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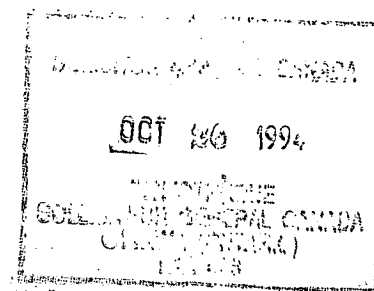
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ALTERNATIVES TO IMPRISONMENT WORKSHOP

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ALTERNATIVES TO IMPRISONMENT WORKSHOP

November 26 and 27, 1985.

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MEMORANDUM

NOTE DE SERVICE

Seminar Participants

FROM
DE

Assistant Deputy Solicitor General
Programs Branch

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE/NOTRE RÉFÉRENCE

1142-P10

YOUR FILE/VOTRE RÉFÉRENCE

DATE

18 November 1985

SUBJECT
OBJET

Alternatives to Imprisonment Workshop
November 26 and 27, 1985
Château Laurier, Ottawa

I am pleased to forward the materials for the Alternatives to Imprisonment Workshop to be held November 26 and 27, 1985 at the Château Laurier.

The information package in this binder includes the following materials:

Tab

1. Agenda
2. List of Participants
3. Client Specific Planning
 - Meeting the Goals of Sentencing:
The Client Specific Plan
 - Make the Sentence Fit the Felon
 - Client Specific Planning
 - Punishment that Fits the Crime
4. Evaluation of Client Specific Planning
 - An Evaluation of Client Specific
Planning (Executive Summary)

Leonard N. Berman

Herbert J. Hoelter

National Center on
Institutions and
Alternatives

Newsweek

New York State
Division of
Criminal Justice
Services

- A Response to "An Evaluation of Client Specific Planning"

Marsha Weissman
New York Center on
Sentencing
Alternatives

- A Study of the North Carolina Office of the National Center on Institutions and Alternatives

Johnathan E. Silbert

- Executive Summary Report on Client Specific Planning: A Project of the National Center on Institutions and Alternatives

Silbert, Feeley and
Associates, Inc.

5. Juveniles

- The Massachusetts Alternative: A Radical Approach to Juvenile Justice

Andrew Rutherford

- Strategies for Restructuring the State Department of Youth Services
 - The Massachusetts Experience

Yitzhak Bakal

- Systems of Control and the Serious Juvenile Offender

Jerome G. Miller

- The Revolution in Juvenile Justice: From Rhetoric to Rhetoric

Jerome G. Miller

- The State that Freeds its Young from Jail

Reader's Digest

6. Canadian Experience with Client Specific Planning

- The Ontario Legal Aid Plan
Ottawa-Carleton Special Services Project

Workshop Staff

- The Winnipeg Client Specific Project

Workshop Staff

7. Proposed Legislation

- Highlights of the Correctional Legislation Package

Communications Group
Solicitor General

8. Population Profiles

- Population Profile - Federal Female Inmates

Operational
Information
Services, C.S.C.

- Population Profile - Federal Male Inmates

Operational
Information
Services, C.S.C.

- Population Profile - Federal Native Inmates

Operational
Information
Services, C.S.C.

- Summary of Double Occupancy

Inmate Population
Management Division,
Security Branch,
C.S.C.

This workshop will provide an excellent opportunity to examine pre-sentence and post-sentence client specific planning for alternatives to imprisonment, and I look forward to an interesting and productive exchange.



Christopher Nuttall

Distribution: See List of Participants

ALTERNATIVES TO IMPRISONMENT WORKSHOP

THE CHATEAU LAURIER
SALON L'ORANGERIE

AGENDA

DAY 1 - November 26, 1985

8:30 A.M.	Coffee	
9:00 A.M.	Preamble	John Evans
9:30 A.M.	Pre-Sentence Client Specific Planning (Adult & Juvenile)	
	Overview/Illustrations	Jerome Miller Ted Hughes Clarence Epp
10:00 A.M.	Coffee	
11:00 A.M.	Evaluations	Jerome Miller Ted Hughes Clarence Epp
12:30 P.M.	Lunch	
1.30 P.M.	Programs to Support Client Specific Planning	Jerome Miller Ted Hughes Clarence Epp
	Issues	Jerome Miller Ted Hughes Clarence Epp
2:45 P.M.	Coffee	
3:15 P.M.	Issues (continued)	Jerome Miller Ted Hughes Clarence Epp
5:00 P.M.	Adjournment	

THE CHATEAU LAURIER
SALON MacDONALD

DAY 2 - November 27, 1985

8:30 A.M.	Coffee	
9:00 A.M.	Post-Sentence Client Specific Planning (Adult & Juvenile) Overview/Illustrations	Jerome Miller George Thomson
10:30 A.M.	Coffee	
11:00 A.M.	Evaluations	Jerome Miller George Thomson
	Issues	Jerome Miller George Thomson
12:30 P.M.	Lunch	
1:30 P.M.	Issues (continued)	Jerome Miller George Thomson
2:30 P.M.	Wrap-Up	Jerome Miller Ted Hughes Clarence Epp George Thomson John Evans
3:30 P.M.	Coffee	

LIST OF PARTICIPANTS
ALTERNATIVES TO IMPRISONMENT WORKSHOP
November 26 and 27, 1985

Guest

Jerome Miller

Discussants

George Thomson
Clarence Epp
Ted Hughes

Workshop Staff

John Evans (Chair)
Bob Cormier
Stan Divorski
John Fleischman
Jon Holland
Sylvia Eastman

Research & Statistics Group

Gerry Woods
Alex Himelfarb
Bruno Marceau
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Sherilyn Palmer
Gerald Gallant
Howard Bebbington

Sentencing Commission

Jean-Paul Brodeur

NEW ENGLAND JOURNAL ON CRIMINAL AND CIVIL CONFINEMENT



VOLUME 9

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SUMMER 1983

Sentencing and Alternatives: A Symposium

FOREWORD

Albert L. Kramer

ARTICLES

Sentencing: A View from the Bench
Joseph L. Tauro

Meeting the Goals of Sentencing: The Client Specific Plan
Leonard N. Berman

*An Alternative to Traditional Sentencing: The Task Sentence—A
Performance Contingent Model*
Robert R. Smith, Donald L. Bubenzer, Ronald M. Holmes

*Restitution: An Economically and Socially Desirable Approach to
Sentencing*
James William Casson III

NOTES

CASE COMMENTS

RECENT CASES

BOOK REVIEWS

BOOKS RECEIVED

New England School of Law, Boston, Massachusetts

Meeting the Goals of Sentencing: The Client Specific Plan

LEONARD N. BERMAN*

Once again the criminal justice system is under sharp criticism for its apparent inability to deal effectively with crime in the United States. Most public opinion polls list crime as one of the high priority issues concerning the American public. Citizens express fear about being out after dark. The elderly are seen as likely victims of the more physical and more mobile offender who needs a few extra dollars or a little excitement. Sales of home security systems and guard dogs continue to soar.

Much of the criticism for the problem of crime has been quite literally laid at the courthouse steps. Judges are said to be too lenient in their sentencing, caring more for the needs of the criminals than for the needs of the victims. Sending more people to prison, "getting them off the streets" as the argument goes, is proposed as the surest way to deal with the threatening crime problem. But are prisons the answer to the problem?

Each week, in courtrooms across the country, judges hear arguments urging that they impose "the most appropriate" sentence on convicted offenders. While what is most appropriate depends on the source of allocution (e.g., prosecuting versus defense attorney), the decision of the judge must reflect the needs of the victim of the offense, the needs of the community more generally, and the needs of the offender. The sentence must also address the sentencing goals of the court: deterrence, retribution, public safety and rehabilitation. For reasons buried deep in the national psyche, prisons are routinely proposed as the means to these ends. But are prisons the best way to meet these needs and goals of sentencing?

Deterrence is the act of discouraging and stopping by fear.¹ Do prisons deter; do they stop an individual from committing a crime for fear of being incarcerated? It is clear that for some the answer is yes. Prisons may deter the "average" American from criminal activity but the average citizen probably would not be involved in crime were there no

* National Center on Institutions and Alternatives, Alexandria, Va.; B.S. University of Massachusetts, 1969; M.A. Indiana University, 1975; Ph.D. Indiana University, 1976.

1. BLACK'S LAW DICTIONARY 405 (rev. 5th ed. 1979).

prisons. Deterrence assumes that an individual is a logical information processor. *If I rob this store, I may get caught. If I get caught, I'll go to prison. I am afraid of going to prison. Therefore, I won't rob this store.* Conversely, the typical offender is not acting as a rational information processor at the time of committing the offense. He can not or does not see the logical progression from crime to getting caught to prison. Most do not expect to get caught, nor do they see prison as part of the equation, since it is not present at the moment. Other factors short-circuit this information processing.

Today there are over a half million men and women incarcerated in our nation's federal and state prisons. On any given day, hundreds of thousands more can be found in the 17,000 local county jails across the country.² Our country's rate of incarceration is exceeded by only two other countries in the world—the Soviet Union and the Union of South Africa. Studies attempting to show a correlation between the rates of crime and incarceration continually show none. For example, North Carolina, with one of the highest rates of incarceration in the country, has a crime rate ranking in the bottom third. Pennsylvania and West Virginia have crime rates which are comparable to North Carolina, yet incarcerate at rates three times lower than North Carolina. Arizona and Florida, which have much higher crime rates, incarcerate at rates approaching that of North Carolina.³ Coincidentally, we will shortly witness a drop in crime rates alongside our high incarceration rates—the drop due to lower numbers of Americans in the eighteen to twenty-five year old category. Unfortunately, one can anticipate a plethora of *post-hoc propter hoc* fallacious comments from the proponents of incarceration as effective deterrence.

While the dictionary can tell us what deterrence is, it cannot tell us how to achieve it, especially as it relates to crime. We know that prisons do not deter the average offender.⁴ We also know that the ultimate sanction, the penalty of death, does not deter commission of the ultimate crime, murder. Studies looking at the correlation between use of capital punishment and occurrence of murder show the same result as found between prison and crime—none.⁵

What about retribution, the theory that "every crime demands repayment in the form of punishment?"⁶ An individual whose punish-

2. L.M. HAYES & B. KAJDAN, AND DARKNESS CLOSES IN . . . NATIONAL STUDY OF JAIL SUICIDES (National Center on Institutions and Alternatives, Grant Number CC-4, National Institute of Corrections 1981).

3. CITIZENS COMMISSION ON ALTERNATIVES TO INCARCERATION, REPORT (Durham, North Carolina 1982).

4. Anderson, *An Eye for an Eye*, TIME, January 24, 1983, at 28.

5. BLACK'S LAW DICTIONARY 1184 (rev. 5th ed. 1979).

ment is incarceration at state prison is making no restitution to the victims of his offense or to the community at large. On the contrary, the offender is continuing to "victimize" his community throughout his term of imprisonment. He continues to extract valuable resources to support his incarceration. Current estimates have placed the cost of constructing a new cell at \$50,000 - \$75,000 each. Maintaining the individual in that cell for one year will cost the community an additional \$10,000 - \$20,000. If the offender had been the family's primary wage earner, incarceration may necessitate that the family seek some form of public assistance.

The direct victim of the offense may receive no compensation if the offender enters prison. The damages suffered, whether to physical structures such as the victim's home or to the person himself, may not be addressed. In other words, the offender is not held responsible for the losses incurred by his victim. While some victims may experience some satisfaction and gratify their need for revenge through the offender's incarceration, the victim will also have to bear the burden of righting the wrong done to him. Equity should demand that the offender make restitution to correct the damage caused, but restitution will not occur if someone is locked in a 5' by 10' cell twenty-four hours a day.

Prisons are intended to satisfy the need for public safety. It is true that prisons incapacitate individuals for the time during which they are incarcerated. However, it is also true that the majority of inmates in our nations prisons pose relatively minor danger to the community. Across the country, approximately sixty-five percent of those in prison have been sentenced for non-person, non-violent offenses. In North Carolina, for example, seventy-six percent of the admissions into its prisons in 1980 were for non-violent offenses.⁶ The National Academy of Sciences has estimated that some states, e.g., Massachusetts, would have to triple its inmate population to achieve a ten percent reduction in crime. A study by the American Justice Institute found that in Ohio a similar reduction in crime would require a five-hundred percent increase in prison population.⁷ In addition to the philosophical issues involved in incarcerating that many people, the costs of constructing and operating that many prisons would seem to be prohibitive.

Additionally, the majority of offenders who walk into a penitentiary will one day walk back into the community. Often these individuals

6. CITIZENS COMMISSION ON ALTERNATIVES TO INCARCERATION, REPORT (Durham, North Carolina 1982).

7. THE EDNA MCCONNELL CLARK FOUNDATION, OVERCROWDED TIME: WHY PRISONS ARE SO CROWDED AND WHAT CAN BE DONE (New York 1982).

leave with at least as many problems as when they entered. Some have learned new "tricks" while in prison so that "this time they won't get caught." The literature is also filled with accounts of the petty thief who upon leaving prison commits violent offenses once back into the community. Leland traced the history of one such person who "went to prison a burglar and came out a murderer."⁸ As Leland concluded, "[i]t isn't that unusual. Prisons do strange things to people."⁹ Much of the violent crime in our communities is a result of our prison system - not deterred by it.

One aspect of retribution as a goal of sentencing is punishment. It will be immediately clear to any visitor to a prison that to live there is true punishment. However, the research on the effects of punishment are clear. Punishment suppresses the behaviors that are being punished—but only temporarily. Those behaviors lie dormant or latent until the punishing agent is gone and then resurface in their full intensity. Only when punishment is counterbalanced with the teaching of the new behaviors desired will the old behaviors be replaced. This issue is tangential to public safety and is the core of rehabilitation, the fourth goal of sentencing. Many judges and correctional officials have long ago given up the notion of prison rehabilitation. Maintenance of the day to day activities without disruption is considered indicative of running a successful program. If an inmate learns a new "society-approved" skill or overcomes a problem which led to criminal activity, that's an unexpected bonus. Today, prisons in thirty-seven states are the focus of litigation because of overcrowding and related problems. Nationwide, only one inmate in ten works in a prison job—there simply are not enough to go around.¹⁰ Waiting lists for entry into a prison vocational training program are so long that an inmate entering the facility in 1982 might not receive acceptance into the program for five or six years. Most inmates, even those who have some skills which could be productively utilized in the community, pass their days in idleness and boredom.

Inmates who suffer from emotional, developmental, drug, alcohol, or other interpersonal problems do not receive regular professional help. The number of psychologists, psychiatrists, social workers, and medical staff are simply inadequate to meet the needs of the thousands of inmates in crowded prisons.

If anything, the inmate probably leaves prison with an enduring

8. Leland, *A Prison Lesson Fails*, *Boston Globe*, November 10, 1982, at 16.

9. *Id.*

10. THE EDNA MCCONNELL CLARK FOUNDATION, *OVERCROWDED TIME: WHY PRISONS ARE SO CROWDED AND WHAT CAN BE DONE* (New York 1982).

hatred and fear of authority and; consequently, a greater susceptibility to peer pressure once outside. Some argue that fear produces obedience, but the recidivism rate belies this. Fear and hatred do not produce the same results as respect and responsibility.¹¹

In sum, prisons have failed in their ability to meet the goals of sentencing. While incapacitation in a prison is necessary for some offenders, especially those for whom public safety is an overriding issue, reliance on prisons for the majority of those currently incarcerated can only result in failure. Increasingly, public officials, corrections personnel, and the general public are recognizing this failure and the need to meet both the community's needs and the court's goals in alternative manners. Community service, work-release, weekend jail—these and other innovative methods of punishment are gaining acceptance across the country. However, as true alternatives to prison, these sanctions must be well conceived and thoroughly monitored. Moreover, so that they are given due consideration by the court at sentencing, they must almost invariably be introduced by defense counsel.

Commenting on the standards of the American Bar Association, Barrasso stated that "it is the defense attorney's responsibility to be familiar with all sentencing alternatives available to his client and with community and other facilities that may be of assistance in meeting the defendant's needs."¹² Another commentator concurred with this position:

As defense counsel, the attorney should be as accurately and fully informed as possible on the alternatives to incarceration available to his client, taking the initiative to establish lines of communication with the governmental and social agencies administering alternative programs. He should exercise his skills in advocacy during pre and post trial periods to insure the judge can make a fully informed decision regarding the disposition of his client.¹³

As representative of the defendant, defense attorneys do recognize this responsibility to their client and to the overall sentencing process. However, many attorneys believe that the development of applicable alternatives to incarceration, including the identification of specific resources in the community to provide the needed services, is more effectively handled by paralegals, social workers, or other human services specialists. Once appropriate resources have been located and commitments to accept the client obtained, the defense attorney can proceed

11. *Id.* at 19.

12. Barrasso, *Rehabilitation Planning Services in a Public Defender's Office*, 10 *OFFENDER REHABILITATION* 117 (1974).

13. Note, *Community Based Corrections: Some Techniques Used as Substitutes for Imprisonment*, 2 *CAL. U.L. REV.* 101, 124 (1973).

with presenting options for the court's consideration.

If a law firm employs paralegals or social workers in its organization, the defense attorney can refer the case to that section of the firm. The majority of defense attorneys, however, do not have this resource available internally. Many do not handle the volume of sentencings required to adequately support this function. As such, the attorney must turn to third party agents to assist with the development of sentencing options that can be presented to the court. If the attorney is seeking assistance on a relatively minor violation, a misdemeanor for example, he will probably have little difficulty in finding an agency or independent consultant willing to research the community and prepare recommendations. Conversely, if the case involves a serious felony charge for which the defendant could receive a substantial period of incarceration, he will find very few agencies willing to offer its services. One such agency, however, is the National Center on Institutions and Alternatives.

The National Center on Institutions and Alternatives (NCIA) is a private nonprofit organization dedicated to the development of effective alternatives to incarceration consistent with public safety. Since 1979, NCIA has worked directly with defense attorneys to develop individualized, highly-structured, alternative to prison, sentencing plans for felony offenders who are facing incarceration. This service, entitled Client Specific Planning, is based substantially on the arguments, discussed above, that prisons do not, and cannot as presently functioning, meet the goals of sentencing and the needs of the community. There are several related premises on which Client Specific Planning has developed.

First, as stated, referrals to Client Specific Planning are felony offenders. It has long been NCIA's contention that if successful alternatives to prison can be implemented for this group, then the less serious offenders, e.g., misdemeanants, can by implication also be handled by alternatives to incarceration. The reverse is not true. A successful program for misdemeanants will not necessarily be applicable to felons. Yet this is the tack that has often been taken in correctional reform movements. The rationale for such a developmental sequence is that the program must "prove its worth" by dealing with less serious problems before it can be adopted for use with more serious issues. Programs for troubled youth are first directed at status offenders, not delinquents. Shoplifters must be rehabilitated before armed robbers can be. The history of such efforts, however, repeatedly shows that these "innovative" approaches never go beyond the lower level problems. Secondly, NCIA is concerned that these "new" approaches to sentencing, such as community service, not be used to extend the

net of social control but used as true alternatives to prison. The sentencing process is in essence a means to achieve social control, to make the offender conform to society's standards. Placing an offender on probation was intended to accomplish this goal. However, most feel that probation is not tough enough and that it needs to be stiffened by additional sanctions. As such, individuals who would have received probation with few conditions or who would have been released from the criminal justice system are now subject to these new "alternatives." Such an approach leaves the problems of prison intact, while adding an additional layer of social control. NCIA has focused on alternatives as they impact the court's reliance on prisons. In the most ideal sense, there should be one less prison bed for each person receiving an alternative sentence. Thus, we would have alternatives to prison, not alternatives to probation.

NCIA's focus on developing sentencing options in serious cases depends, in part, on the distinction between sentencing the offender versus sentencing the offense. A normally law abiding citizen who attends a social function, consumes an excessive amount of alcohol, drives home, and is involved in an automobile accident in which loss of lives occurs is not necessarily a violent person—although the act is a violent behavior. The woman who, after suffering through years of physical and emotional abuse, kills her husband is not an inherently violent person although again, few would argue the behavior is not violent. This is not to say that the offenses (behaviors) are ignored. Rather we are considering the appropriate sanctions for this specific individual who has committed a very specific behavior with specific antecedents.

For this approach to sentencing to be possible, judicial discretion is necessary. Mandatory sentences, where everyone who commits a certain class of offenses receives the exact same punishment regardless of the reasons, dictates against Client Specific Sentencing Plans. Thus, NCIA believes that judicial discretion should be permitted, with mitigating, as well as aggravating circumstances playing a role in each sentencing. In this regard, it is somewhat interesting to compare mandatory versus discretionary sentencing with maturational theories of individual human development. Piaget,¹⁴ for example, points to the ability of children to go from the early black-white, concrete stage of moral development to the later more abstract levels as they mature. In the former, a child can see only the act and its results; in the latter the child can see the reasons behind the act. The classic example used to illustrate this point is the child who in anger breaks dishes after not getting his way versus the one who breaks dishes while helping his

14. J. PIAGET, *THE ORIGINS OF INTELLIGENCE IN CHILDREN*, (M. Cook trans. 1963).

mother wash them. The concrete response (mandatory sentence) would be to punish both children equally since the end result is the same—i.e., dishes are broken. The more mature, abstract response (discretionary sentence) would be to punish the former much more severely since the act had a degree of malicious intent. Perhaps mandatory sentencing is also a reflection of the current computer age in that data is input and a decision reached in the same mechanical way every time. The computer operates on a two position "yes-no," concrete level unable to respond to shades of gray. Mandatory sentencing in which judges are essentially replaced with computer-like sentencing programs may be more a reflection on the computer age than well thought out sentencing practice.

