficult to achieve than had been expected.

7. VANTOUR REPORT (1975)

One of a long line of specialized groups on particular matters ofconcern, the Vantour committee was asked in April 1975 to look at the question of dissociation, as raised by the First Annual Report of the Correctional Investigator, Inger Hansen. It made known its findings in the form of a 98 page report containing 57 recommendations, discussing the usefulness of dissociation as a means of protecting inmates, and the living conditions which existed in both types of dissociation from the point of view of humane treatment and the possible negative effects of prolonged isolation. Added to its terms of reference was a study of the use of administrative dissociation, used widely for the "good order and discipline" of the institution.

The committee visited 13 federal institutions and interviewed 150 staff and 216 inmates before presenting its report in December 1975. In the course of making many detailed recommendations in accordance with its terms of reference, the Vantour group noted that "new regulations alone cannot change the psychological milieu of the dissociation inmate. The philosophy of the Service and the attitudes of individual staff members are not necessarily affected by a change in the regulations." (17)

The report generally supported the need for dissociation, and found that it was not being abused. They expressed concern, however, at the "lack of any substantive rehabilitative or therapeutic value in the concept of segregation." This lack was important because "it must be recognized that almost all of these inmates will eventually be released from prison. This being the case, segregation as it presently exists is not practical. It further enhances the inmate's anti-social attitude and, in general, constitutes a self-fulfilling prophesy". (24) Thus the Vantour Report made the same argument made for rehabilitation in the penal system as a whole, and applied it to the dissociation sub-system. They carried this approach to their whole examination of dissociation, recommending gradual re-introduction of the dissociated inmate into the general prison population, just as prison inmates should be gradually re-integrated into "outside" society before outright release. They suggested that disciplinary hearings regarding dissociation should be chaired by outside, independent, chairpersons, just as other reports recommended improved grievance procedures, or the use of Visitor-Committees for the general inmate population.

Vantour noted that "disciplinary hearings are predominantly security-oriented with little input from classification staff", and suggested that "if the disposition is to be seen as part of a treatment plan and not simply as a punishment for the offence committed, the classification staff should have a greater involvement." (79)

For dissociation units, which the working group agreed would have to continue in existence, specialized staff should be trained and assigned on a full-time basis. This staff should have the benefit of "in-service training covering regulations and theory on social isolation and its effect." (34)

In summary, the report on dissociation fell very much in the main stream of other, more general, reports on corrections, in stressing rehabilitation and treatment, in demonstrating concern for the rights of those affected by decisions, and in stressing the vital importance of well-trained, specialized staff.

8. FARRIS REPORT (1976)

Another very specialized and specific inquiry, the Farris Commission was appointed to investigate "the particular events occurring between June 9th and June 11th, 1975 at the British Columbia Penitentiary." (10) These events concerned the taking of hostages, and the subsequent death of one of the hostages, in New Westminster.

Unlike the Swackhamer committee, however, the Farris Commission placed a very strict and limited construction on its terms of reference, not making the wide-ranging analysis and recommendations made by the committee assigned the task of investigating the Kingston Pen riot.

Even within this fairly narrowly constrained limit, however, Farris made some observations about the B.C. situation which echoed earlier findings about the system in general, and which pointed out that the problems identified in reports such as Swackhamer and Mohr had not been successfully resolved.

The Commission looked at the circumstances surrounding the incident and was forced to the depressing conclusion that, "with these conditions, namely a grossly inadequate physical plant, a largely untrained staff with excessive turnover, a lack of communication and cooperation between the security people and the classification people, an inmate population containing 80 to 90 extremely dangerous men, an inhumane way of controlling such dangerous offenders, it is inevitable that there will be incidents of a like nature to those under investigation." (56)

Again, the concern was with staff, not regulations. While they were talking specifically of the B.C. Pen situation--which was more severe than most in many respects--some of their observations with respect to staff were strikingly familiar. The formal training for correctional

staff, which everyone seemed to agree was vital to the success of a correctional system, was "almost impossible" to carry out in practice, because of the astronomical turnover rate. Classification officers, whose function in rehabilitation and treatment was mentioned through the years as crucial, were untrained before being thrust into the midst of the work situation. The three-week orientation training was, in practice, not carried out because the work backlog was such as to make it an unaffordable luxury.