As stated above, Client Specific Plans (CSP) are comprehensive, individualized sentencing recommendations. A typical CSP incorporates several requirements, each intended to meet at least one goal of the sentencing process, the needs of the community, and/or the needs of the offender. No two plans are, therefore, identical. However, all plans can be expected to have variations of the following elements:

- introductory material/client background
- community service
- financial restitution
- residency requirements
- employment
- vocational training
- education
- medical services
- counseling, psychological therapy
- drug monitoring
- third party supervision
- indicators of potential for success in the community
- letters of support, awards achieved
- reporting requirements
- probation supervision
- miscellaneous requirements, special considerations

The process in Client Specific Planning is quite simple. The development of a CSP is initiated with the authorization of defense counsel, who contacts the NCLA to make a referral. This requirement of defense attorney approval is intended to serve as a screening mechanism ensuring that only prison-bound cases are selected. Experience has shown that attorneys will not enlist CSP services for clients unless they are convinced incarceration is a real possibility for their client. The attorney's authorization is also a key in that the CSP is to be presented to the court. Thus, there is a need for an agent of the court to submit the plan for the court's consideration. CSP case developers do not have this authority. In addition, the attorney has represented the client in

all prior aspects of the case, (e.g., preliminary hearings, trial, etc.) and therefore knows the case and the client. The attorney has access to legal documents such as indictments and can provide valuable input on the court's position on the case.

Upon accepting the case, NCIA assigns a case developer to interview the client, consult with the attorney, and gather information from all those who have a significant role in the case such as the family of the defendant, victims of the offense, the probation officer and the like. With this background as a basis, the most appropriate plan is developed. Contacts are made with community resources to secure their commitments to participate in the plan. Some resources may be recipients of services, such as in community service; others may be providers of services, such as in alcohol counseling. As indicated above, each plan is individualized and multifaceted to meet the goals of sentencing and the needs of the community and the offender.

The CSP, complete with documentation from the resources which will participate if the court adopts the plan, is presented to the defense attorney for submission to the court as an aid in sentencing. The case developer is present in court to testify as to the procedures utilized to develop the plan and the rationales for the specific recommendations.

Some have simplistically argued that Client Specific Planning is yet another "bleeding-heart liberal" attempt at "coddling criminals." On the contrary, Client Specific Planning is, on closer scrutiny, a very conservative approach to sentencing. It is true that CSP attempts to break the exclusive reliance on prisons as the primary method of punishment. However, Client Specific Planning requires the offender to be held accountable for his crime. Controls and paybacks are two key aspects of each plan. For a plan to be successful, it must have the means of monitoring the offender's actions so that the previous illegal behaviors do not continue. If this means daily urinalysis for a drug user, the plan will have such provisions. If the individual needs to be seen by his community supervisor every day, the plan will have that requirement. The offender must know that any deviation from the court's order will be immediately detected. Paybacks by the defendant to the community and direct victims are required. When an offender extracts something of value from his community, he must return something of like value, whether through his own unpaid labors in community service or through monetary compensation to the victim and/or the community.

Client Specific Planning is also conservative in its approach to the court. A plan is presented for a particular defendant who has committed a particular offense and is to be sentenced in a particular environment on a particular day. The court is not asked to adopt an ideology on community service, financial restitution, or alternative sentencing

more generally. It is being asked to consider specific sanctions for the case at hand.

Conservatism is also manifested in the fiscal accountability of CSP. Each client for whom a plan was developed is levied a fee for the services provided. This fee, which varies according to a client's means, does not "buy" recommendations. It is, on the contrary, a further means for demonstrating the accountability by the client. Through these fees and support from private foundations,¹⁵ Client Specific Planning is available to defendants from every economic level; about seventy-percent of the 1,500 plans developed thus far have been for indigent and low income defendants. CSP is reaching toward self-sufficiency—without having received any governmental funding.

Lastly, CSP never compromises public safety. NCIA recognizes that a small group of offenders can not be allowed to maintain their freedom in the community. Consequently, in about fifteen to twenty percent of the cases, there is a recommendation for some form of incarceration. This position is consistent with the widely acknowledged need to remove from the community those offenders who commit violent, person-oriented offenses and are considered a danger to community.

Given the argument that prisons do not meet the goals of sentencing, the true test of Client Specific Planning is its ability to satisfy these goals. How does CSP stack up?

On the issue of deterrence there can as yet be no conclusions. In its three and a half years of operation, approximately 1,500 plans have been presented to courts in thirty-five states, with about sixty-five percent of the plans having been adopted at sentencing. While these figures represent a substantial workload, they are nonetheless little more than a token of the felony sentencings which have occurred across the country during this time. A true test of Client Specific Planning's effect on deterrence will require its more widespread usage. At this time there are some discussions going on to allow CSP to be implemented on a state-wide basis for every felony sentencing in at least one state.

There are some indications that offenders receiving alternative sentences under Client Specific Planning do have a low re-arrest rate. Preliminary results of one independent study of eighty offenders whose CSP's were accepted by the courts showed only a fifteen percent re-arrest rate.¹⁶ A second study, conducted by NCIA, looking at a random sample of the first 120 cases handled by the program, showed eighty-

effective

15. The Edna McConnell Clark Foundation, New York; Eugene and Agnes E. Meyer Foundation, Washington, D.C.; Z. Smith Reynolds Foundation, North Carolina.

16. SILBERT, FEELEY & ASSOCIATES, INC., New Haven, CT. (unpublished report).

seven and one half percent to be in compliance with the plan's requirements, as mandated by the court. A third study is currently being conducted by the Office of Program Evaluation of the New York State Division of Criminal Justice Services. That study will track and compare the re-arrest rates of all offenders in Onondaga County and those for whom NCIA's affiliate, the New York Center on Sentencing Alternatives, develops a court accepted CSP.

An individual receiving an alternative sentence through a Client Specific Plan will be held accountable for both his prior behaviors and those subsequently required by his sentence. His presence in completing long-term community service, counseling, employment, education; making of financial restitution; and constant monitoring by community supervisors will be a daily message to the community that crime is not condoned. When the offender cannot accompany his friends on an evening out because he has to do community service, he will graphically and continually be reminded of this accountability.

Participation in several requirements of a CSP will also show that retribution is extracted. Offenders will learn that if they cause damage to the citizenry or the community, they will have to make direct and meaningful reparation. Retribution in the form of long-term, unpaid labor (e.g., twenty hours a week for two to three years) will be collected. Financial restitution to the victim for direct losses will also be collected. In some cases, where the specific victim is unidentifiable (e.g., possession with intent to distribute, corporate offenses, etc.), a third party or "substitute victim" can be designated to accept financial restitution. Additionally, payments to the community's victim compensation fund, court costs, and other fines can be levied. Through both social and financial restitution the offender will know that he is being punished, but in ways that are different than sitting idly in the state prison. He will be subject to a more "active" punishment which will impinge on his liberty and freedom.

As emphasized above, Client Specific Planning will never compromise public safety. If a secure placement is required, then a secure setting will be located. This setting may be in a locked psychiatric facility in which the client will not be warehoused. Additionally, some cases will require jail or prison or both. In those instances, CSP's will attempt to minimize the negative impact of the prison setting through securement of services within the facility or by researching the prison system to recommend the most appropriate facility within the system.

The client's need for rehabilitation will also be addressed in the Client Specific Plan. Whether the client needs drug, alcohol, financial, marital, employment, or other therapy, that need will be addressed. As a general rule, restitution and supervision will be given primary consid-

eration and treatment needs of the client secondary emphasis. However, the problems which may have led the individual to commit the offense or the difficulties which may follow from his legal entanglements are addressed comprehensively in every plan. Treatment needs may be met through either out-patient or in-patient programs, as warranted, and will be coordinated with the other elements of the plan.

In sum, a well-conceived, fully documented, individualized Client Specific Plan can meet the goals of sentencing more fully than a prison sentence. Given that a Client Specific Plan is a multi-dimensional approach to sentencing, which can include incarceration, and that prison is a uni-dimensional strategy, CSP has the necessary flexibility to meet these sentencing goals in ways not available in prisons.

This flexibility is also at least partially responsible for the acceptance of CSP in such diverse settings as Lincoln, Nebraska; Fayetteville, North Carolina; Syracuse, New York; Los Angeles, California; West Palm Beach, Florida; and Washington, D.C. It is also responsible for its success in federal and state courts, and for its use with parole release. It is an approach to sentencing which confronts the needs of the court, community, and the offender in a direct and comprehensive manner.

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Make the Sentence
Fit the Felon





At best, prison is a short-term solution.
At worst, it doesn't work, is costly, and iatrogenic.
A far more effective approach is to

Make the Sentence Fit the Felon

By Herbert J. Hoelter



There is little doubt that many Americans see our current criminal justice system as an abysmal failure. Among professionals—judges, criminologists, probation officers, etc.—the consensus is that we have not yet found an answer to our Frankenstein. The theories about causes are exceeded only by the theories about solutions. From the “nothing works” theory—with its emphasis on “inca-



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pacitation"—to the "everything works" panaceas—of stiffer sentences, earlier parole, mandatory time, work-release, and other alternatives—the common perception is that everything has been tried, and still there are no solutions. Crime is on the increase, and we purportedly need more prisons and jails. Yet the number of lawsuits against the existing prisons and jails is rapidly increasing.

Part of the problem may be that in the truest sense of the word, there is no "system." Courts, corrections, police, and alternative programs often act in a hit-or-miss manner.

These problems reach to every level of the justice system, emerging most clearly in the courts. Although the criminal courts are seen primarily as providing an arena for assessing the guilt or innocence of defendants, a better case might be made for saying that their most important role concerns sentencing.

The sentencing process is certainly one of the most important components in the criminal justice system today. Sentencing decisions are based on issues of general deterrence, rehabilitation, and incapacitation. They affect the victim, society, and offender. To assist the courts, the Washington, D.C.-based National Center on Institutions and Alternatives, with support from the Edna McConnell Clark Foundation, has developed, tested, and implemented a sentencing program, Client Specific Planning, that appears to be relatively successful.

This program offers a different approach to traditional sentencing, one which fulfills deterrent and retributive aspects of the criminal justice system, yet provides the possibility of rehabilitation.

At first glance the sentencing process looks simple. A judge considers the facts of the case, the possible penalties for the crime, the defendant's history and background (often from probation officers' reports), and listens to the attorney's arguments as they try to influence the court.

One of the problems identified early in the development of Client Specific Planning is that this simple process is full of gaps. Judges are often given selective information, few details, and are subject to inordinate time pressures. For every sentence they must consider a mixed bag of sentencing goals: deterrence of the individual defendant, general deterrence of other people from engaging in criminal activity, protection of the public, and rehabilitation of the offender. These goals often conflict, and the result can be confusing.

For example, recent studies by Norval Morris and others show that when considering individual and general deterrence, one can draw few firm conclu-

sions. These studies suggest that it is not the *severity* of the sanction that matters but rather the *certainly* that some type of sanction will be imposed. This implies that fines, long-term community service, and other nonincarcerative options can be as effective a deterrent as prison for some people. Combining these elusive theories of deterrence with rehabilitation and vague goals of "protection of the public," certainly compounds the sentencing process for judges.

One of the National Center on Institutions and Alternatives' main goals is to eliminate as much of the sentencing confusion as possible by giving the courts individualized plans that speak to the needs for retribution, restitution, deterrence, and rehabilitation. As practitioners presenting daily sentencing plans, we stress the practical, but we also keep current on sentencing research and data. (Examples of two sentencing plans can be found on pages 52 and 53.)

TO INCARCERATE OR NOT

In our attempts to simplify and individualize the sentencing process, we no doubt have posed new questions to some courts. The sentencing decisions, previously a matter of either probation or prison, become more difficult with the interjection of comprehensive plans that satisfy many goals at once.

We have found, however, that judges welcome our input to help them make the important decisions of whether or not to incarcerate. Because of time and staff limitations, judges seldom receive all the information they would like to have before they make their sentencing decisions. As Judge Marvin E. Aspen has noted:

An attorney who goes to the judge with a program that says for example: I have got a job for the defendant. He is going to work these hours if you will release him from jail on a part-time basis. He has arranged to make this type of restitution. He acknowledges he has a drug problem and is willing to take this type of outpatient treatment at this particular medical facility. He is going to do all these things. And this is the program. This is his family, and they support it. And we're ready to go. Nine out of ten times the prosecutor is not going to have any trouble with that, and the judge is in a position where he can support that kind of program.

The willingness of the courts to prescribe well-prepared alternative sentences to traditional incarceration is clear from the results of the Client Specific Planning project. During a recent 39-month period, from October 1, 1979 to May 31, 1981, we

Alternative sentencing is one of the most important aids available to attorneys and courts

handled over 350 cases. The courts accepted approximately 70 percent of the Client Specific Plans—involving crimes against persons and crimes against property. Follow-up on these cases by our research staff indicates that 85 percent of the offenders whose plans were accepted have completed or continue to meet the court-ordered requirements of their individual plans. (Parenthetically, we never ask the courts to consider our overall "acceptance rate" in determining the disposition of a particular case. Rather, each individual and each plan stand on their own merits).

One reason for court acceptance of Client Specific Plans lies in the comprehensive manner in which the case is addressed. The Client Specific Planning staff meet extensively with the client, the attorney, community resource representatives, and other significant figures in the case. Plans are professionally prepared and formally presented including all appropriate documentation (e.g., letters of acceptance from all resources used). Client Specific Planning staff appear at all sentencing hearings and, as requested, testify as to the merits of the plan.

Although case developers attempt to make the recommendations as concrete as possible (sometimes including daily, hour-by-hour schedules for the client), they always recognize the authority of the court to make the final decision. We specify, as best we can, parameters for the court's consideration—but the decision to accept, reject, or revise these belongs solely to the court. The exact length of the sentence, total hours of community service, amount of financial restitution, etc., are all set by the court.

The fundamental principles underlying Client Specific Planning are: (1) there have to be numerous and effective controls on the defendant; (2) there has to be significant restitution; and (3) there must be some type of punishment imposed by the court. These three principles dovetail with the court's sentencing goals of deterrence, public protection, and rehabilitation.

WHAT PURPOSE PRISONS?

We are convinced, however, that a prison term is at best, an ineffective and costly way to achieve these goals. In our opinion, prisons are what John McKnight and Ivan Illich call "iatrogenic"—the apparent "solution" to the problem actually exacerbates the situation. In his book, *Medical Nemesis*, Illich argues that we are a society afflicted with illness-producing medicine, stupidifying education, and criminalizing justice and that often the helpers hurt. It is a frightening and offensive argument, but one

with merit, particularly where prisons are concerned.

This is not to suggest that prisons serve no purpose. They incapacitate for as long as the person is incarcerated. But at what expense? In private industry, any solid accounting system records costs incurred, even if no payment is made during a specific time. Our supposition is that society incurs substantial costs by placing many offenders in prison.

Nor is this to suggest that all offenders ought to be out of prison. Although individualized sentencing plans have been developed for more serious criminals and accepted by the courts, Client Specific Planning staff and consultants recognize that incarceration must be imposed in some cases. Approximately 15 to 20 percent of our plans recommend some type of prison term. If there is such a thing as constructive incarceration, our plans allow for it. For example, we have recommended weekends in jail, work release, split sentences, and other short-term residential arrangements, with a community sentence to follow.

It is a premise of the Client Specific Planning project that most "alternatives" to prisons created in the past are misnamed. They are more often additions to the criminal justice system and have little effect on the number of people in prison or jail. We have therefore consciously and methodically focused on offenders at the "deep end" of the system. Approximately 95 percent of our work is with felons. If a program can be successfully implemented it could have a potentially great impact on the criminal justice system. Many logical and practical inferences can be drawn from a successful program for felons and applied to misdemeanants and lesser offenders, but the reverse is not true; a successful program for misdemeanants will have few implications for felons.

One of the difficult decisions made in the design of the client model was the source of referrals. We decided to restrict referrals to defense attorneys, since they carry the primary responsibility to convince the court that their clients deserve something other than prison. In addition, they generally would not propose a more severe sanction for their client than would normally be imposed by the court—thus avoiding a "widening of the net."

The Client Specific Planning project fills a gap for the defense attorney at the time of sentencing. Before now, there has been no systematic, comprehensive method of presenting courts with structured alternatives. Some probation officers try, some lawyers assist, some judges assume the responsibility. But few have the time (or the expertise) to prepare comprehensive alternative sentencing plans.

PROCEDURES AND PRACTICES

During the intake and evaluation process, case developers determine the exact nature of the current offense; obtain the client's complete employment, educational, and legal history; identify problems the client has in emotional, financial, behavioral, medical, and other areas; and define the client's skills and abilities to be built upon in development of the plan. As necessary, case developers document this information through employers, teachers, client's family, and others.

The gathering of this information is a means to an end. All of it must be useful in developing an appropriate plan. Thus, in asking a client his medical status or previous social agency contacts, a case developer can then obtain needed medical services or avoid duplication of services.

Just as data are gathered on the offender's needs, data are also gathered on the needs of the court and the community. Case developers research the community through town council meetings, county and state budget hearings, the media, and so on. They try to stay current on sentencing practices, jail, and prison issues, and initiatives developed by public officials to deal with crime in the community. And they are acutely aware of the statutory requirements for sentencing an offender on a particular charge.

Case developers are responsible for formalizing a sentencing plan that meets all of these needs. If the client has a drug problem, few marketable skills, and

a questionable residence, the plan must address *all* of these. A case developer cannot be satisfied with securing only drug counseling and monitoring. Vocational training or a job must be secured, drug counseling and monitoring begun, and a suitable place to live obtained.

This contrasts markedly with the prevailing approach of placing offenders in programs that may or may not be useful to the needs of either the individual or the community. Moreover, one of the recognized benefits of Client Specific Planning is that it mainly uses existing community resources, rather than requiring the creation of new ones.

While no formal equation is used (such as equating four hours of community service to one day in jail), elements are realistically related to the severity of the crime, coordinated with time requirements, and placed within the defendant's capabilities.

The average amount of time required by Client Specific Planning staff to prepare an individual plan is three days. Each case developer handles the case from initial assessment through sentencing, ensuring that both the defense attorney and the court deal with one accountable person.

BEYOND PRESENTENCE REPORTS

On the surface, this process appears similar to the work of a probation officer or presentence investigator. But our experience has shown that there are significant differences. As previously discussed, fact

ALTERNATIVE SENTENCE I

Ms. C., 35 years old, had pleaded guilty to two counts of fraud and two counts of uttering. Ms. C. had been purchasing new furniture for her apartment, paying with checks for which she knew she had no funds. Ms. C. also had a previous conviction for forgery.

For this case the National Center for Sentencing Alternatives proposed a series of sentencing options that included:

Residence: Three options were proposed. To allow the court to maintain local control, placement in its county work-release center was arranged. NCIA also arranged for her placement in the work-release program of the jail in the county of Ms. C.'s parents or for placement with her parents. This last option could be in lieu of or subsequent to work-release program placements.

Social Restitution: Ms. C. would serve as a volunteer child-care worker at a day care center. She would perform 10 to 20 hours of long-term community service each week, for as long as the court ordered.

Employment: Employment would be secured through referrals from a local offender assistance organization.

Counseling: Psychological counseling would be provided on a weekly basis. Financial counseling would also be provided through a local credit counseling agency. Ms. C. would receive help in budget matters.

Financial Restitution: Mr. C. would be required to pay her outstanding debts arising from her offenses. This restitution would be incorporated into her counseling program.

Community Supervision: In addition to being placed on supervised probation, Ms. C. would be supervised by a third-party advocate. This advocate, provided through an offender assistance organization, would monitor all aspects of the implementation of this plan. The advocate would file periodic reports to the court.

The judge sentenced Ms. C. to two, 20-year concurrent sentences, suspending all but 18 months. Ms. C. was ordered into the local county work-release center. Upon release from that program, Ms. C. was required to reside with her parents and complete all other components of the proposed plan. The judge thanked the National Center for Sentencing Alternatives for its efforts on behalf of Ms. C.

gathering for Client Specific Planning is a means to an end, not an end in itself. If it is determined that the client has a drug problem, a drug treatment program will be found. Solutions to the problem are the focus of the plan.

Presentence reports, on the other hand, present an in-depth social, legal, and psychological history of the client. While this potentially useful information is needed by the court, the Presentence Investigation (PSI) seldom goes beyond these historical data to present concrete ways of meeting problems. Some PSIs contain generic recommendations ("investigator recommends the defendant receive drug therapy"). But with Client Specific Planning, contact would be made with a specific therapy center, a commitment obtained, and a slot reserved—if the court accepts the plan.

Presentence reports, and therefore conditions of probation, have been generally fragmented. The report might document where the client can receive alcohol treatment and do community service, but they might omit provisions for employment, financial restitution, or supervision. One reason for defendants' failure in the community while on probation is that some of these elements are missing. Client Specific Planning, on the other hand, is comprehensive, enveloping the client with all the necessary services.

Client Specific Plans usually include any combination of the following elements:

- Living arrangements residence;
- Community services;
- Financial restitution;
- Employment;
- Psychological treatment, drug surveillance;

- Education;
- Vocational training;
- Medical physical treatment;
- Supervision/monitoring;
- Reporting; and
- Other special conditions.

COMMUNITY SERVICE PLANS

The inclusion of community service as an integral component of most plans is crucial to the acceptance of Client Specific Planning. But as used by this project, it is unlike most existing "alternative" projects. The service is closely monitored by intensive supervision and regular reports to the court, is integrally linked to the defendant's background and talents, and is long term—often 10 to 15 hours per week for a year or two. It also occupies a significant portion of an offender's time. The availability of a community-service placement is confirmed *prior* to sentencing, so the judge knows exactly where and when a client will be at a particular location.

What value is community service? Criminal activity invariably extracts something of value from the community. Equity demands that to restore equilibrium, the perpetrator must return something of value. Long-term community service can be one appropriate equity-restoring mechanism. While in prison, on the other hand, the offender continues to extract resources from the community. Thus, given the initial loss to the community from the crime and the offender's continued drain of community resources while in prison, the community cannot be expected to welcome back the "rehabilitated" offender. By addressing the original loss through community service

ALTERNATIVE SENTENCE II

In a trial by jury, Mr. H., 37 years old, was convicted of embezzling \$1.1 million from a firm when he had been its financial vice-president. At his trial, Mr. H. admitted to being a compulsive gambler and having lost the embezzled funds in various gambling ventures. The prosecution asked for the 15-year maximum sentence.

As an alternative, the National Center for Sentencing Alternatives proposed that Mr. H.:

- Perform long-term community service, 15-20 hours per week, with a local gamblers' assistance center and the American Red Cross;
- Make partial financial restitution to the insurance company covering the loss (15 percent of his annual gross income for 10 years), to the gamblers' assistance center (as "substitute victim"), and to the court;
- Participate in group and individual counseling for his gambling problem;
- Reside either at home or in a community-based halfway house;

- Maintain his current full-time employment;
- Be placed on probation for the statutory five-year limit plus submit to an additional five-year 'extended voluntary' supervision to allow him to make a long-term financial restitution commitment.

The judge, in her decision, relied extensively on the proposed Client Specific Plan. She imposed a 10-year sentence and suspended all but three years. In lieu of incarceration with the Department of Corrections, Mr. H. was ordered to report to a community-based halfway house, to perform community service with the gamblers' assistance center, to participate in counseling, and to maintain employment. The judge also placed him on five years probation, to start upon release from the halfway house, and indicated that any gambling episode would constitute a violation of probation. As for the financial restitution, the judge urged the insurance company to pursue civil action to recover its losses.

by the offender, the balance can be restored and a link between community and offender developed.

The same equity-restoring concept is applied to financial restitution. Used in addition to community service, financial restitution is employed in appropriate cases (e.g., theft, burglary, embezzlement). The inclusion of financial restitution to the victim of the offense does not preclude the addition of financial restitution to the community as a substitute or third-party victim. When used in this manner, financial

restitution will accompany social restitution.

The acceptance of Client Specific Planning by the legal community and the courts has been a key to its success. Alternative sentencing is one of the most important aids available to attorneys and courts. Used properly, it can help assure comprehensive service and treatment to the offender, while keeping public safety and restitution in focus. Used properly, it may also help reduce severe overcrowding in our country's penal system.

Comments about C.S.P.

"At a time when many authorities and laymen are demanding harsher sentences, an increasing number of criminologists want to suspend prison terms. . . 70 percent of NCIA's proposed sentences have been accepted by the courts."

*Newsweek, August 4, 1980
Punishments That Fit The Crime*

"This Circuit Court Judge, who is nobody's lenient judge, adopted almost word for word the entire package. . . ."

*Assistant Public Defender
State of Maryland*

"I prepared the case using all skills I have developed in this area over the past several years. However, without the invaluable assistance provided by your organization, I feel that my client would still be an inmate. . . ."

*Defense Attorney
Westminster, Maryland*

"The sentencing proposal submitted . . . was remarkably thorough and professional in both its content and manner of presentation. Indeed, the sentencing judge himself stated that he was 'in awe and simply amazed' by the quality of your effort."

*Defense Attorney
Newark, N.J.*

"The ability of your staff to develop comprehensive, realistic and detailed alternative sentencing plans is incomparable . . . the overall professional manner in which it was packaged and presented was exemplary."

*Defense Attorney
Alexandria, Virginia*

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FOCUS ON PUNISHMENT

Jerome Miller and Herbert Hoelter

Criminal justice seems to have taken a sharp turn to the right in the past decade. It's common these days to hear calls for mandatory sentences, longer prison terms, re-validation of the death penalty, and sending juveniles to adult prison. In states like California it seems that every time the members of the legislature sit together they add offenses to the list calling for mandatory sanctions, and, when not doing that, lengthen the sentences—all apparently in response to citizens' demands for "get tough" measures.

With the U.S. Justice Department predicting that we will shortly average three or more executions a week, one wonders if the body politic can ever be sated with these supposedly common sense measures for dealing with crime. The violence of contemporary corrections has a way of feeding on itself, stimulating more of the same, so it is likely that sooner rather than later we will be immersed in an unproductive morass, an even more costly prison system that does little to lessen crime in the streets. Then it is likely the pendulum will swing back and rehabilitation of offenders will be the demand, with the public naively believing that outmoded approaches will do the trick and decrease crime.

The irony is that in either case, there has been little new thought in the criminal justice field. We'd see more impressive progress if the landmark recommendations made in the late 1800s by the American Correctional Congress could simply be put into effect today.

If a "balance sheet" was presented on the cost/benefit of locking up offenders as a solution to the crime problem, the tally would shock the public and might even discourage the practice. It currently costs an average of \$15,000 to lock up one person for one year in this country. In many states it's as high as \$25,000. In addition, it costs over \$70,000 just to build *one* new prison cell. At these prices, an offender could be sent to one of the better colleges each year and have plenty of spending money left over.

Why Prisons?

And what are the benefits of locking up these offenders? The one we hear the most is incapacitation: at least the offender will not be on the streets committing a crime. The larger question, however, is at what *total* expense? Prisons certainly incapacitate for as long as the person is incarcerated. However, recent studies have shown that even incapacitation of "career" criminals will minimally effect overall crime rates, so society is incurring substantial costs with negligible benefits.

Our reliance on prisons, and the amount of resources we give that failing system, should be a national embarrassment. We currently have over 500,000 men and women in our prisons—*excluding* jails and lockups. Our country's rate of incarceration is higher than any in the western world, and exceeded only by the incarceration rates of the USSR and South Africa, hardly admirable company for an "advanced" democracy. The question must

again be posed, for what purpose?

If the argument for prisons is that they help to control crime, the data speak for themselves. We have built and filled prisons at an astounding rate for the last ten years with no effect at all on crime. A prison term is *at best* an ineffective and costly way to achieve this goal.

Prisons are what John McKnight and Ivan Illich call "iatrogenic"—the apparent solution to the problem exacerbates the situation. In his book *Medical Nemesis*, Illich argues that we are a society afflicted with illness-producing medicine, stupidifying education, and criminalizing justice, and that often the helpers hurt. It is a frightening and offensive argument, but one with particular merit where prisons are concerned.

Prisons survive because most reforms in corrections have either been short-lived or off target. An enduring and growing theme is that prison is the only choice. In its rigidity and bureaucracy, prison ensures its endurance by serving both sides of the debate. Whether we wish treatment or punishment, the prison can be presented as providing either alternative. Though the equation is inevitably skewed toward punishment and retribution, the professional correctional administrator can usually give some semblance of validity to the notion of rehabilitation in prison, whether or not objective studies support that ideology.

Liberals have pressed for rehabilitation, but their approaches to reform haven't been innovative enough. They've

There Are Alternatives

Locking them up and
throwing away the key isn't
the only way

sometimes advocated bringing professionals into the prison. Psychiatrists, social workers, sociologists, psychologists have set up shop there, along with their tools of treatment, training and diagnosis—"transactional analysis," "positive peer culture," psychotherapy. Unfortunately, it hasn't worked. Treatment in prison is notable by its failure. Other prison programs, like those recently advocated by Chief Justice Burger in his prison reform agenda (vocational training or education, for example), have likewise had a sad and unproductive history.

Another proposed reform is to get offenders out of institutions, through "alternative" programs like halfway houses, work-release, and probation.

Alternatives in Action

What are the alternatives that we've provided, generally to the middle-class offender? They range from fairly restrictive work-release programs and halfway houses to the more permissive options of weekends in jail, community supervision, public service stints and restitution schemes.

Work-release programs are commonly used in American corrections, and the public is probably more familiar with this alternative than any of the others. Offenders on work-release reside at an institution but are released during the day to work at a noninstitutional job. The rules and characteristics vary from state to state; in some states an offender must find a job himself before he will be admitted to a program, but in other states a job is provided to an offender who is deemed worthy of the program. Wages vary, again, from state to state. Often if an offender earns a decent wage he must then

Jerome Miller engineered the closing of the youth institutions in the state of Massachusetts, still the only statewide reform of its kind. Since then he has worked on the staffs of the governors of Illinois and Pennsylvania. In 1977, he founded the National Center on Institutions and Alternatives (NCIA), a non-profit organization which develops and operates alternative programs across the nation. Herbert Hoelter is the co-founder of the National Center on Institutions and Alternatives and director of the Client Specific Planning program. Prior to his work at the NCIA, he was an assistant to the Commissioner of youth services in Pennsylvania, where he worked with Jerome Miller in removing youths from adult prisons.

CASE I

The National Center for Institutions and Alternatives (NCIA) through Client Specific Planning, is coming up with alternatives tailored to the needs of individual offenders and the courts. In the boxes accompanying the article are some examples of creative alternatives.

Maria Campo, 35 years old, had pleaded guilty to two counts of fraud and two counts of passing bad checks. Ms. Campo had been purchasing new furniture for her apartment, paying with checks for which she knew she had no funds. She also had a previous conviction for forgery.

For this case, NCIA proposed a series of sentencing options which included:

Residence: Three options were proposed. To allow the court to maintain local control, NCIA arranged for placement in a county work-release center. NCIA also arranged for placement with her parents or with a work-release program in her parents' county. Placement with the parents could be in lieu of or subsequent to placement at either work-release program.

Social Restitution: Ms. Campo would serve as a volunteer child-care worker at a day-care center. She would perform 10-12 hours of long-term community service each week, for as long as the court ordered.

Employment: Employment would be secured through referrals from a local offender assistance organization.

Counseling: Psychological counseling would be provided weekly. Financial counseling would be provided through a local credit counseling agency. Ms. Campo would receive help in budget matters.

Financial Restitution: Ms. Campo would be required to pay her outstanding debts arising from her offenses. This restitution would be incorporated into her counseling program.

Community Supervision: In addition to being placed on supervised probation, Ms. Campo would be supervised by a third-party advocate. This advocate, provided through an offender assistance organization, would monitor all aspects of the implementation of this plan. The advocate would file periodic reports to the court.

Judge Stewart Williams sentenced Ms. Campo to two 20-year concurrent sentences, suspending all but 18 months. Ms. Campo was ordered into the local county work-release center. Upon release from that program, she was required to reside with her parents and complete all other components of the proposed plan. Judge Williams thanked NCIA for its efforts on behalf of Ms. Campo.

pay a percentage back to the state department of corrections; this percentage can be anywhere between 30 and 90 percent and, ironically, amounts to an offender paying to stay in prison, since the state considers its percentage as payment for room and board.

If an offender is lucky enough, his prison sentence will be shortened by serving the end of his time in a halfway house. Here he lives with anywhere from four to 100 other residents in a less restrictive setting, and may work in the surrounding community. Halfway houses provide supervision for an offender trying to readjust to life in the community. It is possible that an offender could be sent to a halfway house in lieu of a prison stay, but this sentencing option is rarely used.

Since halfway houses are located within the community, offenders with violent

histories are usually not allowed residence in them (as is also true of work release participation). Drug and psychiatric halfway houses, however, are more likely to admit "problem" offenders since their rules are very restrictive. Generally, for the first third of their stay offenders are not allowed any visits to the community, but furloughs become more frequent as the offender undergoes more treatment. This approach to rehabilitation works best when the setting closely resembles a family, with staff showing care for individual offenders and allowing them to develop self-esteem and personal values.

Less restrictive—and much more innovative—is the weekends in jail option. An offender sentenced in this way spends from either Friday night or Saturday morning to either Sunday night or Mon-

CASE II

In a trial by jury, John Hayes, 37 years old, was convicted of embezzling \$1.1 million from the firm for which he had been financial vice-president. At his trial, he admitted to being a compulsive gambler and having lost the embezzled funds in various gambling ventures. The prosecution urged the maximum sentence of incarceration for 15 years.

As an alternative, NCIA proposed that John Hayes:

- Perform long-term community service, 10-15 hours per week, with a local gamblers' assistance center and the American Red Cross;
- Make partial financial restitution to the insurance company suffering the loss (15 percent of his annual gross income for 10 years) as well as payments to the gamblers' assistance center (as "substitute victim") and to the court;
- Participate in group and individual counseling for his gambling problem;
- Reside either at home or in a community-based halfway house;

- Maintain his current full-time employment; and
- Be placed on probation for the statutory five year limit plus submit to an additional five year "extended voluntary" supervision to permit his making more substantial, long-term financial restitution.

Judge Margaret Arnow, in her decision, relied extensively on the proposed Client Specific Plan. She imposed a 10-year sentence and suspended all but three years. In lieu of incarceration with the Department of Corrections, Mr. Hayes was ordered to report to a community-based halfway house, to perform community service with the gamblers' assistance center, to participate in counseling, and to maintain employment. Judge Arnow also placed him on five years' probation, to start upon release from the halfway house, and indicated that any gambling episode would constitute a violation of probation. As for the financial restitution, Judge Arnow urged the insurance company to pursue civil action to recover its losses.

day morning locked up, but during the rest of the week he is a community resident. The idea is that he should be punished by withholding some of his liberties, but completely pulling him out of his home is unnecessary.

Often this alternative is used in combination with another—public service work. Here the sentence calls for weekends or evenings spent volunteering in an agency or public service organization. Offenders have spent time working in nursing homes, boys' clubs, counseling agencies and any number of other settings. This option is usually reserved for misdemeanants.

The courts have also started using community supervision; offenders, in addition to having a probation officer, are placed with a third-party advocate who helps them stay on the right track. These advocates may, for example, help an offender find a job, child-care or counseling. Advocates are provided by offender assistance organizations.

One alternative currently getting a lot of public attention is financial restitution. Here an offender who is able to pay back his victim does so. Unfortunately, in the past many offenders didn't have the

means to participate in this kind of plan. Currently, courts are starting to recognize the usefulness of payment schedules. Both offenders and victims can benefit when the courts allow an offender to pay his victim back on a supervised schedule.

What helps an alternative to "work," lowering recidivism, enabling offenders to function more productively and, quite possibly, ultimately affecting the level of violence which sustains the culture of crime? The ones that work are those where an offender has an advocate who works with him at least thirty hours a week, a kind of paid or volunteer buddy. In addition, there are programs that demonstrate care for the individual as well as supervising him. They are generally high risk programs willing to become involved in the Byzantine and confusing contradictions which characterize the life and perceptions of the individual offender, and programs which, because of their emphasis on the individual, do not replicate easily. The emphasis of these programs is incompatible with the "objective" responses of mandatory sentencing or the bureaucratic response of the helping social agency or program. But what about alternatives in general?

Are they more successful? Are they more cost effective?

Why Alternatives Fail

The answers to these questions are mixed. The primary problem with "alternatives" is that they generally have not been tried for the population who would otherwise be in prison. The programs which work (and there are many) are reserved for populations which have the means to avoid falling into the criminal justice system abyss, generally the more articulate, interesting individuals who are able to involve friends or family in their plight—the middle-class or their mimics. In practice that means that alternative programs have actually *increased* the total number of offenders in the system. By creating dual systems—prison for "lower class" criminals, alternatives for those who rarely go to prison—we're doing nothing for most prisoners. There are isolated programs which provide the exception, such as "Client Specific Planning" (see boxes for case studies), but the norm is not to handle the "serious" offender in alternative settings. The paradox is that the diagnostic or labelling process which enables many offenders entry into alternative programs is ludicrously arbitrary.

Ronald Laing, the British psychiatrist, has commented that most diagnoses are "social prescriptions," focusing on what's best for society, not what's best for the individual. Those of us in the so-called helping professions often maintain the naive view that the diagnosis of serious offenders is a scientific exercise. At other times, when feeling less comfortable with psychiatric nomenclature or the rehabilitative ethic, we stress the legal definition of the serious or violent offender. But the most crucial aspect of this process has been neglected—namely, the bureaucratic and political considerations which call for certain prescriptions. For example, when dealing with a convicted felon, the diagnosis is more likely than not a *bureaucratic response to a political problem*. In this context, the diagnosis helps relieve strain on the system by focusing attention on an individual or class of "deviants," many or most of whom, paradoxically, are products of that very same system. The process repeats itself. Only the labels are changed to protect the guilty.

It matters little, therefore, whether the definition is one of "sinner" of the seventeenth century, "possessed" of the eighteenth century, "deviant" of the nineteenth century, "deviant" of the twentieth century, "deviant" of the twenty-first century.

(Continued on page 64)

Alternatives

(Continued from page 13)

teenth century, "moral imbecile" of the nineteenth century, or a "constitutional psychopathic inferior" of the early twentieth century. In the 1940s the label was "psychopath"; "sociopath" in the 1950s; a person was "unresponsive to verbal conditioning" in the 1960s; and a "criminal personality" or "career criminal" in the 1970s. Through all of these labels we avoid dealing with the political and bureaucratic issues which lurk somehow below our awareness, but which might enlighten the whole process.

"Just desserts" models based in mandatory sentences are no more responsive to these issues than the indeterminate sentences based in rehabilitative ethic. As George Mead commented over 70 years ago in *The Social Settlement* "the social worker may be the sentimentalist but the legalist ends up being the ignoramus."

In order for the system to change we have to admit that the system *needs* to change. In addition, authentic alternatives, as *alternatives to prison*, have been given little opportunity to succeed. The typical state corrections budget is 95 percent locked into the prison line item. Because of a tradition of dealing with light-weight offenders unlikely to be incarcerated, alternatives are thought of as luxuries rather than necessities, super-

fluous rather than required. When budget cuts become necessary, "alternatives" are the first to go. Had they been true alternatives to prison, reflected in lower numbers of imprisoned inmates, this probably wouldn't be the pattern.

Any Hope Ahead?

There are a few bright spots on the horizon. The public is beginning to recognize the costs and failures of the current system. In addition, many programs are responding to the offenders who really need their help. For example, the Client Specific Planning (CSP) Program has consciously and methodically focused on offenders at the "deep end" of the system. Approximately 95 percent of our work is with felons, and 40 percent of them have committed violent crimes. We say that if a program can be successfully implemented with this population it can have a significant impact on the whole criminal system, including the treatment of lesser offenders.

Many other alternative programs are also recognizing the mandate to balance the individual needs of the offender with the political needs of the courts to impose sentences that serve justice. The fundamental principles underlying CSP are relatively simple: (1) there have to be effective controls on the defendant; (2) there has to be significant restitution; and (3) there must be some type of punish-

ment imposed by the court. These three principles dovetail closely with the court's sentencing goals of public protection, rehabilitation, and deterrence.

The important issue is not that CSP works but rather the premises which underlie it. CSP is one means of insisting we treat offenders who are strangers the way we would deal with offenders who are relatives or friends—with caution, but with concern. It is our view that demands for justice, as well as rehabilitative or reformatory needs, can be met through use of this model, *provided it remains focused on those specific offenders who would otherwise go to prison.*

The issue then, becomes not one of conservative vs. liberal approach to corrections. It is not even one of getting "tough" vs. being "permissive." Rather, it is how to establish an environment in corrections where the individual matters, and to introduce this approach to the vast mass of offenders. We are talking about establishing conditions for personal responsibility and remorse, thereby opening possibilities for personal reform and change. Until now, this has happened accidentally, if at all. Simply put, it means guaranteeing that the same degree of involvement and concern is put into planning for the average offender (who is a stranger), as we would insist upon were the offender a close friend or family member. □

CASE III

Dave Williams, 24 years old, pleaded guilty to "assault with intent to murder" his 19-year-old former girlfriend following the breakup of their relationship. Williams had fired several shots at the woman, wounding her in the thigh, shoulder, and buttocks. After the shooting, Williams, with his girlfriend as a captive, held police at bay for 20 minutes.

NCIA proposed the following alternative sentence:

Residence: Mr. Williams would be placed in a comprehensive community support program offering psychological counseling, vocational assistance, and training toward independent living. Mr. Williams would eventually move into a supervised apartment.

Community Service: Mr. Williams would volunteer 10-12 hours per week in a long-term community service at a local hospital.

Employment: With the help of an offender's assistance organization, he would seek full-time employment.

Psychiatric Counseling: Mr. Williams would undergo a psychiatric evaluation and enter into continuing therapy at a local, university-affiliated, psychiatric clinic.

Special Research Project: In response to the particular offense, Mr. Williams would be required to read and report on a book dealing with battered women.

Special Condition: Mr. Williams would be prohibited from any con-

tact with the victim of his offense.

Probation/Community Supervision: Mr. Williams would be placed on probation. Additionally, to assist with the coordination of his plan, a third-party advocate from an offender aid organization would voluntarily provide supervision. NCIA also indicated to the court that Mr. Williams had scored 10 on the U.S. Parole Commission Saliency Factor Score System, making him a good probation candidate.

Judge Henry Jones imposed an 18-year sentence, suspending it all so Mr. Williams could participate in the Client Specific Plan with five years' probation and a three-year community service order.

COST

Costs for Client Specific Planning services are billed at an hourly rate plus expenses. Rates are dependent upon the complexity of the case and the nature of the representation.

Upon case acceptance, a range of hours for each service provided will be closely estimated. Deviations from that estimate are subject to client approval.

In many locations, NCIA has developed public and private funding sources to partially support services for low-income and indigent defendants. For example, our Southwest Regional Office in Dallas, Texas, can handle fee-waived cases for Court-appointed attorneys and public defenders. In Los Angeles, our Western Regional Office has developed private support for indigent youthful offender cases.

CSP has also qualified for direct Court reimbursement in many State and Federal jurisdictions. Sample motions and requests for reimbursement for our services are available from our business office.

STAFF QUALIFICATIONS

All Client Specific Planning staff are carefully selected and professionally trained in both State and Federal work through our in-house training program. Senior staff have a minimum of ten years experience in the criminal justice or related fields, and each has prepared over 100 cases. Many have also published professional articles.

Individual case assignment is based upon the type of case and the staff person with the most expertise in a given area. Individual biographies are available upon request.

REFERENCES

CSP services have been provided for over 2,000 attorneys. Legal references are available in every state. We also provide references by specific type of offense.

Additionally, there are over 15 national publications which have highlighted Client Specific Planning services. Our bibliography and publication list is available upon request.

CLIENT SPECIFIC PLANNING SERVICES: DO THEY MAKE A DIFFERENCE?

Approximately 70% of CSP proposals have been accepted in whole or in part by the Courts and parole authorities. We cannot, of course, guarantee individual outcomes. We do, however, pledge that each client will be given prompt, experienced service and a professional work product.