Worse still, "there is a conflict between the correctional staff and the classification staff of the penitentiary", making it impossible for either group to discharge its responsibilities. (55)

The report came to no conclusions on these questions, and made no recommendations, saying simply that "investigation into the broader aspects of the operation of penal institution and needs for reform are not within the scope or resources of this Commission." (10)

In summary, the Farris Report, while not addressing overall questions of philosophy and purpose, and while not concerning itself with the system as a whole, pointed out clearly in its limited look at a particular incident the fact that the bold promise and optimistic assumptions made by earlier reports had, in practice, proved to be much more difficult to achieve than anyone had thought.

9. THE LAW REFORM COMMISSION (1976)

Ouimet, in 1969, had expressed the first doubts about the suitability of prison as a place for rehabilitation, while at the same time repeating, and elaborating, earlier statements of philosophy that rehabilitation was an essential goal of corrections--almost by definition.

As we saw, the Solicitor General's "perspectives" paper in 1973 elaborated on this change in emphasis, laying great stress on the importance of prevention and diversion, and seeing imprisonment as a sanction of last resort, an expression of the failure of these earlier, and preferable, approached to the protection of the public.

But nowhere was the doubt about the practical workability of rehabilitation in prison expressed more clearly than in the series of studies, working papers and reports issued by the Law Reform Commission.

Where Archambault, Fauteux and Ouimet were unanimous in stating the goals of the prison system as the "protection of society by way of deterrence, segregation and rehabilitation" (Ouimet, p. 189), and where they were agreed in placing ever-increasing stress on the need for rehabilitative and treatment programs in prison, and in rejecting "vengeance" as a valid reason for sentencing, the Law Reform Commission concluded that the only valid reasons for a sentence of incarceration were separation, denunciation, or a response to a wilful refusal to comply with other court-ordered sanctions. Rehabilitation as a goal of sentence was conspicuous by its absence.

And the reason it was not included was because "experience and research in the social sciences now make it difficult to accept with easy assurance the usual justification for imprisonment. Generally, it is difficult to show that prisons rehabilitate offenders or are more effective as a general deterrent than other sanctions." (Working Paper 11, p. 11)

While criminal law traditionally sought "to deter potential criminals and rehabilitate the actual offender, "unfortunately success is doubtful. Deterrence and reform are not wholly effective. Take deterrence. Some criminals are irrationally undeterrable, some just like to gamble, and some consider crime a worthwhile risk because the chance of being caught is slight. Above all, our society has too much respect for freedom and humanity to make deterrence really bite. Or take reform. It is hard to rehabilitate offenders without being sure what it is to habilitate them. And once again our respect for freedom and humanity rules out mind-altering techniques that operate mechanically and by clockwork-orange methods." (3)

To be sure, prisons will still be necessary. But the Commission wanted everyone to be clear that their necessity is "not because we expect that the offender will be reformed by this measure, not because such a measure will necessarily deter others from committing offences, but because there are cases in which the community has reached the limits of its tolerance." (Report on Sentences, pp. 2-3)

Prisons, like the criminal law itself, should be viewed as a last resort, it should be used with maximum restraint. If, unfortunately, some people must be sent to prison, it is important to remember that someday they will be released. But even this, traditional, argument for rehabilitation and treatment programs was approached shyly and from a different angle by the Law Reform Commission.

The fact of eventual release was not employed as a justification for elaborate, sophisticated "treatment" of offenders in the way often mentioned by other reports. Instead, the fact made it clear that conditions within prisons should impose the minimum restraints necessary, and should approximate as closely as possible the conditions in the community. Work was important, pay was important to enable the offender to support his family and accept responsibilities. A series of gradual steps to increase freedom is essential to facilitate the offender's successful return to the community.

But just as "it is important to remember that rehabilitation cannot be used as a primary reason for imposing imprisonment in the first place," so is it important to understand that "the timing of release and the transition from complete custody to lesser degrees of restricted freedom should ordinarily not be dependent on the offender's reaction to treatment but on his behaviour and acceptance of responsibilities." (Working Paper 11 - pp. 37-8)

The stress is on restraint, the emphasis is on finding other solutions than imprisonment whenever possible, the key is to engage the community which the offender is part of and to which he will eventually return.