As the largest and most respected sentencing service in the country, we are proud to have set the standards in private sentencing services to defense attorneys and Courts. We will continue to meet that challenge as we expand Client Specific Planning and develop new expert services.

"At a time when many authorities and laymen are demanding harsher sentences, an increasing number of criminologists want to suspend prison terms. . . 70 percent of NCIA's proposed sentences have been accepted by the courts."

Newsweek, August 4, 1980
Punishments That Fit The Crime

"Much of the current interest in alternative sentences has been highlighted by the work of the National Center on Institutions and Alternatives. . . ."

Barrister, Winter 1984
Alternative Sentencing: Does It Work?

NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES

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Client Specific Planning

Setting the Standards for Sentencing and Parole

CLIENT SPECIFIC PLANNING

BACKGROUND

Since 1979, the National Center on Institutions and Alternatives has successfully provided Client Specific Planning (CSP) sentencing and parole services to defense attorneys and courts throughout the country. CSP services are designed to provide defense counsel with individualized sentencing or parole plans for their clients who are found or are pleading guilty to charges and are facing, or seeking relief from, incarceration. Our services have also proven effective in cases in which a background investigation and research are likely to mitigate the length or nature of sentence.

Initially available through a single office in Washington, D.C., CSP services are now provided nationally through a network of regional and affiliate offices. Client Specific Planning services are available for cases in Federal, State and Local Courts, as well as for all levels of parole.

CASE PHILOSOPHY

Often defense attorneys and Courts have neither the time nor access to resources to develop individualized sentencing and parole options for their clients. In addition, rules and procedures for sentencing and parole change frequently, creating a myriad of confusing circumstances which require understanding and careful review and evaluation.

We believe that every client facing a potential prison term deserves to have as strong a presentation as possible made to the sentencing or paroling authorities. Experience has shown that this does not happen when left to existing practices.

Our policy is to approach each case on an individual basis, presenting background information, research, and individualized dispositional options. These include the use of extended community service, work-release and halfway house programs, creative uses of fines, and other sanctions available under the law. This case-by-case approach insures that every defendant is represented as effectively as possible.

CASE EXPERIENCE

Client Specific Planning offers the most experienced and professional sentencing and parole preparation services available in the United States.

Through June, 1984, Client Specific Planning services have been provided for over 3,500 clients. We have worked with over 2,000 defense attorneys and presented our work in 43 states and four countries. Our reports have been submitted in 65 of the 94 Federal District Courts.

We have been involved in many landmark sentencing and parole decisions, and have worked with the most experienced attorneys in the country. Our research and case materials are continuously updated, providing clients with the most comprehensive approach available for every case.

TYPES OF CASES

Client Specific Planning services have been used for virtually every type of case. We agree with and support the legal tenet that every defendant is entitled to the best possible representation under the law. Client Specific Planning extends that commitment to the sentencing and parole phases.

We have assisted attorneys in many of the major cases in this country involving white collar crime, spousal and familial abuse, political corruption, sexual offenses, RICO and narcotics violations, and virtually all types of cases handled by Local Courts.

SERVICE OPTIONS

Numerous services are available under Client Specific Planning. Upon intake, an experienced staff will help determine which services are most appropriate.

- **Sentencing Reports**

Provides practical, individually tailored alternatives designed to eliminate or mitigate the use of imprisonment. Plans are developed which meet the sentencing goals of the Court, including punishment, deterrence, public safety, and rehabilitation.

- **Sentencing Reconsideration**

Provides a comprehensive sentencing report where sentence has been imposed, but revision is possible. Particularly appropriate for motions pursuant to Title 18, United States Code, Rule 35. Also relevant for most state cases and "shock probation."

- **Parole Plans**

Provides community release plans and mitigation arguments in support of release on parole. In Federal cases, also provides for technical expertise toward achieving the lowest possible guideline.

- **Research**

Provides current research and statistics regarding specialized issues such as drunk driving/deterrence, prison populations, availability of work release programs, and mandatory imprisonment statutes.

- **Background Investigations**

Develops mitigating circumstances and social histories for presentation toward reductions in prison terms. This is particularly useful in cases where the Court will receive limited background information such as in international cases, and cases where the defendant is at great risk, such as capital cases.

- **Institutional Designation/Transfer**

Works with appropriate authorities for placement of clients in correctional or community-based facilities. Our knowledge of resources, both on a local and national basis, makes us uniquely qualified in this area.

- **Identification of Other Experts**

In some cases, other types of professional services, (e.g., psychiatric, financial, investigative) will be required. CSP staff are experienced in both identifying and working with these professionals to insure a coordinated effort.

- **Technical Assistance/Expert Testimony**

CSP services maintain a mailing list of over 6,000 criminal defense attorneys to whom we provide technical updates on important developments in sentencing and parole. CSP staff have also provided specialized training and featured speakers at over 50 legal and judicial seminars. Staff are also available for litigation requiring expert testimony.

Punishments That Fit the Crime

On a warm spring evening last year, 19-year-old Alan Cole killed ten of his friends. They were packed into his Ford pickup truck when Cole—high on marijuana and beer—missed a curve on a rural Maryland road and crashed the truck into a tree. Cole was convicted of automobile manslaughter—but he never went to prison. Instead, the judge sentenced him to a program of drug and alcohol counseling, psychotherapy and three years of volunteer work in a Baltimore hospital emergency unit.

The case of Alan Cole appears to buck a national mood. At a time when many authorities and laymen are demanding harsher sentences, an increasing number of criminologists want to suspend prison terms for lawbreakers who seem unlikely

Cole's sentence was designed by the Washington-based National Center on Institutions and Alternatives. Founded two years ago by criminologist Jerome G. Miller, NCIA devises what it calls "client-specific" punishment plans, in cooperation with attorneys and judges. Miller finds "even the most conservative judges receptive"; 75 per cent of NCIA's proposed sentences have been accepted by the courts. "We are uniquely aware of the horrors of prison," says Maryland circuit court judge John McAuliffe, who has worked with NCIA. "We try cases of prison rapes and hear the sordid details of what goes on there." Judge Samuel Barrick explains his sentence of Alan Cole: "I didn't feel that he or society would have benefited from his being sent to prison. We had already lost ten lives. We would have been losing

often employed by a social-service agency, may meet with the criminal several times a day, transport him to and from his job and spend evenings and weekend hours with him to keep him out of trouble. The advocate must also make regular progress reports to the court. At an average weekly cost of about \$35, Miller says, "the advocate offers the same supervision that would be provided by a parent or relative in a middle-class family." Should a criminal fail to live up to his end of the alternative bargain, there is always a fallback position for the judge: he can sentence the offender to a full prison term.

JEAN SELIGMANN with YVETTE BENEDEK
MAOR in Washington and bureau reports



Richard Childress—Baltimore Sunpapers

Convict Cole with parents, criminologist Miller: Finding alternatives to prison



John Ficaro—Newsweek

to commit violent crimes. These advocates of "alternative sentences" argue that incarceration is both costly (as much as \$26,000 a year per prisoner) and ineffective as a deterrent to crime. When the punishment is tailored to fit the crime, they contend, both the offender and the community benefit. Some examples:

- A Chicago man known as "Weird Harold" was convicted of trafficking in pornography. The court ordered him to donate 3,000 "clean" books to the library of the county jail.

- A white man convicted of harassing an interracial couple in Florida was sentenced to spend weekends working in a black church.

- A Tucson, Ariz., barber who had stolen from Salvation Army collection boxes was sentenced to provide free haircuts for four Saturdays at that charity's rehabilitation center.

the eleventh." Some parents of the dead children complained about the sentence, but most approved of it. "There was nothing that could be accomplished by putting him in jail," says one man who lost a son and daughter in the crash.

Damages: Miller maintains that NCIA's recommended punishments are tough as well as constructive. Last year, for example, two Virginia teen-agers were convicted of setting fire to their high school, causing \$4.5 million in damages. Under a plan offered by NCIA and accepted by Judge Lewis Griffith, each youngster was given a suspended sentence of a year in prison—plus 3,000 hours of volunteer work in homes for the aged and mentally retarded, and \$10,000 in financial restitution, payable over ten years by the boys themselves.

NCIA builds into its plans special safeguards to deal with potentially dangerous offenders. Paid or volunteer "advocates,"

**OFFICE OF POLICY ANALYSIS, RESEARCH &
STATISTICAL SERVICES**

**Source: New York State Division of
Criminal Justice Services**

EXECUTIVE SUMMARY

Programs offering alternatives to incarceration for certain offenders, who under normal circumstances would be incarcerated, can be a valuable supplement to the criminal justice system of New York State. These programs offer the potential for more individualized sentencing in that they provide additional sentencing options. Further, they have the potential for enhancing the correctional system in that they address the issues of prison overcrowding, the high cost of incarceration, and the negative effects of incarceration on offenders and their families. During the first 22 months of its operation, Client Specific Planning, as provided by the New York Center for Sentencing Alternatives in Onondaga County, did not achieve this potential.

Introduction

- o The Client Specific Planning (CSP) service is designed to promote and develop alternative sentences for offenders who are otherwise likely to be sentenced to prison or lengthy jail terms.
- o At the request of a defense attorney, a CSP case developer prepares a comprehensive package of supervised community-based sanctions to be presented to the court as an alternative sentencing plan.
- o The New York Center for Sentencing Alternatives, located in Onondaga County, provides the CSP service in New York State.

The Operation of CSP in Onondaga County

- o The New York Center worked from outside the established criminal justice community, using CSP to bring about change in the conventional pattern of sentencing offenders.
- o The New York Center directed its services toward defense attorneys; defense attorneys are among those able to estimate likelihood of incarceration for their clients, they provide access to the decision making process in the courtroom, and they are most likely to favor alternatives to incarceration.
- o CSP plans generally included some combination of supervision, residence, community service, and counseling.
- o CSP plans focused on the needs of the client relative to the instant offense. They were not particularly individualized with respect to conditions surrounding the lives of the clients such as employment and education.

- o CSP plans differed from pre-sentence reports prepared by the Probation Department in that CSP plans emphasized post-conviction handling of an offender, while pre-sentence reports emphasized the present offense and the prior criminal record of an offender.
- o The quality of the CSP plans prepared by the New York Center staff can be characterized as professional. They reflected a high standard of preparation and presentation.
- o Once a CSP plan had been accepted by the Court, neither the New York Center nor defense attorneys using the service made much effort to assist the local criminal justice system in implementing the plan.
- o A fiscal evaluation of the efficiency of the operation of the service could not be conducted because evaluators were not given access to adequate information about the financing of CSP cases.

Characteristics and Outcomes of CSP Cases in Onondaga County

- o During the first 22 months of its operation, the New York Center prepared 31 CSP plans for defendants facing sentencing in Onondaga County Courts; of these, 19 were accepted or conditionally accepted by the court.
- o As a group, clients selected by the New York Center were not otherwise likely to have received sentences of incarceration.
- o For CSP clients generally, the probability of being incarcerated was not reduced by having a CSP plan presented to the Court.
- o Offenders released with CSP plans were a slightly greater risk to public safety than were a comparable group of offenders released to the community in Onondaga County.

CSP and the Criminal Justice Community in Onondaga County

- o Few people in the criminal justice community of Onondaga County had a clear and thorough understanding of CSP.
- o Proponents of CSP focused on the practical qualities of the service and considered it "always workable," innovative, and a viable alternative to incarceration.
- o Opponents of CSP focused on its concept and considered the service "naive," biased toward the defense, and viewed it as having little credibility within the criminal justice community.

Conclusion

- o The manner in which the New York Center operated CSP in Onondaga County prevented the service from reaching its potential.
- o The philosophy of the New York Center was wholly adversarial. This effectively precluded the possibility of cooperation with components of the system other than defense attorneys.
- o In order for the CSP service to have a genuine decarcerative impact in Onondaga County, without unacceptable increases in the risk to public safety, some fundamental changes in operation would be necessary.
 - The providers of CSP need to cooperate to a greater extent with members of the criminal justice community in order to increase awareness and knowledge of the service. This should improve the ability of the New York Center to more appropriately select offenders for alternative sentences.
 - While greater integration into and cooperation with the system is necessary, the advocacy role of the CSP service should not be compromised. The value of CSP is to provide a "second opinion" when routine processing seems likely to result in the incarceration of an offender.
 - CSP providers need to take more responsibility for seeing that CSP plans are provided to the Court and Probation Department, and that they are carried out as written.
- o If such operational changes were made, and if the philosophical posture of the New York Center were modified to permit cooperative efforts with the system, the CSP service could become a valuable supplement to the criminal justice system of Onondaga County.

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A RESPONSE TO, "AN EVALUATION OF CLIENT SPECIFIC PLANNING:
AN ALTERNATIVE TO INCARCERATION" (BY MARSHA WEISSMAN
OF THE NEW YORK CENTER ON SENTENCING ALTERNATIVES)

NCJRS

JUN 18 1984

ACQUISITIONS

The New York Center on Sentencing Alternatives (NYCSA) is a private non-profit organization whose primary project is Client Specific Planning. The overall purpose of our organization is to foster the development of effective alternatives to incarceration which meet the needs of the community, the courts and individuals involved in the criminal justice system.

Client Specific Planning was initially developed by the National Center on Institutions and Alternatives in 1979. The NYCSA affiliated with NCIA in 1981 at which time we began to implement the Client Specific Planning model throughout New York State. NCIA affiliate offices are also located in Florida, California and Texas. NCIA and its affiliates including the NYCSA have presented 2,500 cases in federal, state and local courts throughout the United States.

The Client Specific Planning service has been recognized as being in the forefront of alternative sentencing.* We have particularly emphasized information dissemination to members of the defense bar and in New York State have worked both with the New York State Defenders Association and various public defender/assigned counsel programs.

* Recent articles discussing the project have appeared in The National Law Journal, Volume 6, Number 33, Monday, April 23, 1984 and The Barrister, Volume 11 Number 1 Winter 1984. In the past, articles highlighting CSP have appeared in The National Law Journal, Volume 4, Number 11, November 23, 1981, The Defender Volume IV Number 2, July, August 1982 and New York Law Review, Volume XXVII, Number 3, 1982 (MacCarthy and Brook "Defense Counsel and the Federal Sentencing Process") to name but a few.

The CSP project was established through a grant from the Edna McConnell Clark Foundation. At the time that the Department of Criminal Justice Services (DCJS) evaluation began, the NYCSA was funded primarily through the Clark Foundation grant, and secondarily through client fees. Subsequent to the evaluation (1982), the NYCSA became a recipient of a grant from New York State administered through DCJS. This appropriation was renewed for fiscal year 1983-1984 and renewed again for fiscal year 1984-1985. We appreciate the support of New York State in our efforts.

The evaluation report prepared by the DCJS Bureau of Research and Evaluation came as a result of a request by DCJS to examine the Client Specific Planning service. At the time this request was made, the NYCSA was not receiving any funds from New York State, nor had we submitted or developed any grant for state consideration. Our involvement in this process was purely voluntary, motivated by the desire to assist the state in furthering its perspective on alternative sentencing. Additionally, the NYCSA anticipated that the findings of the evaluation would aid in improving project implementation. The DCJS evaluation represents an analysis of our project in its initial stage of operation.

The evaluation performed by DCJS provided us with some useful, constructive criticism, yet has left us with some fundamental concerns about the general findings and conclusions. The remainder of this document addresses these concerns.

We were heartened to note that the cornerstone of our project, that is the preparation and presentation of sentencing reports was regarded positively by the evaluators. As these sentencing reports are the primary focus of the project, this was of particular interest to us. The evaluation as a whole however failed to correctly address the fundamental purposes and objectives of the Client Specific Planning project and its relationship to the criminal justice system. Further, we would note that as the evaluation was conducted over two years ago and examined the project in its initial stages, much of the commentary is dated.

It was useful for us to review the evaluation in light of the changes and improvements we have already undertaken including expansion of sentencing reports to incorporate social background and criminal history factors; broader dissemination of information about the project throughout the criminal justice system and other community agencies; and improvement in the distribution of the reports particularly to the Probation

Department. There have been additional changes made directly as a result of our review of the evaluation including expansion of intake criteria to further identification of appropriate clientele and the development of more formal procedures for sentence implementation and follow-up. We appreciate the DCJS' input on these aspects in particular.

Our major point of departure with the evaluation concerns the role of CSP relative to (conventional) sentencing procedures. This relates directly to the manner in which the CSP project is operated, clearly a major concern of the evaluation.

Rather than a "radical" departure from traditional sentencing practice, or proceeding from "outside the established criminal justice community", the NYCSA endeavored to mesh the CSP service into traditional and existing practice and procedures.

As the DCJS report indicates, CSPs are developed at the authorization of defense counsel. We would underscore that the defense counsel are not outside the established criminal justice community, but rather, along with the judge and prosecutor, are an integral part of this community. Thus in working through

defense counsel, the NYCSA has entered into a well recognized component of the criminal justice system.

CSP therefore is designed to be an enhancement of traditional sentencing practice as described in Article 380 of the Criminal Procedure Law of the State of New York which sets forth the authority of the court to determine sentence, and the right of defense counsel to speak on behalf the defendant and Article 390.40 which allows for a defendant to submit information relative to the issue of sentence. In order to ensure due consideration by the court, such memoranda are almost invariably introduced by defense counsel.

The NYCSA has developed its CSP service not to change the conventional pattern of sentencing offenders but to enhance such practices. The American Bar Association, the New York Defenders' Association, legal scholarship and court decisions have all encouraged an expansion of this process by calling for thorough presentation of alternative programs for defendants at the time of sentence. Commenting on standards developed by the American Bar Association Barasso stated that:

...it is the defense attorneys responsibility to be familiar with all sentencing alternatives available to his client and with community and other facilities

that may be of assistance in meeting the defendant's needs.*

The development of the CSP service nationally and locally was undertaken with existing sentencing procedures in mind. CSP is conservative in its approach asking neither the court, nor the other components of the criminal justice community, nor the community at large to embrace a broad ideology on alternative sentencing or corrections. Rather, we request that each case and each sentencing report be considered on its individual merits. Approaches to courts and probation officers have been grounded largely in this individual, case-by-case approach. Our intent was not to avoid cooperation among components of the criminal justice system, but rather to focus such cooperation on a particular defendant at a particular point in time. The need to individualize sentencing, particularly with regard to alternative sentencing was emphasized by Judge Joseph L. Tauro, United States District Judge, District of Massachusetts when he stated:

* Barasso "Rehabilitation Planning Services in a Public Defender's Office, 10 Offender Rehabilitation 117 (1974).

The lawyer's responsibility is to focus the judge's attention on this particular defendant- that this defendant is salvageable- that it would be in the public's best interest for this defendant to be given the opportunity to redeem himself by a voluntary program of public service, rather than by making mailbags in Atlanta.* (emphasis in the original)

The CSP service was designed to specifically enhance the defense counsel's ability to carry out this responsibility and thus provide thorough information to the court.

Since the time of the evaluation, the NYCSA has become more active in the dissemination of information about the service to the public. Our ability to do this rests in no small part in our growing experience in sentencing and development of CSPs.

Client Specific Planning has always been focused in its objectives. While we recognize and appreciate the complexities of the criminal justice system, we believe that addressing all of these aspects is beyond the scope of the project**.

* Josphe L. Tauro "Sentencing, A View from the Bench", New England Journal on Criminal and Civil Confinement Volume 9, Number 2 Summer 1983.

** For discussions of the need to improve sentencing practice see for example Jonathan E. Gradess "A New Paradigm for Sentencing" in The Defender January 1982; American Bar Association Standards for Criminal Justice Sentencing Alternatives and Procedures Standard 18-6,3 441 and MacCarthy, Terence and Carl Brook, "Defense Counsel and the Federal Sentencing Process," New York Law School Law Review, Volume, XXVII Number 3, 1982.

Our primary objective is to develop comprehensive, well prepared and well documented sentencing recommendations for court consideration. We were pleased therefore to find DCJS' evaluation of this most important aspect of our service to be viewed positively. Moreover, we view the effort to develop quality proposals as significant undertaking requiring careful attention. Sentencing is a complex process; CSP proposals endeavor to address the multiple goals of sentencing including deterrence, retribution, public safety and rehabilitation.

In sum, our basic disagreement with the DCJS report rests with what we believe to be fundamentally a misunderstanding of the role and process of sentencing. The definition and interpretation of that process provided by DCJS discounts the role of defense counsel as biased and places such counsel outside the criminal justice system. Obviously, as CSP accesses the system through the defense attorney, it is not surprising that the DCJS evaluation also concludes that the New York Center operated outside the system.

In addition to this general and overarching disagreement with the evaluation, there were numerous specific points which we question. We will touch briefly on but a few of these.

The process of plan preparation was inaccurately portrayed in the DCJS report failing to capture the thoroughness of the intake interview, a process lasting three - to - five hours. Additional background information is obtained through other sources including family of the defendant, victim of the offense and social service professionals.

Also misconstrued was the identification and confirmation of plan elements. Based on the background information developed, contacts are made with community resources to secure commitments to participate in the plan. Each plan is individualized and multifaceted to meet the goals of sentencing, address the nature of the offense and offender needs as well as interests of the community. Each plan contains variations of the following: community service, financial restitution, employment, education, residence, counseling, and community supervision. However the specific recommendation concerning each element is

individualized.

Placements, particularly those involving community service are developed with an eye towards appropriateness, needs of the community and agency and skills of the offender somewhat obscured in the evaluation report is the fact that all community resources are apprised of the circumstances surrounding our request for service including information on the background of the offender and the offense. Most resources have the opportunity to interview the defendant. Although the DCJS interpretation is somewhat negative, the direct quotations from community service supervisors provided in text are indicative of their satisfaction with the implementation CSP project. Upon careful reading, these comments reveal that supervisors are of the opinion that NYCSA cooperated fully in placements, screened clients carefully and made appropriate requests for placements. The statements also suggest that the NYCSA was available for consultation regarding any problems with placement should such occur.