10. FEDERAL CORRECTIONS AGENCY TASK FORCE REPORT (1977)

A small task force was appointed in the Fall of 1973 "to develop and implement an integrated Canadian Corrections Service, which would include the Canadian Penitentiary Service and the National Parole Service." The task force made known its views in a 121 page report published in March 1977, and interpreted its mandate as providing a "timely opportunity to examine in depth the traditional roles

and responsibilities of the Federal Government in corrections, to assess the basic assumptions, the underlying philosophy, principles and logic that provide the rationale for what we do." (iv)

The theme of the report reflects the results of a far-ranging consultational process, and represents what amounts to an attempt to come to grips with the problems identified by the Perspectives Paper of 1973, and the Law Reform Commission reports. The dilemma identified in those papers, and, really, since Ouimet in 1969, was faced squarely in the context of an analysis of trends which the task force undertook.

Looking at the situation which had evolved, and was evolving, the task force perceived "four major trends in society which already have and will continue to have an impact on corrections across Canada:

1. Growing public concern about crime and criminal justice;
2. Increasing public awareness about crime and criminal justice;
3. The growth of the crime rate;
4. Changes in society's views of crime." (4)

Elaborating, the report noted "clear signs that major segments of society are moving towards a renewal of emphasis on individual responsibility and on the rewards obtainable through self-discipline and adherence to the work ethic." (4-5) This had two ramifications for public attitudes towards crime and corrections:

"1. Society appears to be demanding sterner penalties for certain crimes to fulfil both punitive and deterrent functions, and
2. A growing desire for decriminalization of certain acts once regarded as crimes, to reflect changes in public attitudes, is evident." (10-11)

All this was going on within a general framework of priorities and concerns for corrections, which remained much the same as those enunciated by the Perspectives paper, as well as other reports. "Federal corrections must stress first and foremost the protection of the public, including the offender, from criminal conduct and the effects of crime. Within this context, progressive and humane policies must

be pursued, always provided that the risks to the public are minimal--and can be demonstrated as such. The need for good community relations will take on a greater importance in the years ahead, together with the need for an honest and comprehensive program of public education." (7)

These priorities, taken in conjunction with the public desire for sterner penalties for some, most serious crimes, and the simultaneous wish to decriminalize other, less serious behaviour, will likely lead to a "substantial increase in the relative numbers of difficult-to-handle offenders who will be incarcerated for long periods of time. This increased burden of incarceration will, of course, fall heavily on Federal Corrections." (13)

These trend lines also led the task force to project a growing community orientation, a demand for greater involvement on the part of the private sector, increased federal-provincial collaboration on corrections, and a recognition of the need for more effective manpower planning, training and development within corrections." (14)

If all of this sounds familiar in terms of the recommendations and analyses of reports stretching back to Archambault, the task force moved on to outline its belief in the need for a really fundamental shift in emphasis, a shift made necessary by the difficulties encountered over three decades of tough experience in attempting to implement the earlier stress on treatment. The goals of the system may not be so different insofar as they speak of the need to protect society, and of the requirement to return an offender to the community who is not worse than when he entered the system. But, within that shared framework, the task force saw the need for a fundamentally different perception of the role of corrections authorities.

In the past, the stress on rehabilitation made "the assumption that correctional practitioners are able to change or modify the personality of the offenders, which further assumes that criminal behaviour is somehow an expression of some underlying personality disturbance which requires extensive therapy and treatment before the criminal behaviour ceases." This set of assumptions is elsewhere referred to as the "treatment" or "medical" or "coerced cure" model.

But experience has not proven this assumption to be realistic. Indeed, "as a correctional goal, these claims have been challenged as being unrealistic, unsubstantiated and unattainable. Continued emphasis on rehabilitation as the recognized goal in corrections will tend to mislead the public as well as the offender regarding the intent, capacity and capability of corrections." (25-6)

What the task force proposes in place of this unrealistic model is one of "correctional opportunities", one of "facilitated change". "In order to meet the reality of today's correctional environment, Federal Corrections must provide correctional opportunities, opportunities designed to assist the offender in the development of daily living skills, confidence to cope with his personal problems and social environment and the capacity to adopt more acceptable conduct norms. The opportunities principle is based on the assumption that the offender is ultimately responsible for his behaviour." (30-1) As can readily be seen, this approach ties in with the task force's perception in society as a whole of a "renewal of emphasis on individual responsibility and...self-discipline...."