Related to the above is the issue of appropriateness of community placement. The evaluation somewhat obscures the fact that CSP recommendations are not always community

based. The objective of the service is development of alternatives consistent with public safety. As such the NYCSA recognizes that a community-based sentence is not appropriate for every offender. Obviously, community service placements would not be developed for individuals who pose a danger to the community; in such cases the NYCSA recommends either incarceration or secure treatment.

Contrary to what is implied in the evaluation, recommendations were in fact both life specific and community specific. Moreover, recommendations in the sentencing proposals are not developed solely to address offender need. They are also offered to provide the court with comprehensive information about a client's activities and whereabouts. A client may not "need" employment, but the court should be afforded information about the nature, and location of such employment.

Whenever possible, the NYCSA builds upon existing client strengths and wherever possible does not disrupt existing employment, residence or educational programs. The evaluators downplayed the important role case developers frequently play in ensuring that available/existing resources, such as employment, can be maintained. Also

underemphasized was the role of case developers in encouraging clients to take responsibility for securing employment on their own prior to sentencing.

The issues involved in "life-specific" resource development are more complex than absence or presence of a particular element. For example, the identification of a job training program is more meaningful to a young, undereducated unemployed offender than an older educated individual temporarily laid off. The specific comments in the DCJS evaluation regarding the employment question are generalizations and in fact do not reflect the specific context and conditions surrounding the individual lives of clients. The data analysis in the report is somewhat misleading on this issue. For example, the evaluation criticizes the program for failing to address employment needs of unemployed clients. Yet a review of these cases reveal that recommendations for elements other than employment, specifically job development and/or education, were in fact life specific. Recommendations for unemployed clients were developed based on identification of offender characteristics and needs and availability of community resources. For example, in most cases included in the DCJS evaluation where the NYCSA did not include an employment

recommendation, this in fact reflected an assessment of realistic needs. In two such cases, we recommended instead full-time education. Both clients were young (under twenty years of age); one client re-entered high school and the second enrolled as a full-time student at a local community college. In five cases we recommended vocational training in lieu of employment. The backgrounds of these offenders indicated that they had little or no job skills, low education levels and little, if any job experience. Finally, almost every case where neither full time education nor job training was recommended, the NYCSA's primary recommendation was for incarceration or long term residential treatment for periods exceeding one year.

A review of the data within the actual context of client lives reveal that CSP recommendations are realistic. While we in no way question the value or importance of productive activities, particularly employment, an expectation that all clients are immediately employable is utopian at best. The ability of case planners to refer and place clients with appropriate educational or vocational services, particularly where such individuals have life histories indicating chronic unemployment, few if any job skills and low educational levels is in our view truly

client specific.

Additional inaccuracies in the report appear in a wide variety of issues including: discussions of training of case planners; use of CSP in parole matters; office procedures and policies; access to background information; comparisons with pre-sentence reports and; requests by DCJS for information relative to number of clients and financing of CSP cases. To address all these issues would necessitate an analysis too extensive to be provided in this context.

Finally, we would comment on certain statements made in the report relative to the cooperation of the NYCSA with the DCJS evaluation. The NYCSA and NCIA made every effort to cooperate with the evaluation. This is underscored by the fact that the NYCSA agreed to the evaluation at a time prior to receiving any state funds. It is in fact unusual for programs to consent to such evaluations absent some contractual obligation. The NYCSA provided the DCJS evaluation team with unimpeded access to staff, and cumulative data and revised case data in line with clarified

requests from DCJS.* The only question arose around issues of client confidentiality. As a private agency receiving no governmental funds, this issue was at the time, a salient one. In an effort to allow the evaluation to proceed, NCIA/NYCSA financed the services of a third party who collected data requested by DCJS while maintaining client confidentiality. The NYCSA also offered to contact individual clients and to obtain their permission to release information. The third party option was selected as a more thorough and expeditious mechanism by which to proceed.

In summation then, the NYCSA was disappointed in the conclusions reached by the DCJS evaluation, particularly in light of our efforts at cooperation. Our disappointment is sharpened in light of the fact that the DCJS evaluation attaches negative conclusions to our project at the same time that the interest in Client Specific Planning is increasing as evidenced by continued acceptance of our plans in courts throughout New York State and by the continued funding of our project authorized by the New York State Legislature.

* Evaluators were originally unclear as the type of cases they desired to examine and eventually decided upon cases sentenced in county court.

The NYCSA will continue its efforts at providing courts with realistic sentencing proposals. We certainly have gained some valuable insights as a result of the DCJS evaluation and where appropriate have incorporated their recommendation into the project operation. We believe that the CSP model as developed and implemented with its emphasis on the preparation of sentencing reports addresses a critical need within the criminal justice community, and we will continue our efforts to participate in this process in a qualitative, professional manner.

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REPORT ON CLIENT SPECIFIC PLANNING
A STUDY OF THE NORTH CAROLINA OFFICE OF THE
NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES

Jonathan E. Silbert

November 21, 1983

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ACQUISITIONS

REPORT ON CLIENT SPECIFIC PLANNING
A STUDY OF THE NORTH CAROLINA OFFICE OF THE
NATIONAL CENTER ON INSTITUTIONS AND ALTERNATIVES

I. Introduction

This study was commissioned by the Z. Smith Reynolds Foundation Inc. in anticipation of the passage of the Community Penalties Bill (H.B. 830) and the expected distribution of funding under the proposed bill by the Department of Crime Control and Public Safety. The study was designed to produce an evaluation of Client Specific Planning, a sentencing planning service provided by the North Carolina office of the National Center on Institutions and Alternatives (NCIA) in Fayetteville. In addition to a general assessment of the quality of NCIA's work, the Foundation also sought the answers to three specific questions:

1. But for the involvement of NCIA and the submission to the sentencing court of a Client Specific Plan, would the sentence received by the defendant have been harsher in terms of jail or prison time?
2. To what extent have defendants who have been sentenced in accordance with Client Specific Plans actually complied with the terms and conditions of those plans, and how does the performance of these

defendants generally compare with that of other probationers?

3. How and where does the concept of Client Specific Planning best fit into North Carolina's existing criminal justice system?

This report begins with a brief history of Client Specific Planning and NCIA's Fayetteville Office. It then describes the research design and discusses in detail the results of the survey undertaken to answer the questions posed above. The report concludes with an overall assessment of Client Specific Planning and some observations about the future of this program in North Carolina.

II. Background

The National Center on Institutions and Alternatives was founded in 1977 as a private, non-profit organization concerned with criminal justice reform. Its main office is now in Alexandria, Virginia, and it works with affiliates in several cities across the United States. NCIA's major undertaking to date has been the development of Client Specific Planning. This service involves the preparation, at the request of defense attorneys, of alternative sentencing plans. These plans are usually presented to the Court at the time of sentencing, although occasionally they are used at parole and sentence reconsideration hearings and in plea bargaining. NCIA tailors each plan to the

individual client, and a proposed alternative sentence typically consists of several components, such as community service, financial restitution, residential treatment, job training, out-patient counseling, and occasionally, in very serious cases, a period of incarceration to be followed by a combination of some or all of the above alternatives.

Unlike many so-called "alternative sentencing" programs, NCIA claims to take great care in assuring that it accepts as clients only those defendants who, but for NCIA intervention, would be likely to be sentenced to incarceration. NCIA charges fees on a sliding scale, and uses income from full-fee paying clients and support from The Edna McConnell Clark Foundation to offset costs in its low and no fee cases.

In late 1981, The Edna McConnell Clark Foundation awarded a grant to the National Legal Aid and Defender Association (NLADA) to enable it and NCIA to provide sentencing planning and advocacy services to indigent defendants. Under this grant, affiliate offices of NCIA were established in West Palm Beach, Florida; Lincoln, Nebraska; and Fayetteville, North Carolina.

The North Carolina office opened in January, 1982 and is located at 214 F Dick Street in Fayetteville. It is staffed by a Director (Elizabeth Harbourt), a secretary and six part-time case developers. As of this writing, it has received 119 referrals, of which 17 were fee producing cases

from private attorneys, 101 were public defender cases, and 1 was a pro se request by an inmate for assistance in a parole hearing. Plans have been developed and presented to court in 73 of these cases. Of these, NCIA reports that the sentencing court substantially or fully adopted 59 and rejected 14 Plans. Twenty-two cases were dropped, and twenty-four are still pending.

III. Research Design

The design for this survey was patterned on a study by Silbert, Feeley and Associates, Inc. (Malcolm M. Feeley, Principal Investigator) of Client Specific Planning cases in the metropolitan Washington, D.C. area.¹ That study, commissioned by The Edna McConnell Clark Foundation, sought to determine whether or not NCIA's plans resulted in non-custodial alternative sentences for offenders who otherwise would have received jail or prison terms, and whether those serving such alternative sentences under the plans were in compliance with the conditions ordered by the court. Eighty plans which had been submitted and accepted by the court during 1981 were used as the sample for that survey.

NCIA's impact on keeping offenders out of prison in North Carolina was assessed through interviews with the judge, defense attorney, prosecutor and probation officer who handled each case selected for study. Information about

compliance with conditions of sentences was obtained through interviews with those individuals who were identified as supervisors of principal components of the plans. The interview questionnaires used in the metropolitan Washington, D.C. study were modified for use in the Fayetteville survey.

The sample of cases for the North Carolina study included all referrals during 1982 which were also disposed of during that same year. Of these forty-five cases, plans were submitted in thirty-three.² Twenty-eight of these plans were designated by NCIA as accepted or substantially accepted by the Court. The balance were considered rejections.

We personally interviewed the eight judges who imposed sentence in the thirty-three cases in which plans were presented. We also interviewed the ten District Attorneys who were involved in the prosecution of these cases. We interviewed the two private Defense Attorneys and seven Public Defenders who represented all the defendants in the sample. We also spoke with the thirteen Probation Officers who supervised the twenty-eight defendants whose plans were accepted. Almost all of these interviews were conducted in person, with the remaining few done by telephone.

Telephone interviews were conducted with the people designated as the key supervisors or third party advocates for the defendants whose plans were accepted. The questions

asked of these people were substantially different from those asked the previous four groups, focusing on the specific issue of compliance. Also consulted were Elizabeth Harbourt, Director of the North Carolina Office of NCIA, Herbert Hoelter and Leonard Berman of NCIA's national office, and Malcolm Young of the National Legal Aid and Defender Association in Washington.

To answer questions about the future of Client Specific Planning in North Carolina, we asked the judges, prosecutors, defense attorneys and probation officers whether or not they thought the concept of Client Specific Planning should be expanded, and, if so, what form that expansion should take. We also asked whether exposure to Client Specific Planning had changed their attitudes toward alternatives to incarceration. Finally, these individuals were asked to rate the quality of NCIA's work in each of the cases in which they were involved.

The services of the Principal Investigator for this study, Jonathan E. Silbert, were made available by The Edna McConnell Clark Foundation, to whose Justice Program he is a consultant. He worked on the Washington, D.C. study described above and has provided the Clark Foundation with periodic assessments of Client Specific Planning over the past four years. The interviews were conducted by Jonathan Abady and Martha Allerton, students in the Washington, D.C. area who had been working as summer interns in NCIA's

national office. Funds for necessary travel were provided by the North Carolina Citizens Commission on Alternatives to Incarceration.

The results of the survey are summarized in the sections which follow.

IV. The Sample Cases

The thirty-three cases in which Plans were submitted to the court and which were disposed of in 1982 comprised the sample. Fourteen of the plans were incorporated into the sentence virtually intact. In ten cases, the Court accepted the Plan, but eliminated or reduced some of the conditions, primarily those relating to restitution or community service. In four cases, the court generally accepted the Plan, but imposed some amount of incarceration.³ The Court rejected four other Plans outright, imposing substantial active sentences. In one case, the Court rejected the Plan on the grounds that it was too strict and imposed instead a straightforward suspended sentence with probation, fine, court costs and attorney's fees. The dispositions in the sample cases are summarized in the table which follows:

TABLE I

Dispositions of Sample Cases

Plan Accepted in its entirety	14	(42%)
Plan Accepted, but with somewhat less stringent conditions	10	(32%)
Plan Accepted, but with somewhat more stringent conditions	4	(12%)
Plan Rejected; sustantial incarceration imposed	4	(12%)
Plan Rejected; suspended sentence imposed	1	(3%)
Total	33	(100%)

The twenty-eight defendants in the sample whose plans were accepted, in whole or in substantial part, were originally charged with a total of 163 separate counts, or a mean of nearly six counts each. Five were charged with a single count and seven with ten or more counts, with three counts being the mode. Charges ranged from assault with a deadly weapon with intent to inflict serious injury, sale of drugs, robbery, burglary and larceny to multiple counts of Medicaid, AFDC and welfare fraud, multiple serious motor vehicle charges, forging and uttering, etc. In only a few cases were there charge reductions. All defendants in the sample were convicted by plea of guilty; none of the cases involved trials.

V. But for the involvement of NCIA and the submission to the sentencing court of a Client Specific Plan, would the sentence received by the defendant have been harsher in terms of jail or prison time?

Evaluations of "alternative sentencing programs" have been rightly concerned that such programs may "widen the net" of social control by placing additional restrictions on people who would receive sentences of probation anyway, rather than providing true alternatives to individuals who otherwise would have received active sentences of confinement. To test whether NCIA cases were truly prison-bound, we asked the judge, district attorney, defense attorney and probation officer involved in each case to consider whether the sentence in that case would have been harsher, the same or more lenient, in terms of incarceration, if a Client Specific Plan had not been presented. Defense Attorneys felt overwhelmingly that their clients would have been more harshly treated had no Plan been presented. District Attorneys and Judges also believed that many or most defendants would have been treated more harshly had they not had the benefit of Client Specific Planning. Probation Officers, on the other hand, tended to feel that the sentences would not have been much different.

Table II, below, arrays the responses of these officials to this question:

TABLE II

In terms of jail or prison time, do you think the sentence in this case would have been harsher, the same or more lenient if a Client Specific Plan had not been presented?

	Judges	District Attorneys	Defense Attorneys	Probation Officers ⁴
Probably Harsher	13 (46%)	16 (57%)	24 (86%)	9 (33%)
Probably About the Same	9 (32%)	4 (14%)	4 (14%)	14 (52%)
Probably More Lenient	1 (4%)	1 (4%)	0 (0%)	4 (15%)
Don't Know/Don't Recall	5 (18%)	7 (25%)	0 (0%)	0 (0%)
Total	28 (100%)	28 (100%)	28 (100%)	27 (100%)

The table suggests that many or most defendants would have been more harshly treated had they not had the benefit of Client Specific Planning.⁵ NCIA records, however, indicate that incarceration was actively sought by the prosecution in only eight of the twenty-eight cases in which the Court sentenced substantially in accordance with the Plan.⁶ Nevertheless, we are confident in concluding that a majority of the defendants in this sample would have received active prison terms without NCIA's services, and that the submission of a Client Specific Plan made the difference in the outcome. Client Specific Planning is thus an effective technique for bringing about the imposition of alternative sentences in cases in which active prison terms would have been the norm.

It is also significant that many judges, prosecutors, defense attorneys and probation officers reported themselves to be more willing to consider alternatives to incarceration in serious jail or prison bound cases following their exposure to Client Specific Planning. Only a few probation officers reported themselves as less willing to consider alternatives as a result of their experience with Client Specific Planning.⁷

The table which follows arrays the responses to this question:

TABLE III

In general, as a result of your experience in this case, are you now more or less willing to consider alternative sentences for offenders who otherwise are likely to be sentenced to jail or prison?

	Judges		District Attorneys		Defense Attorneys		Probation Officers	
More Willing	4	(50%)	5	(50%)	9	(100%)	3	(23%)
Less Willing	0	(0%)	0	(0%)	0	(0%)	3	(23%)
No Difference	4	(50%)	5	(50%)	0	(0%)	7	(54%)
Total	8	(100%)	10	(100%)	9	(100%)	13	(100%)

VI. To what extent have defendants who have been sentenced in accordance with Client Specific Plans actually complied with the terms and conditions of those plans, and how does the performance of these defendants compare with that of other probationers.

Financial restitution to a victim was made a condition of probation in twenty-one of the twenty-eight cases in the sample. Records of restitution payments are maintained by the Clerk of the Cumberland County Court, who provided data showing the total amount paid and date of last payment for each defendant. Table IV, below, summarizes this information:

TABLE IV

Financial Restitution

Substantial Compliance ⁸	9	(42%)
Nominal Compliance	6	(29%)
<u>No Record of Compliance</u>	6	(29%)
Total	21	(100%)

In each case where a sentence substantially in accordance with the Client Specific Plan was imposed, we attempted to interview the individual or individuals indicated as key supervisors and/or third party advocates. In one case, no such individual had been designated. In another case, shortly after the imposition of sentence, the defendant concluded that she did not wish to attempt to perform the conditions of the plan, and she asked the court to impose an active sentence. We were successful in interviewing a total of forty-four key supervisors and

third-party advocates who were responsible for the remaining twenty-six cases. We particularly sought to determine the defendants' degree of compliance with the Plans' community service components. We also asked for an overall rating of the defendants' performance since sentencing.

Community service was a condition of the sentence in twenty-three of the sample cases. In general, the interviews suggest that although most of these defendants performed some amount of community service, very few have completed their court-ordered assignments. Almost one-quarter of the defendants who were ordered to do community service have done none at all, and close to half have worked only a nominal fraction of their assigned hours. Table V, below, arrays the responses.

TABLE V

<u>Community Service</u>		
Full Compliance ⁹	3	(13%)
Substantial Compliance	5	(22%)
Nominal Compliance . . .	10	(44%)
<u>No Compliance</u>	<u>5</u>	<u>(22%)</u>
Total	23	(100%)

Tabulation of the supervisors' and third-party advocates' overall ratings of the defendants was complicated somewhat by the facts that there were two such individuals in eighteen of the cases, and that often the perceptions of

the two individuals involved were quite different. For purposes of tabulation, we have used a single, averaged grade when two persons were interviewed about the same case. The table which follows summarizes the results:

TABLE VI

Overall Rating of Clients By Key Supervisors
and Third Party Advocates

A	(<u>Excellent</u>) (always meets all responsibilities promptly)	3	(11%)
B	(<u>Good</u>) (generally meets responsibilities, but may need prompting)	9	(32%)
C	(<u>Adequate</u>) (keeps in contact but misses obligations, needs prompting)	5	(18%)
D	(<u>Poor</u>) (needs constant reminding, misses obligations regularly, drags along)	4	(14%)
F	(<u>Failure</u>) (does nothing or next to nothing, is unresponsive to reminders, hard to contact)	1	(4%)
	UNABLE TO GRADE	4	(14%)
	OTHER ¹⁰	<u>2</u>	(7%)
	TOTAL	28	(100%)

We asked the probation officers who supervised defendants sentenced in accordance with Client Specific Plans to compare the performance of these defendants with that of other probationers. The Table which follows summarizes their answers:

TABLE VII

In general, have your probationers who have been sentenced in accordance with Client Specific Plans complied with the terms of their probation to a greater extent, to the same extent, or to a lesser extent than your other probationers?

Compliance to a Greater Extent	2	(16%)
Compliance to the Same Extent	5	(38%)
Compliance to a Lesser Extent	5	(38%)
Other or Don't Recall	1	(8%)
Total ¹¹	13	(100%)

In general, we conclude that there are problems in the monitoring and enforcement of compliance with the conditions of Client Specific Plan sentences. Although a majority of Client Specific Planning clients perform as well or better than the average probationer, the degree of compliance by a significant percentage of Client Specific Planning clients is below the average. This in itself is not surprising, given the fact that Client Specific Planning clients, considered to be "prison-bound" almost by definition, are probably likely to be more difficult to supervise than more traditional probationers. Only rarely, however, is there substantial compliance with those particular conditions, such as community service and financial restitution, that distinguish Client Specific Plans from more conventional suspended sentences with probation supervision.

Moreover, failure to comply tends to go unreported to the Court, or at least unpunished.¹²

These findings, however, do not necessarily suggest that NCIA is at fault. Its mission is to assist defense attorneys with the development and advocacy of a non-incarcerative sentence. NCIA does not represent itself as an enforcement agency. Nevertheless, it is clear that if Client Specific Planning is to have a meaningful impact on sentencing practices and prison overcrowding, a mechanism that insures that the special terms and conditions of probation are being fulfilled must be implemented.

Imposition of an alternative sentence is only half the battle. For Client Specific Planning to become a legitimate and institutionalized part of the criminal justice scene, all parties---judges, district attorneys, defense attorneys, probation officers, supervisors and defendants---must know that each element of the sentence will be enforced and that non-compliance will be dealt with sternly.

V. How and Where Does the Concept of Client Specific Planning Best Fit into North Carolina's Existing Criminal Justice System?

Judges and defense attorneys strongly favored the expansion of Client Specific planning throughout North Carolina. Half the district attorneys surveyed agreed, and another twenty percent thought that the service should be continued, but at about the same level. None thought that it should be curtailed, and the remaining thirty percent expressed no opinion. Three of the probation officers

recommended reducing or eliminating Client Specific Planning, but more than half favored its expansion.

The table which follows arrays the responses on this issue:

TABLE VIII

Do you think that an effort should be made to make Client Specific Planning services more generally available through the state?

	Judge	District Attorney	Defense Attorney	Probation Officer
YES, should be expanded	7 (88%)	5 (50%)	9 (100%)	7 (54%)
NO, should be kept about the same	0 (0%)	2 (20%)	0 (0%)	0 (0%)
NO, should be reduced	0 (0%)	0 (0%)	0 (0%)	3 (23%)
DON'T KNOW/NO OPINION	1 (12%)	3 (30%)	0 (0%)	1 (8%)
OTHER	0 (0%)	0 (0%)	0 (0%)	2 (15%)
TOTAL	8 (100%)	10 (100%)	9 (100%)	13 (100%)

There was less agreement about where Client Specific Planning fits into North Carolina's criminal justice system. Judges generally favored placing the service within the Probation Department, but probation officers themselves expressed a slight preference for keeping it within a private agency, as is currently the case. Both district attorneys and defense attorneys strongly preferred a private agency. A small minority of respondents suggested one or a combination of other state and private agencies, including

the public defender's office, department of corrections and district attorney's office. The table which follows arrays the responses to this question:

TABLE IX

Given the nature and organization of the North Carolina criminal justice system, what do you think would be the best way or ways to deliver Client Specific Planning services?

	Judges	District Attorneys	Defense Attorneys	Probation Officers
Private Agency	3 (37%)	7 (70%)	8 (89%)	4 (31%)
Public Defender Office	0 (0%)	0 (0%)	0 (0%)	1 (8%)
Probation Department	5 (63%)	2 (20%)	0 (0%)	3 (23%)
District Attorney	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Other State Agency	0 (0%)	0 (0%)	0 (0%)	2 (15%)
Other	0 (0%)	1 (10%)	1 (11%)	3 (23%)
Total	8 (100%)	10 (100%)	9 (100%)	13 (100%)

VI. Conclusions

We asked the principal criminal justice officials involved in each case we studied to assess the overall quality of the Client Specific Plan and the work of the NCIA representative. Especially when those responses listed under "don't know/don't recall" are put aside, the results are strongly supportive of both NCIA and Client Specific Planning. The table which follows arrays the responses:

TABLE X

In retrospect, how do you assess the Client Specific Plan and the work of the NCIA representative in this case -- Excellent, Fair, Poor?

	Judges		District Attorneys		Defense Attorneys		Probation Officers	
Excellent	24	(83%)	12	(43%)	25	(89%)	9	(33%)
Fair	0	(0%)	3	(11%)	0	(0%)	3	(11%)
Poor	0	(0%)	0	(0%)	0	(0%)	1	(4%)
Don't Know/Don't Recall	1	(4%)	10	(35%)	1	(4%)	7	(26%)
Other ¹³	3*	(11%)	3**	(11%)	2***	(7%)	7****	(26%)
Total	28	(100%)	28	(100%)	28	(100%)	27*****	(100%)

Our findings on this and other questions are consistent with those of the Washington, D.C. survey described earlier in this report as well as less formal evaluations of the Fayetteville and other NCIA affiliates. All these studies show Client Specific Planning to be an effective vehicle for proposing an articulate sentencing plan that, to the extent possible, replaces incarceration with alternative forms of punishment. NCIA has consistently reported high rates of acceptance of its plans by the courts, and Fayetteville is no exception. The available studies also show that the defendants whose cases are referred to NCIA are likely candidates for incarceration. The officials closest to the cases agree that were it not for the Client Specific Plans,

most defendants would have been more harshly treated in terms of jail or prison time. With many members of the judiciary clearly aware of the prison overcrowding problem and in search of satisfactory alternatives to incarceration, Client Specific Planning addresses an important need.

The judges' responses highlighted another need met by Client Specific Planning. Judges value NCIA's work not only for the alternatives it proposes but also for the personal information about the defendants it presents. North Carolina law authorizes the preparation by the Department of Probation of a presentence investigation upon request of the judge. In practice, however, this is apparently rarely done. Independent of the outcome, Client Specific Planning thus contributes to a better informed sentencing decision.

Many probation officers expressed the opinion that they could undertake the functions now being performed by NCIA. Unlike the probation department, however, NCIA openly and unabashedly favors non-incarcerative sentences. The Client Specific Plan is a document designed to be used by an advocate, a defense attorney, and it does not pretend to be a neutral source of information. Most probation officers would probably feel uncomfortable in this role. Thus, although an increase in the use of probation-prepared presentence investigations could improve the amount and quality of information taken into account by the sentencing.

judge, this would not be a substitute for the expansion of Client Specific Planning.

With regard to the issue of compliance, Fayetteville's experience is also similar to that of other jurisdictions in which Client Specific Planning has been examined. While NCIA provides a system for monitoring the performance of the defendants in its plans, enforcement is left to probation officers. Enforcing the additional sentence components included by NCIA, however, will certainly require more resources than the Department of Probation has at its disposal, especially if Client Specific Planning is expanded in North Carolina. Monitoring currently tends to be lax, and formal violations of probation are initiated primarily only as the result of subsequent arrest and conviction, not failure to perform community service or to make financial restitution.

Yet, it is in the interest of Client Specific Planning as well as the criminal justice system as a whole that the conditions of alternative sentences be vigorously enforced. The concept of sentencing planning will quickly lose its legitimacy if the Plans are perceived as empty promises.

Most of the criminal justice professionals we surveyed respect Client Specific Planning and believe that it performs a useful service. The continued use of Client Specific Planning will inevitably lead to better informed sentencing decisions based on consideration of comprehensive

personal information viewed in the context of a variety of sentencing options.

It would appear prudent, however, to couple any expansion of this service with funding for some kind of intensive probation supervision that would permit adequate enforcement of the terms and conditions of the Plans. We understand that North Carolina is for the first time considering the implementation of an intensive supervision program under the aegis of its Probation Department. North Carolina thus has a unique opportunity to foster a controlled expansion of the concept of Client Specific Planning along with a mechanism to insure a satisfactory level of compliance, and to provide for an evaluation of any such expansion.

A judge who knows that his sentence, although somewhat innovative, will be vigorously enforced, is more likely to impose an alternative sentence than is one with doubts about the likelihood that the defendant will be made to perform his responsibilities. Although such a development may expose more failures and lead to more violations of probation, the overall result will be better administration of non-custodial sentences for more defendants who would otherwise have been incarcerated.

FOOTNOTES

¹ Feeley, Malcolm M. and Debra Kelley, Report on Client Specific Planning: A Project of the National Center on Institutions and Alternatives, April 1, 1983 (unpublished).

² A total of sixty cases had in fact been referred during 1982, with fifteen still open at the end of the year. The twelve cases which were dropped without a Plan having been submitted were about equally divided between defendants who preferred a plea-bargained sentence which included some confinement to the demands of the proposed Plan, and those whose attorneys were able to negotiate a straightforward suspended sentence without using a Plan.

³ In one of these cases, the court imposed a term of ten days, in another, one weekend in jail, and in a third, eight Sunday nights in jail. Only one of the cases involved any substantial period of confinement. In that case, NCIA recommended a sentence suspended after 90 days, whereas the prosecution had urged the three year presumptive sentence on each of several counts. The court in fact imposed a sentence suspended after 180 days of confinement and adopted most of the remaining elements of the Plan.

⁴ Excludes one case in which, after a sentence incorporating the Client Specific Plan was imposed, the defendant elected to be incarcerated rather than be placed on probation and perform the conditions prescribed in the Plan. Figures refer to number of cases, not number of interviewees.

⁵ The National Legal Aid and Defender Association has completed a study of the three project sites, including Fayetteville, established pursuant to the Clark Foundation grant. This study suggests that a somewhat lower percentage of North Carolina Client Specific Planning referrals were prison-bound than in West Palm Beach and Lincoln. See Young, Malcolm C., Results from the Alternative Sentencing/Sentencing Advocacy Project 1982, National Legal Aid and Defender Association (Washington D.C.: 1983). Using a formula based on seriousness of offense and previous criminal record, this study concluded that sixty-three percent of the cases referred to the Fayetteville office in 1982 were "prison bound". Figures for the West Palm Beach and Lincoln were ninety-one percent and eighty percent, respectively.

For purposes of comparison, the results of the interviews in the Washington, D.C. survey were as follows:

	Judges	District Attorneys	Defense Attorneys
Probably Harsher	53%	52%	63%
Probably The Same	47%	48%	27%
Probably More Lenient	0%	0%	0%

Probationers Officers were not interviewed in the Washington survey.

⁶ Prosecutors made no recommendation in six cases, supported the Client Specific Plan in five cases, and recommended straight suspended sentences in four others. We are unable to determine what, if any, recommendation was made in the remaining five cases in this sample. These figures suggest that prosecutors viewed fewer than half the defendants in this sample as candidates for incarceration. Fayetteville attorneys, however, appear to use Client Specific Plans in plea negotiations to a much greater extent than do their brethren in West Palm Beach and Lincoln. Many prosecutors apparently agreed to support the Plan or to make no recommendation after having their opinions about the defendant changed as a result of such negotiations.

⁷ Our interviews with probation officers revealed resentment of NCIA, based predominantly on the perception that NCIA was performing tasks that probation officers could do as well or better. Probation officers frequently complained about lack of contact between NCIA and their department during the preparation of a Plan. Better communication between these two agencies should ease some of this tension and encourage a more supportive probation department.

⁸ "Substantial Compliance" means that a defendant has made reasonably regular payments and/or is close to completing restitution. "Nominal Compliance" includes cases where one or two small payments were made, but no subsequent payments were made for several months and/or the payments which have been made total less than ten percent of the amount due. "No Record of Compliance" includes six cases in which the Clerk's office had no record of the making of any restitution payments since the date of sentencing.

⁹ "Full Compliance" means that the defendant has completed the assigned number of hours of community service.

"Substantial Compliance" means that the defendant is

performing community service regularly and that, if performance continues at the same pace, the assignment will be completed on schedule. "Nominal Compliance" includes cases in which the defendant reported to his or her assignment no more than once or twice and/or has worked less than ten percent of the hours ordered. "No Compliance" means that the defendant performed no community service whatever.

10 "Other" includes one client who elected to serve time rather than perform the conditions of her plan, and one where no supervisor was designated in the Plan.

11 Total of 13 reflects the number of probation officers, some of whom supervise more than one defendant sentenced in accordance with a Client Specific Plan.

12 We did not ask probation officers specific questions about the performance of individual probationers with respect to the components of the Plans out of concern that our questions could encourage some probation officers to initiate violation proceedings. Records maintained by the Clerk of the Court were clearly inadequate for determining the existence of probation violations, often failing to include even conviction information on the underlying offenses. Anecdotal evidence, however, suggests that no probation violation proceedings were initiated for failure to perform community service or to make restitution.

13 *includes one "good" and two "plan too harsh". **includes two "plan good but too tough". ***includes one "good", one "good but over-stated defendant's drug problem". ****includes three "good" and four "well prepared but too ambitious and rigorous". *****excludes one case in which, after a sentence incorporating the Client Specific Plan was imposed, the defendant elected to be incarcerated rather than be placed on probation and perform the conditions prescribed in the plan.

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EXECUTIVE SUMMARY
REPORT ON CLIENT SPECIFIC PLANNING:
A PROJECT OF THE NATIONAL CENTER ON INSTITUTIONS
AND ALTERNATIVES

April 1, 1983

EXECUTIVE SUMMARY
REPORT ON CLIENT SPECIFIC PLANNING:
A PROJECT OF THE NATIONAL CENTER ON INSTITUTIONS
AND ALTERNATIVES

The National Center on Institutions and Alternatives, based in Alexandria, Virginia, but with affiliates in several states, was founded in 1977 as a private, non-profit organization concerned with criminal justice reform. In its major undertaking to date, Client Specific Planning, NCIA responds to requests by defense attorneys for alternative sentencing plans for their clients. The plans are usually presented to the court at the time of sentencing, although occasionally they are used at parole and sentence reconsideration hearings and in plea bargaining. NCIA tailors each plan to the individual client, and a proposed alternative sentence typically consists of several components, such as community service, financial restitution, residential treatment, and out-patient counselling. In a very few serious cases, the plan includes a short period of incarceration to be followed by some combination of the above alternatives. NCIA charges fees on a sliding scale and uses income from full-fee paying clients and support from the Edna McConnell Clark Foundation to offset losses in its many low and no-fee cases.

From October 1979 to May 1981, NCIA's national office handled 354 cases. Excluding cases still pending at the time of this study and those terminated early without plans, NCIA reports that 57% of its plans had been fully accepted by the courts, another 11% had been conditionally accepted (i.e. the court accepted part, but not all of the plan) and 32% had been rejected.

NCIA's principal funding source, the Edna McConnell Clark Foundation, commissioned this study to determine whether Client Specific Plans have resulted in non-custodial alternative sentences for offenders who otherwise would have received prison or jail terms, and whether those serving such alternative sentences have been in compliance with the conditions ordered by the court. To this end, we investigated 80 recent plans which NCIA had designated as accepted or conditionally accepted. We interviewed the judge, defense attorney and prosecutor who handled each such case to assess their judgments of the quality and value of NCIA's work and to determine the probable outcome of the case had a Client Specific Plan not been submitted. We also interviewed people identified as supervisors of the plans to determine information about compliance with sentence conditions. At the direction of the Foundation, however, we

refrained from contacting probation officials and other court related agencies to ensure that our study would not unwittingly jeopardize offenders who might be in non-compliance with conditions of their sentence.

The cases which formed the basis of this study were selected from NCIA's file of recent cases in Washington, D.C. and Montgomery and Prince George's Counties, Maryland, jurisdictions that had supplied NCIA with most of its cases as of the time that this study was commenced. This Executive Summary synthesizes the study's significant findings.

I. CHARACTERISTICS OF CASES

All defendants in our sample were originally charged with serious felony offenses. Sixty-nine percent had prior convictions, and 34% had previously served time. Forty-two percent involved serious acts of violence against persons, and as further evidence of the difficulty of the cases, over one-third of the sample actually received some type of incarceration as part of the sentence. In all cases in the sample, the offenders appeared to be likely candidates for imprisonment in any jurisdiction.

Our interviews with the judge, prosecutor and defense attorney in each case confirmed that Client Specific Planning had a substantial impact on reducing the harshness of the sentence. Their responses are arrayed below:

TABLE I

JUDGES' ESTIMATES OF PROBABLE SENTENCE SEVERITY IF CLIENT SPECIFIC PLAN HAD NOT BEEN SUBMITTED*

Probably Harsher	53%
Probably The Same	47%
Probably More Lenient	<u>0%</u>
	100%
	(N=72)

* Thirty-six judges handled the 80 cases in the sample. Excluding "don't knows" (7); and the one judge not available for an interview, we received responses regarding 72 of the sample cases.

TABLE II

PROSECUTORS' ESTIMATES OF PROBABLE SENTENCE SEVERITY IF
CLIENT SPECIFIC PLAN HAD NOT BEEN SUBMITTED*

Probably Harsher	52%
Probably The Same	48%
Probably More Lenient	<u>0%</u>
	100%
	(N=33)

*It was often difficult to determine which prosecutor had handled the sentencing phase of the sample cases. We ultimately identified 36 prosecutors who handled the sentencing in 62 cases. The table excludes cases where the prosecutor was not identifiable or was unavailable for interviews (34) and those in which the prosecutor could not recall the case well enough to comment (13).

TABLE III

DEFENSE ATTORNEYS' ESTIMATES OF PROBABLE SENTENCE SEVERITY
IF CLIENT SPECIFIC PLAN HAD NOT BEEN SUBMITTED*

Probably Harsher	63%
Probably The Same	37%
Probably More Lenient	<u>0%</u>
	100%
	(N=75)

*Seventy-three attorneys represented the 80 defendants in the sample. The 70 attorneys we were able to interview handled a total of 75 of the sample cases.

We also asked the judges, defense attorneys and prosecutors to give us their overall assessment of NCIA and its work. Their overwhelmingly positive response is detailed in the tables which follow:

TABLE IV
JUDGES' OVERALL ASSESSMENT OF NCIA

Excellent	6%
Good	85%
Adequate	6%
Poor	3%
Failure	<u>0%</u>
	100%
	(N=33)

TABLE V
PROSECUTORS' OVERALL ASSESSMENT OF NCIA

Excellent	0%
Good	31%
Adequate	67%
Poor	2%
Failure	<u>0%</u>
	100%
	(N=35)

TABLE VI
DEFENSE ATTORNEYS' OVERALL ASSESSMENT OF NCIA

Excellent	32%
Good	64%
Adequate	3%
Poor	0%
Failure	<u>1%</u>
	100%
	(N=68)

We also asked judges whether their experience with NCIA had made them more or less receptive to alternatives to incarceration. Although most (74%) reported no change in their attitude, and none stated that they were less willing to consider alternatives, we regard the 26% who indicated that they were now more willing to consider alternatives as quite significant, since it suggests a long term multiplier effect. The responses must be treated with caution, however, given the size and nature of the sample and the fact that the responses reflect only reported attitudes and not concrete behavior.

Those who reacted positively to Client Specific Planning cited thorough preparation, dedication, and creativity in locating placements on the part of NCIA's highly skilled staff. Most agreed that the plans themselves were well structured, impressively documented, and were presented in an objective manner. Negative comments stressed an apparent lack of coordination with other agencies, especially probation, and the absence of adequate follow-up procedures in the plan. Those who were involved in several cases found the format too predictable. Some judges pointed to tardiness in submission of the plans, although NCIA reports that it delivers plans promptly to defense attorneys, who sometimes do not submit them to the court until the last minute for tactical reasons. Prosecutors in particular felt that NCIA strained its credibility by advocating alternative sentences in very serious cases where prison time was inevitable.

Most sentences in the sample involved several components. The table which follows lists the sentences which were imposed by their primary components:

TABLE VII

PRIMARY COMPONENTS OF IMPOSED SENTENCES IN THE SAMPLE CASES*

A. Time	43%
B. Supervision by Third Party Advocates	16%
C. Out Patient Counselling	15%
Residential Treatment	13%
D. Community Service	12%
E. Financial Restitution	<u>1%</u>
	100%
	(N=68)

* Table excludes those cases with no identifiable primary component (2); no shows on any component (3); re-arrested or never on plan (3); inadequate information obtained from interviews (3); probation with no discernible element of plan in effect (1).

The single largest category is "time", which includes psychiatric confinement, long-term imprisonment, and short-term imprisonment to be followed by after-care as specified in the Plan. Although a significant component of nearly half the plans, it should be recalled that in most cases, the amount of time received was considerably less than would have been the case without NCIA's involvement. In cases where certain components were to be preceded by confinement, however, we found significant problems in implementing those after-care plans. A greater effort must be made to ensure that when a defendant is released from confinement, he or she begins the other components of the sentence at once.

Third party advocates, persons of special authority or significance to the offender who have agreed to serve as combined supervisors, counsellors, advocates and coordinators, are significant to most NCIA plans, even where they are not the primary component. We found, however, that half of the third-party advocates we interviewed lacked a clear understanding of their role, apparently because it had not been satisfactorily explained to them by NCIA. On the other hand, many third-party advocates were truly outstanding, maintaining regular contact with the offenders and keeping in close contact with supervisors of other components of the Plan. We recommend that NCIA take greater care in selecting and indoctrinating third-party advocates to ensure that they will perform as anticipated.

The out-patient and residential treatment programs selected by NCIA were generally "strong" placements in which clients were actively and closely monitored. In all such cases, we found that the facility had made a definite commitment to the Plan and that it fully understood its role.

Although virtually all NCIA Plans recommend community service, usually between 100 and 200 hours, community service was the primary sentence component in only 12% of the sample. Moreover, judges rarely specified the total amount of hours in their sentences, generally indicating only that the offender work five to ten hours a week for an unspecified length of time or for a term to be arranged by probation. In fact, our interviews revealed that most orders for community service translated into expectations of four to six hours of work per week. Very few in the sample exceeded this number, and none involved such amounts of time

that they could reasonably be compared to custodial sentences. Those supervising the "volunteers" lacked any incentive to monitor the offender's attendance or quality of work with care, and there were numerous instances of non-appearance altogether. For the most part, it appears that community service is ordered as an auxiliary sanction that is not taken especially seriously by anyone.

Although several cases in the sample involved financial restitution, we were unable to investigate this sentence thoroughly because it was administered by probation, and the terms of our study precluded contact with that agency. In the one case that did involve substantial restitution not administered by probation, the organization receiving restitution was in regular contact with the offender's third-party advocate, was receiving payments, and was very pleased with the performance of the offender and NCIA.

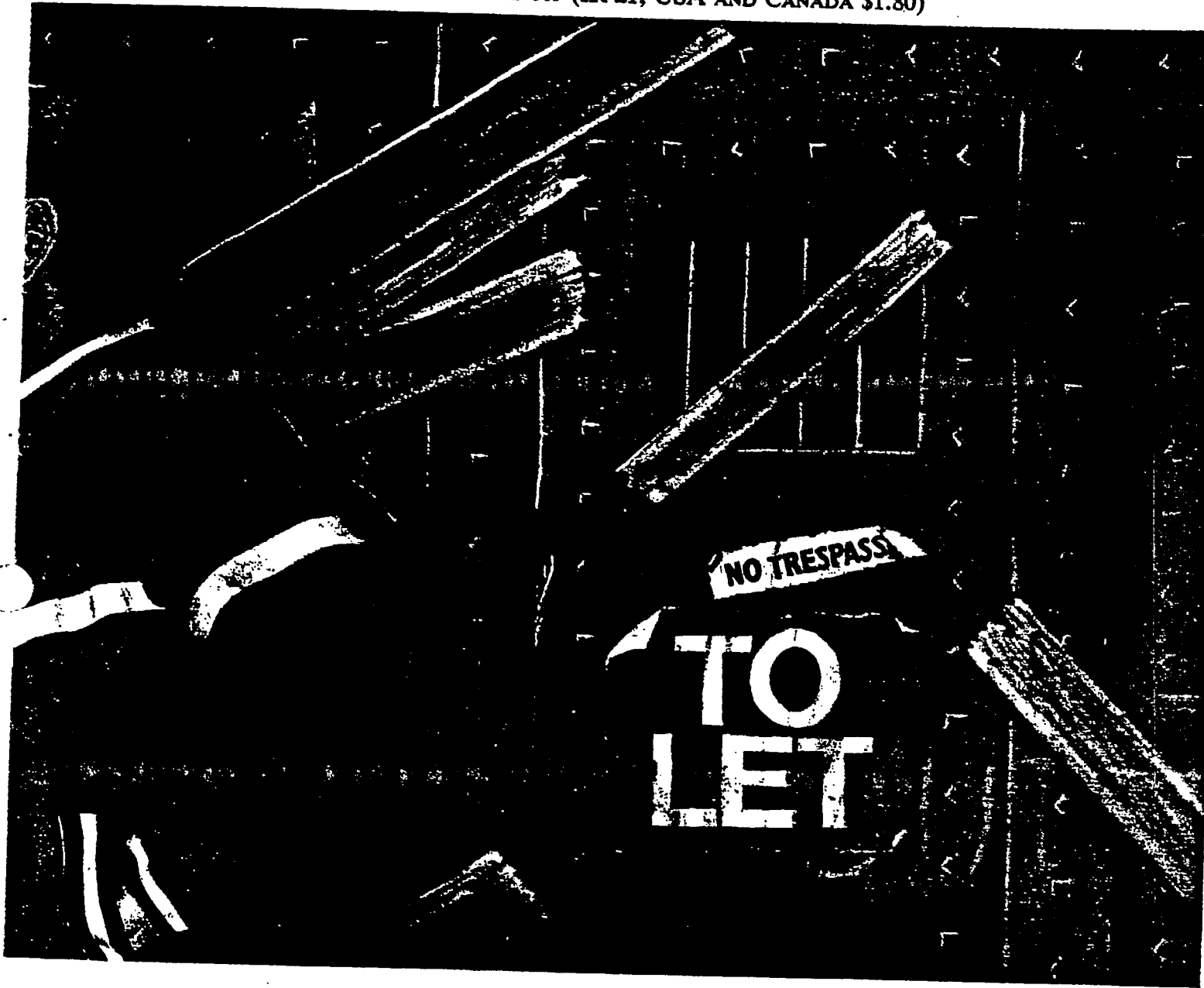
We found reason for concern about the relationships between offenders and their community service supervisors. In the thirty-five community service cases we examined, we found that in 23% the relationship was close and personal, in 43% it was casual or impersonal, and in 34% there had been virtually no contact between offender and supervisor. If community service is to become a meaningful component of alternative sentences, the quality of this relationship will have to improve markedly. Indeed, performance on these components correlate well with the quality of the relationship. In only 9% of the cases did the reports of supervisors indicate exceptional performance on all components. In 38% of the cases, the performance was adequate, and in slightly more than half the cases, there was deficiency in one or more significant component.