The Program Opportunities Model of corrections does three things: it makes the offender responsible for changing his own conduct, it provides Federal Corrections with a realistic goal rather than an unattainable goal of changing the offender's behaviour, and it does not lead the public to believe that Federal Corrections can resolve the problem of crime. (77)

Having restructured our thinking as to the proper role of corrections, we can, following the task force's reasoning, identify six basic principles and a like number of objectives for federal corrections:

PRINCIPLES

I	The offender is ultimately responsible for his criminal behaviour.
II	The sentence of the court constitutes the punishment.
III	The community is a responsible participant in the correctional process.
IV	Federal Corrections is responsible for the provision of an environment with appropriate measures of security, conducive to active participation in program opportunities.

V Federal Corrections is responsible for the provision of adequate procedural safeguards designed to protect the rights of the offender.

VI The offender is responsible for earning and maintaining his privileges.

OBJECTIVES

I To manage and administer the sentence imposed by the court.

II To confine and control the offender for that period of time designated by the court.

III To provide program opportunities designed to assist the offender in developing and adopting more acceptable conduct norms.

IV To manage and control the reintegration of the offender into the community.

V To promote public awareness, understanding and acceptance of programs and activities within Federal Corrections.

VI To promote and contribute to the development of an effective criminal justice system in Canada (40)

The model has, of course, ramifications for the organization and management of the corrections system, and the task force goes into some detail in outlining these ramifications. The system must be more and better integrated. The emphasis in the management of the Canadian Corrections Service must be on:

- human resources management
- a sound base of information, relying on sophisticated computer technology
- a structure which clearly delineates roles, authority and responsibility
- a management philosophy or style which includes diversity and innovation, yet where necessary (e.g. security) stresses disciplined control." (111)

Federal corrections must maintain a sensitive balance between essential restrictions of freedom required by the sentence of the court and the need to protect the public, and, accessibility to program opportunities." (55) Further, it is the responsibility of Federal Corrections "to provide opportunities which will allow the offender to demonstrate increasing responsibility through exercising his ability to choose." (56)

The community has a key role to play, and the institution and community must be viewed as two parts of the same continuum, and as sharing a common purpose. Both staff and offender must share, from the very beginning, in the planning of how the sentence will be served, and a "package" approach is favoured, involving work, training, education, privileges, community release and measures of control. (64) This principle of "shared responsibility" involves the offender in the plan and makes him accountable for its fulfillment, while making Federal Corrections accountable for providing the necessary resources for the plan. (65)

The shift from "counselling" to "management" skills, while principally a shift in degree rather than kind, is in accordance with the shift in emphasis from "treatment" to "opportunities", and requires that staff train and develop the living-unit officers responsible for the actual case work, that they monitor the offender's total performance in carrying out the program plans, that they develop community resources and provide accountability for their involvement, and that they communicate with police, courts, and both the public and private sectors of the community. (70)

The opportunities provided must be diversified and relevant to today's society, while also being in accordance with the choices of the offender and the involvement, where possible, of community input. (76)

In summary, the Federal Corrections Agency task force seems to have taken as its starting point the dilemma perceived first in Ouimet, and developed in the Perspectives Paper and the reports of the Law Reform Commission, and to have attempted to synthesize a new emphasis for corrections which takes into account the hard lessons learned in three decades of experience with "treatment" and rehabilitation programs. The report goes out of its way to say that the new "program opportunities model" "is not intended to leave the impression that Federal Corrections is abdicating its responsibility or 'copping out'...It does not constitute an admission of failure; rather it simply suggests that 'we have bitten off more than we could chew'." (28) In shifting the focus to what it thinks is a more realistic, if more modest, conception of what federal corrections can, and therefore should be expected to do, the task force is making

an effort to integrate the lessons of experience with many of the traditional goals and concerns of corrections. As the Solicitor General makes clear in his Preface to the report, the analysis of the task force is part of a continuing process, and "further studies and consultations will be required before firm conclusions can be reached."