This study has confirmed that the National Center on Institutions and Alternatives, through Client Specific Planning, has been effective in promoting alternatives to incarceration. Because of Client Specific Planning, the defendants in this study, all of whom would almost certainly have received lengthy prison sentences, received suspended sentences or, at worst, shorter jail or prison terms than they otherwise would probably have received. There is considerable room for improvement, however, in the implementation of the alternative sentences. Although there are several cases of outstanding performance by offenders sentenced in accordance with the plans, the instances of no shows and unsatisfactory compliance are disturbing. NCIA needs to be more careful in the selection and indoctrination of supervisors of the various plan components. To ensure its own credibility, as well as to promote more constructive sentences, plans should spell out a more effective monitoring and enforcement mechanism for those portions of the plan which are under the supervision of third parties. This study has demonstrated that Client

Specific Planning can produce creative and constructive non-incarcerative sentences. The continuing challenges are to find effective ways of monitoring defendants' performance and to institutionalize Client Specific Planning so that it can become an established part of the criminal justice system.

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Closing prisons, a radical experiment
Andrew Rutherford

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THE LISTENER

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3 MAY 1984 Vol. 111 No 2856

Sir Fred Catherwood gives a characteristically robust response to the Bishop of Liverpool's 1984 Dimbleby Lecture. He concludes: 'If [Christian leaders] use the weight of their public authority to produce amateur economic answers to one-issue politics, then who is to give the powerful moral guidance on which all the great moral reforms of the past have been based?' The debate about the Arts Council Literature Panel continues in the letters pages.

We regret that this week the cost of THE LISTENER has been increased to 60p. This is the first price rise since February 1981, and reflects a steady increase in costs. We have been helped to hold the price for three years by an increase in the weekly sales and an upsurge in our advertising revenue. The annual subscription rate will remain at the old price for the next month (see details on page 18). All price increases are to be regretted, but if it is any consolation at all to readers, I can endorse my predecessor Anthony Howard's remark when he had to announce a price increase—that there will be no consequent riotous living in Marylebone High Street. R.T.

FEATURES

- 2 The Massachusetts alternative Andrew Rutherford
- 4 The Coal Board numbers game Will Hutton
- 5 The Dimbleby Lecture Frederick Catherwood
- 7 No unfinished business Elizabeth Kubler Ross
- 9 Four-pastors and real food Derek Cooper
- 10 Jews and American showbusiness Colin Shindler
- 12 The return of Grand Theory V: Anthony Giddens on Jürgen Habermas
- 14 Out of the Air
- 16 Langham Diary Christopher Dunckley
- 17 Letters to the Editor
- 19 Centreplace Gerald Kaufman

BOOKS

- 22 Reviews by D. J. Enright, Hilary Corke, David Hunt, Clancy Sigal and George Ball

RADIO AND TV REVIEWS

- 27 John Naughton, John Wain, Richard Morrison and Peter Fiddick

THE LISTENER GUIDE

38-39

- 39 Endpiece Frank Delaney Crossword

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Andrew Rutherford: The Massachusetts alternative

A radical approach to juvenile justice

In the early Seventies, over a period of two years, Dr Jerome Miller, then Commissioner for Youth Services in Massachusetts, closed down most of the state's custody institutions for young offenders. In this article for THE LISTENER, Andrew Rutherford, Senior Lecturer in the Faculty of Law at Southampton University, writes about the radical experiment in juvenile justice which followed in Massachusetts and its results, and compares the Massachusetts alternative with the treatment of young offenders in Britain

Hastings House is a sprawling residence in a mixed-income neighbourhood of Cambridge, Massachusetts. Twelve youngsters, all in their mid-teens, live in the house and attend the local schools. They are fairly free to come and go, but the local park, which has become a centre for drug users, is off limits. One of the residents, 14-year-old Frank, is from Boston's North End, a close and largely Italian community situated within five miles of Cambridge. Frank has been to juvenile court on four occasions and was on probation when arrested in January on seven burglary charges. He was sentenced by the juvenile court to the state Department of Youth Services, which decided to place Frank in Hastings House, so that he was separated from street friends for a while but still near enough his family for regular contact. His education is proceeding without interruption and Frank is also learning a great deal from the director of Hastings House, Michael Radan, who has run Hastings House for a year and is employed by a private non-profit agency, Massachusetts Halfway Houses Inc., which is under contract with the Department of Youth Services to work with young offenders. Like most of the staff, Michael Radan is an ex-offender and he is making Frank confront his attitudes and behaviour, which he had regarded as the norm.

For 14-year-old John, from the vast Leigh Parks estate near Portsmouth, Hampshire, events have followed a rather different course. John, also on his fourth appearance in court, was convicted of several burglary offences. He

was sentenced to three months in a detention centre and is now in Send, just over the Surrey border and 70 miles from home. Send Detention Centre is one of 120 institutions administered by the Prison Department at the Home Office. If John does his time quietly, one-third of the sentence will be remitted. Although he attends classes in the institution, the educational programme does not compensate for the term from school John is missing. The emphasis on physical exercise and paramilitary regimentation is because Send was chosen as one of the settings for the revived notion of the 'short, sharp shock'. The use of prison jargon is the rule and, when out of staff earshot, conversation is spiced with criminal bravado. When John returns to Leigh Parks he will, for a while, have something to brag about. However, nothing much will have changed except that John, not yet 15, will have to cope with the consequences of a custodial record.

In the early 1970s Massachusetts gained international attention by abruptly closing down all the large institutions for young

offenders in the state. During the preceding decade, in the United States and in Europe, there had been a chorus of opinion that warehousing youngsters in large and rural isolated institutions made no sort of sense. Many of the institutions were poorly managed, and there were constant disorders and runaways. Scandals of various dimensions seemed never far from the surface. Furthermore, the problems with which young offenders needed to come to



Dr Jerome Miller

terms were mostly in the home and urban neighbourhood. The emerging policy theory was to limit intervention by the juvenile justice apparatus, summed up as the three Ds: decriminalisation, diversion (from court) and de-institutionalisation. This was the rhetoric of a decade noted for its challenge to conventional assumptions and traditional practice. Only in Massachusetts was rhetoric to be translated into reality.

The double significance of the Massachusetts experience is that the young offender institutions were actually closed and that 12 years later they have not been reopened. Furthermore, juvenile crime, as measured by arrests, is falling and juvenile justice has ceased to be a political issue. All this is in sharp contrast to what is happening in most other American states and in this country, where the numbers of young people in custodial institutions continue to escalate. Professor Lloyd Ohlin of Harvard Law School carried out a long-term study of the events in Massachusetts and has commented that the institutional closures came at the tail-end of the Sixties: had the training schools (as the youth institutions were euphemistically known) been shut down a few years earlier, some other states would probably have followed suit. As it was, by the early Seventies the mood and temper of the times had begun to change. In 1984 the 'get-tough' crusade remains much in evidence but, as it wanes, as it inevitably will, the Massachusetts alternative will take on an enhanced relevance. The dissolution of the training schools in Massachusetts and the discovery of alternative ways of holding young people in the community are among the most remarkable and hopeful events in the bleak history of penology.

In 1969 the political conditions existed in Massachusetts for a new approach to dealing with young offenders. Federal and state inquiries had uncovered widescale abuses in the training schools, and demands for reform were being made by a powerful coalition of interest groups spearheaded by the respected and non-partisan League of Women Voters. The new state governor, liberal Republican Francis Sargent, added his voice to the demand for reform by declaring: 'Simply caging children is not the way of an enlightened society.' Within a few months, a bill, stalled for two years, which greatly strengthened the powers of the state agency responsible for young offenders, became law. Having secured the resignation of the long-serving agency director, Governor Sargent established a 'blue-ribbon' commission to advise on the appointment of the first commissioner of the reorganised Department of Youth Services.

In October 1969, Dr Jerome Miller was appointed commissioner. Miller was in his early thirties and a member of the social work faculty at Ohio State University. Most of his social work career had been with the United States Air Force based in England, working with children of air force personnel. Miller had been especially impressed by the work in Britain of Maxwell Jones and George Lyward, two pioneer practitioners of the therapeutic community. It is important to stress that Miller did not arrive in Boston with any notion of shutting down the institutions. Indeed, he brought in Maxwell Jones and other experts



to advise on how the training schools might be made more humane and effective in steering youth away from crime. One training session in the concept of the therapeutic community was held at Shirley Industrial School. While the meeting was in progress the superintendent had all the boys lined up and instructed the staff to carry out a roll-call. As the community meeting concluded, Maxwell Jones turned to Miller and remarked: 'Perhaps with this group my ideas won't work.' Dr Jones was referring not to the boys but to the staff. Reforming the institutions continued to be an uphill task and Miller encountered considerable resistance from institutional staff. Indeed, he suspected that runaways were being encouraged by some staff, in order to bring about his own downfall as commissioner. Although there was some progress in making the training schools better places, he doubted whether it could be sustained. Miller came to regard the notion of a good penal institution as a contradiction in terms because it would inevitably regress.

One year after becoming commissioner, in October 1970, Miller closed the 100-bed maximum-security Institute for Juvenile Guidance, located in the grounds of the state institution for the criminally insane, because he saw it as being totally beyond reform. Although the closure attracted little opposition, it did not occur to Miller at this stage to apply the same tactic to the four large training schools. During the course of the next year, Miller came to appreciate how politically dispensable he was. Commissioners come and go but the institutions and their staff remain. Miller and his colleagues pondered on how a reform process could survive even the efforts of a successor intent on turning the clocks back.

Under Massachusetts law the courts have

the power to commit a delinquent youth (up to age 17) to the Department of Youth Services but it is for the Department to determine where to place that youth. Under the traditional arrangements, which Miller inherited, virtually all placements were to one of the state training schools. The decision as to how long the youth remained within the training school was taken by the Department on the advice of the training school superintendent. Miller's initial tactic to reduce the institutional population was to speed up the parole process. In one instance he ordered a training school superintendent to take sick-leave so that one of Miller's senior colleagues (a medieval languages scholar who had been appointed to the one vacant position in the institution as janitor) could become acting superintendent and accelerate the number of releases. By the time Miller began his third year in office, opposition by institutional staff had become highly vocal. Miller appeared on television shows with young people who would vividly describe conditions in the training schools. He had become identified with a moral crusade on behalf of institutionalised youth, and opinions within the state had begun to polarise. Miller realised that he could not rely upon the broad coalition that had supported the legislation and his appointment. He remembered Saul Alinsky's dictum, 'When the argument turns into a fight, the liberals leave the room,' and concluded that only incisive and speedy action would forestall his removal.

Between January and June 1972, the four large state training schools were closed. Later that year, three county training schools (which held the least serious offenders) were closed when state financial support was cut off. It should be emphasised that shutting down institutions in Massachusetts did not follow a preconceived plan but consisted of creative and pragmatic responses to fortuitous circumstances. The Lyman School for Boys, the oldest youth institution in the United States, was, for example, closed by moving the youthful inmates from the institution to the University of Massachusetts at Amherst where they attended a conference on de-institutionalisation. Unlike most conferences on this topic, the focus was action rather than talk. By the end of the conference, the participants, assisted by students, had come up with alternatives to returning to the institution.

The training schools were closed so rapidly that there was very little organised opposition. As Miller later commented: 'If you close a prison quickly, you might get some upset but only for a week or two.' Immediate support was forthcoming from the League of Women Voters and other non-professional groups. Juvenile court judges were mostly upset and angry. Social-work professionals sat on the fence, waiting to see who was winning. Even critics of Miller concede that if a long-term gradualist strategy had been followed, the institutions would almost certainly still exist today. The price for speed was chaos. The institutional closures preceded the development of alternative programmes and it was some time before these were established. Miller decided that the best alternative programmes were likely to come from the private rather than the public sector and he encour-

aged staff to think of youth committed to the Department as their own children who needed the best services that money could buy. 'With what it costs to institutionalise, you can afford to be very creative' was a maxim that encouraged a variety of new initiatives across the state. Within a year or so, the Department was purchasing services from some 200 private, non-profit groups. For a while, the institutions, empty except for staff, still had to be paid for, and it was a couple of years before the fiscal bureaucracy caught up with the new arrangements.

When Jerome Miller left Massachusetts in January 1973 he had been commissioner of youth services for fewer than 40 months. He went on to hold senior appointments at a state level in Illinois and Pennsylvania but powerful groups with investments in the status quo were able to organise effective opposition. In 1977, he founded an agency which works with defence counsel in providing sentencers with alternatives to imprisonment. In exile, Miller, the ultimate reluctant bureaucrat, waits in vain for a call to return to the crusade. Meanwhile, in Massachusetts, the training schools remain closed and the state is able to address itself to the problems of youth crime, unhindered by the irrelevant heritage of juvenile prisons.

In the 12 years since the training schools were closed in Massachusetts two key issues have been to the fore. The first of these has centred on the number of beds in small secure settings that are required to hold young people involved in very serious offences. Miller had argued that the definition of dangerousness is determined by available secure capacity and that the number of beds should be kept to an absolute minimum of perhaps 40 or 50. In late 1975, media pressure on the secure beds issue forced the resignation of Miller's successor. By this time the state governor was a liberal Democrat, Michael Dukakis, and, in 1976, a task force was set up to recommend how many secure beds were required. The task force report put an absolute ceiling of 168 on the number of secure beds and considered that a third of these did not need to be full security. In 1979, Dukakis was succeeded as governor by Edward King, a conservative Democrat who had campaigned on a law-and-order ticket. It was widely expected that if King did not reopen training schools, he would greatly increase the number of secure beds. That this did not happen was to the credit of the various vigilant groups which opposed any slippage from the de-institutionalisation process. As one senior official recently commented: 'If Ed King can't do it, no one can.' In 1983, Michael Dukakis returned as governor and current plans are for some increase in secure provision, but not of substantial proportions. More than 90 per cent of youth committed to the state continue to be placed in non-secure and often non-residential programmes.

Although most observers of the Massachusetts scene deny that there has been slippage with reference to secure beds, they do acknowledge that insufficient attention has been given over the past five years or so to the development and monitoring of programmes based in the community. It is widely held that the state should do more to support and—17

4—encourage the private sector in developing a wider range of programmes. Although a variety of imaginative schemes for working with young offenders have been pioneered in Massachusetts, the urgency for more action in this area seems likely to ensure the main policy thrust over the next few years will be to strengthen the network of programmes which work with young offenders in the community.

The work which remains to be done in Massachusetts in no way diminishes the significance of the gains that have been made. Professor Ohlin has summed up the key lesson as being confirmation of Jerome Miller's faith in not over-reacting to teenage behaviour, reflecting 'an extraordinarily generous willingness to look at each offender as someone trapped by events; someone who is not an event but a person'. Professor Ohlin concludes that incarceration is a deceptive policy which over the long term will inevitably fail. The bottom line for Ohlin is that it is only in the community that the problem of youth crime will be effectively tackled.

In 1969, there was young offenders legislation, not only in Massachusetts, but also in England and Wales. It was the intention of the Children and Young Persons Act to phase out the use of detention centres and Borstals for juveniles (as in Massachusetts, persons up to age 17) and to increase the powers of the local authority rather than the courts to decide upon the placement of young offenders. In retrospect, the events in Massachusetts can be described as a 'deep-end' strategy: by first closing institutions the community-based alternatives followed. The opposite course was chosen for this country where a 'shallow-end' strategy intended that demand for institutions would decline after the alternative programmes had been established. However, far from withering away, penal custody for juveniles in this country has gathered pace. In the mid-Seventies, the government was saying that there should be a major shift towards non-residential provision and, in 1980, there was an official note of regret that over the previous 15 years the number of juveniles receiving custodial sentences had quadrupled. In 1982, criminal justice legislation repeated the intent to phase out custody for juveniles.

In Massachusetts, attempts to give the courts powers directly to place youngsters in institutions have consistently failed. However, in much of the United States, as in this country, the powers of the courts have been strengthened. In many states the number of juveniles in both training schools and in adult prisons has escalated. Massachusetts is one of the few states where the number of young people who are referred to adult courts and end up in the prison system is declining. A recent study has shown that the total incarceration rate for juveniles is four times as great for the US as a whole than it is for Massachusetts. It can be little comfort for concerned citizens in this country that the juvenile incarceration rate here is higher than for much of the US and is more than five times the rate to be found in Massachusetts. While policy and practice in this country is characterised by drift and despair, getting out of institutions in Massachusetts has provided direction and impetus to the search for constructive and creative responses to youthful offending.

*strategies for restructuring the
state department of youth services*



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Yitzhak Bakal

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Foreword

Experts, for a number of years, have felt that most correctional institutions emphasize control of youth rather than treatment and that many youth, particularly those incarcerated for status offenses, are wrongfully confined. It is evident from statistics on recidivism that correctional institutions have fulfilled neither their philosophy nor potential in the rehabilitation of youth.

Today many changes are occurring in the juvenile justice system. This article presents an example of one State's almost revolutionary effort to better serve youth in trouble, by closing large training schools and using the community as the site for the processes necessary to effective rehabilitation.

JAMES A. HART
Commissioner
Office of Youth Development

Strategies for Restructuring the State Department of Youth Services—

THE MASSACHUSETTS EXPERIENCE

YITZHAK BAKAL

The large correctional institution has failed to achieve its goals. Placing people who do not follow the established rules of our society—especially the young—into environments set apart from society has served neither the public nor the person confined. Whether the intent has been to punish or to rehabilitate, the experience of over a hundred years has shown that institutionalization is not the answer. The learning process has been expensive not only in monetary terms, but in human cost as well.

Even as larger institutions are being built, more and more professionals in youth services, mental health, and the correctional field in general have come to believe that society can be better served by alternatives that include a setting *within* the society to which the person in trouble must ultimately return.

Over the past decade, the nature and dimension of the juvenile delinquency problem in the United States and around the world have been changing rapidly. Crime and recidivism rates have been rising alarmingly, especially among juveniles. Public concern that developed over this problem resulted in greater expenditures of money and resources on the already-existing, traditional youth service operations. But this did not achieve the desired effect of improving services or reducing the crime and recidivism rates.

A radical transformation in the nature and quality of service delivery has taken place in the Department of Youth Services of the Commonwealth of Massachusetts. Between 1969-1972 the role of the Department has changed from that of custodian to that of advocate. Large

Much of the material presented here is based on material in my forthcoming book of articles *Closing Correctional Institutions: New Strategies for Youth Services*. The book will be available in June 1973 from Lexington Books, D. C. Heath and Company, 125 Spring Street, Lexington, Mass. 02367, \$10.

training schools were closed, and the community became the site for the processes necessary for effective rehabilitation. Services were increased in number, nature, and quality, while costs were actually reduced.

The significance of this move away from institutionalization can be best illustrated by briefly reviewing the four stages that the institutionalization of young people has undergone. The first stage was based on a belief in the value of placing offenders or disturbed young people in a wholesome setting, away from the negative influences of their home and community environments. The plan was to cultivate proper values, attitudes, and behaviors through a regiment of discipline and inspirational character-building. To that end, the first public reform school in the U.S., the Lyman School for Boys, was established in Massachusetts in 1846.

The next stage was the introduction of clinical services, within existing institutions, providing individualized attention to motivational and psychological aspects of the residents.

The third stage followed from the introduction of therapeutic community concepts into the large institution. Groups of doctors, social workers, attendants, and inmates openly discussed their problems and grievances. This was intended to create a more responsive climate for the joint working out of differences.

The fourth stage developed when many practitioners in the corrections field began to see that rehabilitation consists not of therapists "curing" offenders, but rather of worker and resident creating an atmosphere of trust and problem-solving where all grow, or regress, together. It was quickly found that this type of treatment simply could not be successfully administered in institutions that were cut off from society, having a tradition of custodial or punitive rather than rehabilitative treatment, and generally staffed with people tied directly to an entrenched bureaucracy having a vested interest in maintaining the status quo.

Research and decades of experience in youth services also demonstrate why correctional programs involving institutional confinement are not only ineffective, but are all too often destructive.¹ Training schools are described—often quite accurately—as poorhouses for neglected children. They are essentially custodial in nature, and if they teach anything, it is crime. They tend to increase the alienation and crystalize the criminal self-concept of the committed offender.² Upon his or her release, the

¹ This point is repeatedly documented in the careful and objective studies by the research teams of the California Department of Corrections and the California Youth Authority.

² Clifford R. Shaw, *The Natural History of a Delinquent Career* (Chicago: Institute of Juvenile Research, 1931); or see studies on prison socialization and experiences of inmates in, Donald R. Cressey, ed., *The Prison* (New York: Holt, Rinehart and Winston, 1961).

readjustment to society is extremely difficult,³ and recidivism rates range as high as 80 percent. This rate tends to increase, furthermore, in proportion to the length of confinement in an institution.⁴ Thus the youthful offender who has experienced failure in his school and his community faces yet another failure when he is exposed to such an inept and destructive system. This system reinforces the stigma of the delinquent, deprives the youth of a legitimate identity, and perpetuates the cycle of failure.⁵

Life in the closed institutionalized setting is prey to powerful influence of peer-group processes on residents and staff members as well. At the level of the basic living unit, untrained, underpaid, immobile personnel are isolated from the administrators and professionals in charge of the institution. They make deals with residents, with whom they have to find some kind of underground *modus vivendi*. Thus the whole institutional enterprise becomes manipulative, encouraging self-serving anti-system behavior.⁶

Public bureaucracies administering youth programs lack the autonomy to give adequate service delivery for youth. A department of youth services is usually controlled by many groups, which exert strong pressures to resist change. First, within state governments there is the legislature, which controls the budget, and the governors' executive office, which exerts bureaucratic controls. There are also other agencies of the criminal justice system: the police, the courts, and probation. Internally a department is comprised of staff who can exert controls through their unions or political influences. Because a public bureaucracy is essentially dependent on maintaining the status quo for its very existence (in this case, the system of institutions), change is exceedingly difficult. Even some of the most high-minded administrators and professionals may succumb to a rationale of "that innovation is a good idea, but. . . ." In this way progressive solutions are stillborn, and the punitive system of institutionalization of troubled young people perpetuates itself. This was the situation in Massachusetts in 1969, when a new Commissioner of Youth Services, Jerome G. Miller, was appointed.

THE MASSACHUSETTS EXPERIENCE

It was under Miller's direction that the Massachusetts Department of Youth Services (DYS) began a unique experiment that has radically

³ Reuben S. Horlick, "Inmate Perception of Obstacles to Readjustment in the Community," *Proceedings of the American Correctional Association*, 1961, pp. 200-205.

⁴ David A. Ward, "Evaluations of Correctional Treatment: Some Implications of Negative Findings," in *Law Enforcement Science and Technology*, S. A. Yerskey, ed. (New York: Thompson Book Co., 1967), p. 205.

⁵ Don C. Gibbons, *Society, Crime and Criminal Career* (Englewood Cliffs: Prentice-Hall, 1968).

⁶ For a thorough study of this subject see Howard Polsky, *Cottage Six: The Social System of Delinquent Boys in Residential Treatment* (New York, 1962).

departed from traditional approaches in two significant ways. *It was the first state to close its correctional institutions for youth; and it has developed many innovative and promising community-based alternatives for its troubled youth, without a major increase in its budget or personnel.* As state youth service departments across the country begin to experiment with alternative methods of service delivery, the Massachusetts experience is relevant.

Background

The closing of institutions by the Massachusetts DYS was an almost totally unforeseeable event. It was not a gradual process that was planned over a period of many years. It was, rather, the climax of a series of events that continued to broaden the base of support for change, while narrowing the number of possible alternatives.

The climate for change began to develop in the 1960s when the quality of care in the institutions had reached an all-time low. Both the public and the legislature were concerned. The system had been failing children for years. Many staff members, lacking professional skill, had turned to excessive use of punishment in order to control their young charges. This situation was brought to the attention of the public through the media, and criticism came to a boiling point with the release of several investigative reports (especially a study made by HEW). With the public and the legislature alarmed, the time was ripe for the governor and the legislature to act. Political pressure was exerted on the then-director of the division, and he resigned in 1969.

The legislature passed a reorganization bill elevating the Division of Youth Services into full Department status and moved it from under the Department of Education to a super-agency consisting of Welfare, Health, Mental Health, and Correction. The Reorganization Act provided for the appointment of a new commissioner and four assistant commissioners of his choosing. The act also set a new professional tone for the agency, using key words such as therapy, prevention, community services, purchase of services, and research.

Finally, the Act broadly empowered the new department to "establish necessary facilities for detention, diagnosis, treatment and training of its charges, including post-release care." While these powers in themselves did not mark a major new thrust, the language of the Act later proved sufficient grounds for Commissioner Miller and his assistants to implement a noninstitutional system, although this was not its specific intention.

The positive intent of the Act was clearly reflected in the search for a director. The search panel consisted of well-reputed professionals such as Dr. Lloyd Ohlin, head of the Harvard Center for Criminal Justice, and Dr. Harold Demone, director of the Mass. Bay United Fund. Miller was chosen because of his training at the Ohio State University School

of Social Work and his experience in the military, developing a youth services agency for U.S. Air Force dependents. He had experience in both theory and practice of youth service operation.

The appointment of Miller in turn led to further upgrading of the staff of DYS, for he chose highly qualified assistants from the education and social work professions. These professionals in turn hired many young and progressive people to work for them. So there was a significant injection of new people and ideas.

The personnel and ideological changes within DYS, coupled with continued publicity in the media and growing public concern over the quality of care for children, increased and reinforced the climate for change that had begun in the 1960s. During his first year as commissioner, Miller and his assistants tried many new programs within the existing system.

There was increased staff training, made possible by Federal funds. One institution was closed, others were decentralized into a cottage-based system. Some group homes began to develop as alternative placements for youth. A productive liaison was established between the University of Massachusetts and the Westfield Detention Center. And the process of regionalization within the State began.

Opening the System

Miller's first year in office is noted for his effort to "open" the system, that is, loosening the existing rigid structure in order to make it more amenable to change. In approaching this task, the new commissioner had several liabilities and obstacles: (1) he was an outsider to the system and lacked support within DYS; (2) his resources were limited by lack of funds; (3) years of institutional autonomy almost precluded any central authority's intervention.

Several important strategies were employed toward this end. The first of these was to increase public relations through mass media. During this early period Miller made many local television and radio broadcasts and made himself available to the press. He continually cast himself in the role of outside change agent. He exposed and criticized the wrongs of the system explicitly: "We must eliminate the little totalitarian societies which dominated the juvenile institutions in the past. Most of the units were set up so that their successful kids could only function in a dictatorship." At the same time he was vague about the changes he was planning to implement. In this way he gathered support for himself while depriving his opponents of a focus for opposition, thus keeping himself on the offensive. His image developed as one of a reformer and a sensitive advocate for the needs of youth.

He also exposed the internal conflicts and staff sabotage to the press and public. In this way he made the inner workings of the Department publicly visible, and he made it clear to the press and the public that he

was as concerned as they were with exposing the problems that existed in his Department.

The result of this continuing dialogue with the public through the media was a general increase in understanding and support of the new commissioner and his philosophy. It helped make the public more aware of DYS and its functions, and it improved immensely the image of the Department in the public eye. It also changed somewhat the image of a juvenile delinquent from a criminal to a victim. By exposing the injustices and brutality inherent in the system, more people became aware of these institutions, and more people were made to realize that children were being victimized, instead of rehabilitated. The public was made to feel responsible for allowing this sort of treatment to exist. "You can control runaways, you can 'produce model institutional' kids by brute force and fear if that's what you want, to reassure legislators, the police or the community. Lock doors, handcuff kids to their beds—and you'll have no runs. But they will react when they get out; they have learned to con the adults."

Thus a new voice was heard at DYS, the voice of the concerned public. And once the commissioner exposed the injustices of the system he oversaw, he was obligated to correct them. He had gained the support of the public to do just this.

Whereas the institutions were previously autonomous, they were now becoming accountable to the central administration. The commissioner began to ask for written reports of any cases involving force or brutality. In a newspaper report in March 1970, he complained of the existing system, "A staff member alone was often judge, jury, and prosecutor in regard to particular incidents, with facts often grossly distorted to protect the staff. From now on, I will ask for State Police investigation in cases of obvious brutality." In this way, using his authority, more actors became involved in transactions between staff and youth.

Another useful strategy employed by Commissioner Miller was the involvement of the youths themselves in decisions affecting their lives. He toured the institutions, often appearing unexpectedly. He went directly to the young people and listened to their grievances. In this way he found what was really going on rather than what the staff wanted him to know. And he gave youngsters the feeling that they had an important advocate. He encouraged them to call him or come to his office. The institutionalized youngsters in his charge became an important source of information to him and his staff.

By making himself accessible to the resident of the institution he was in fact breaking down the hierarchy in these institutions. The youngsters began to realize they had some recourse if they were mistreated, and the staffs realized they were accountable for their actions.

One of the costs of this change was the insecurity it wrought among the staff. Without any feeling of support from the administration, they

lost their former means of discipline. This at times caused conflict, resistance, and even sabotage. It also presented problems to the middle-management personnel who had to deal with disgruntled staff at the institutions, and to try to implement all the new policies. So in terms of staff unrest, the costs of this change were great.

However, all of these strategies—the use of public relations, divesting the institutions of their autonomy, the breakdown of the hierarchy, listening to the grievances of the young people—had the result of opening the system. The staff at the institutions were now accountable to many segments of the population—the young people, the public, and the central administration.

Implementing Institutional Alternatives

In 1969 the Division operated five large training schools: the Lyman School for Boys (ages 12-15), the Shirley Industrial School for Boys (ages 15-17), the Oakdale Residential Treatment Unit for boys (ages 9-11), the Lancaster Industrial School for Girls (all ages), and the Bridgewater Guidance Center, a maximum-security unit. The Division also operated four regional detention centers: two in the Boston area, one for girls at South Huntington Avenue and one for boys in Roslindale; the third was a co-educational center in Worcester; and a fourth in the western part of the State, Westfield. These facilities, with the exception of two detention centers, Worcester and Westfield, operated on a custodial, training school model for the treatment of the children in their custody. They were mostly outmoded, uncoordinated with their idiosyncratic management and sporadic links to other social services, and the Department in general. Their communication with the Division at large was almost nonexistent. The institutions themselves were hidden either in suburban or rural locations and were isolated from outsiders, and very often were subject to local patronage influences.

The new commissioner made many attempts to introduce alternative treatment methods within these existing institutions; however, these innovations proved mostly unsuccessful. The training sessions introduced in early 1970 and run by Dr. Maxwell Jones⁷ created staff polarization and resulted in mass runaways. It is important to note that these concepts proved to have many limitations for application within antiquated institutions that lacked backup programs, resources, and progressive staff.

In mid-1970, another attempt at change was made at the Shirley facility. The "guided group interaction" approach was introduced by Harry Vorath from Minnesota. A modified version of the Maxwell Jones

⁷ Dr. Maxwell Jones is a British psychiatrist, famous for introducing therapeutic community concepts into the mental hospital setting. Therapeutic community concepts are intended to alter the traditional passive role of the "inmate" through a process of active resocialization in which roles are broken down and relationships become more equalized among staff and between staff and residents.

approach, it is more structured and geared to institutional settings. This approach was adopted by a group of staff from Shirley School, and was used in running an intensive-security unit at Oakdale.

Another approach tried in collaboration with Dr. Mathew Demont from the Massachusetts Department of Mental Health was the self-help group. DYS explored these self-help programs as an alternative that would provide massive change inside the institutions. The idea was to turn over several institutions to private self-help groups that needed space for their own operations. They would in turn accept DYS youngsters into their programs. This idea held high promise for radically altering service delivery practices in DYS for several reasons: (1) the private groups had a high degree of success in terms of their acceptance by the community, the public, and the legislature; (2) they provide a therapeutic environment for those residents interested in introspection and change; and (3) they maintain themselves on a minimal budget because of the strong demands exerted on the residents.

Despite these high hopes, however, the outcome actually proved to be very limited for two reasons. First, all of these groups were able to work with only a limited number of DYS youngsters. Such groups have high expectations and exert tremendous pressure on the residents. In order to continue they had to work with motivated children, and thus the attrition rate was very high.

Second, these programs have an authoritarian approach that proved to be at odds with DYS's emerging approach of humanism, permissiveness, and equalitarianism. Further, because of the high visibility of DYS and its many detractors, it was difficult to support new programs before they proved themselves viable. Although all of these new programs had only limited practical success, they were useful inasmuch as they challenged the old system and demonstrated that many possibilities exist in the treatment of youth.

The gains made by implementing these initial changes were therefore outweighed by the problems caused. The institutional system was so deeply entrenched that any change had to be massive in order for its effects to be significantly felt. In one sense the changes were not great enough. Yet every new measure introduced was resisted by the older staff, who were fearful of their positions or of changing their long-accepted roles. So for them the changes were too great.

There was also a certain degree of loss of control caused by the newness of the programs. Runaways temporarily increased, causing a reaction from local communities and the legislature. There was a basic contradiction between the closed institutional setting and the new style of open meetings. This contradiction resulted in tension that could not be satisfactorily resolved. To sustain trust between worker and inmate during those hours not spent in open encounters proved difficult. It became apparent that polarized subcultures invariably resulted from plac-

ing trained personnel in authority over residents who lived under severe restrictions. This polarization prevented the emergence of a common transcending atmosphere of mutual caring and aid. And the larger the institution, the more pronounced the polarity. Thus all of the changes within the institutional context brought about opposition from the staff, the legislature, and the public, while only minimally improving services rendered by DYS.

The climate had been ripe for change. Many changes and alternatives were attempted within the institutional system, but these were not successful in any meaningful way. Believing there were no viable alternatives left, Miller concluded that the system of institutionalization was so inherently bad that *the only solution available was to close the institutions entirely and provide new programs and alternatives outside the system.*

During the January 1972 legislative recess, Miller used his discretionary powers as commissioner to officially close the institutions. Youngsters who could not be immediately paroled, placed, or referred to community programs were housed temporarily on the campus of the University of Massachusetts.

This operation was called the JOE II conference, and was essentially planned and executed by a core group of the university's volunteers and regional DYS staff. The operation, in spite of many administrative problems, was successful in that it made the closing of the largest institution, the Lyman School for Boys, relatively painless for the youngsters involved, because this method eliminated staff opposition and sabotage. The 100 youths, who stayed for about a month on the university campus, were matched with youth advocates while arrangements were made for them to be placed in community based programs, preferably in their home regions.

The closing of institutions was an act that overshadowed all other accomplishments and incremental changes. It had a very important psychological impact. First, it set the tone and clearly defined the task for the year 1972. After initial staff bewilderment and surprise, energies were released in the direction of the creation of alternatives. Groups began to come up with proposals; resources were found; and children filled these placements at an accelerated rate. There was a new goal, a new task, and a new hope.

Second, it gave the Department national recognition. Newspaper articles and television networks covered the closings, and the Department was described as a bold, action-oriented agency willing to take risks to ameliorate the deplorable conditions of training schools for youthful offenders. In professional circles, this action was described as a breakthrough in providing services for youths in trouble.

Third, the drama involved in the closing of the oldest training school in the country, Lyman, effectively attracted significant public attention.

Finally, the closing of Lyman symbolized the end of punitive and repressive institutions, even though other facilities in the state remained open waiting to be phased out in the near future. It was as if all the institutions had been closed.

In retrospect, this move succeeded for several reasons:

1. The University of Massachusetts and the western region of the DYS provided a good cushion to absorb youngsters, and moreover, proved to be a rich resource for program alternatives.
2. Forestry camps and Outward Bound type programs were very effective in handling and providing alternative programs.
3. Detention centers were still available to accommodate youngsters who were awaiting placements.
4. An intensive care unit, Andros, was immediately opened at Roslindale. This unit, which later was staffed almost entirely by ex-offenders, was able to work effectively with hard-core youngsters, and gave the court the assurance that the dangerous youngsters were *not* in the streets.
5. The publicity, which the closing of institutions generated, caught the attention of many groups who proved to be resources for DYS, and the developers of its alternatives later on.

Once the training schools were closed, it was necessary to develop quickly the services to fill the vacuum. There were three major elements in the new DYS approach: (1) nonresidential alternative, rather than old-style residential institutions; (2) small community-based residential homes instead of the large institutions; and (3) purchase of services from private community groups rather than state operation of all programs. As programs developed they could be categorized into the following areas: (1) prevention; (2) pre-commitment; (3) post-commitment; and (4) special programs.

Those needs and programs, which are explained in detail in another report,⁸ include: prevention grants-in-aid to cities and towns; youth advocates to work directly with youths in trouble; legal advocates to assist in case preparation; court liaison officers; parole volunteers to give increased attention to the young offender and decrease caseload burdens; group homes (Federally and State financed); halfway houses for drug and other kinds of offenders; intensive-treatment facilities for those requiring secure settings; foster homes; forestry camps; Outward Bound programs; and a series of detention alternatives to minimize the negative effects of the pre-adjudication period.

⁸ See *The Massachusetts Experience: A Model of Deinstitutionalized, Community-Based, Privately Run Programs for Delinquent Youth* (Washington: HEW, 1973).

Prevention Programs

DYS annually awards grants to local community agencies which are operating or will be establishing programs for the prevention, treatment, and control of juvenile delinquency. State monies must be 50 percent matched by either local or private funds. Program goals generally fall into two categories: establishment of better communication and coordination among public and private agencies, and furnishing new services where there are gaps in existing services within the community.

Pre-Commitment Programs

DYS seeks to operate a system of treatment programs which is sensitive to the individual child, from the first moment the child comes under the jurisdiction of DYS. The first task is to maintain a system of differentiated detention units which hold youth both on a pre-arraignment and on a post-adjudication status.

The pre-arraignment period is quite brief, sometimes only overnight, during which Department personnel at a secure detention center help youth make family contacts, apprise them of legal needs, and make a preliminary classification of treatment needs. At the court arraignment the next day the child might be bailed or detained, and if the latter, placed by the Department in a maximum security unit or one of the smaller detention alternatives. The detention period before adjudication provides the opportunity for pre-judicial planning, initial screening of the child, and development of treatment alternatives to present to the court at the time of disposition. It is at this time that the court liaison officer, armed with diagnostic and case material gathered during the detention period, is able to explain to the court the alternatives to commitment which could be most beneficial to the child.

Court Liaison Program: DYS began to place liaison personnel in a number of courts to help develop community remedies for children in trouble and assure the most suitable care available for those youth placed in the custody of DYS. Concerning himself with court-acquainted youth and youth awaiting trial, the Court Liaison Officer provides counselling and casework services to youth at the point of court intake. After discussing placement options with the youth, the CLO explores alternatives to commitment and provides recommendations to the court on case disposition. Whenever possible, the CLO encourages the court to divert children away from the juvenile justice system and into community sponsored programs.

Shelter Care Facilities

The DYS has established small detention facilities in the seven regions in which detainees can be placed prior to trial, with the assurance that

they will receive close interim attention. These small detention facilities are low-security, small group programs designed to minimize the alienation characteristically suffered by children in detention, and maximize the youth's willing participation in treatment services.

These small shelter care facilities support a staff of about 10 and a youth population of 12-15. Regionalized detention centers replace traditional detention units with small therapeutically-oriented homes where the detained child receives counseling services while awaiting trial. Emphasis is placed upon vocational and educational counseling and testing in conjunction with pre-placement planning. The aim of the DYS is to reduce the population of detainees in maximum security settings to an appropriate minimum and find more treatment-oriented open community settings for the balance of the detained population.

Detained-Youth Advocate Program: A Detained-Youth Advocate provides temporary foster homes and one-to-one advocacy for youth who are awaiting trial. During the youth's stay with an advocate he may enroll at a local public school, or any specialized or vocational school in the community, and may take part in community-sponsored programs.

Post-Commitment Programs

While DYS continues to run a number of programs in its own facilities, the major emphasis is on the purchase of care for committed and referred youth. In fiscal year 1971 DYS had a purchase-of-care budget of about \$500,000. In fiscal year 1972 the purchase-of-service budget amounted to \$1,850,000 of regular and supplemental funding. This money was applied to three categories of care: foster home placements (\$25-50 per week), group home placements (\$150 per week), and intensive residential treatment (\$200 per week). Also purchased are such specialized services as vocational counseling, family counseling, and special educational services.

Since the closing of the state training schools heightened the need for residential placement options, DYS embarked on expansion of group home resources for both short-term and long-term placements. This was accomplished by doubling the use of state-funded group homes, funding a number of new private group homes with money from the U.S. Dept. of Justice's Law Enforcement Assistance Administration, creating a new program to expand foster care resources available to the Department, and developing ways to increase conventional foster care families throughout the State.

Parole Youth Advocate Program: This program has been designed to augment foster care. Funded through the Emergency Employment Act, the advocates are trained counselors who provide foster homes, intensive counseling, and referral services to 1-3 youth in their homes. The advocate is responsible for the youth's successful readjustment into his

community through the provision of all services needed by the youth and his family. The program operates much the same as the detained-youth advocate program.

Group Homes

DYS is purchasing care from more than 200 group homes, both for short-term and long-term placement. Most homes have the capacity of 10-15 youngsters. Most of them offer individual group and family counseling. It is too early to assess how effective these programs are in dealing with their youth. However, since all these programs are voluntary, they are forced to develop motivational methods that are not coercive or repressive in nature in order to keep the youth in the program. Thus if youth do not feel a sense of belonging and involvement, they drop the program and then it is up to the regional director to find a new one for them.

After Care Services

In addition to residential placement, DYS post-commitment programs include parole after-care services. Parole services begin at the time of commitment to DYS and continue until the youth has completed his parole term. Regional officers of after-care, following training, provide extensive counseling and casework services to each youth. Major emphasis is placed upon reintegration of the child into his community through utilization of local resources.

Parole Volunteer Program: Additionally, to increase the parole care resources, DYS has designed a parole volunteer program and contracted for additional parole work from a private agency. Studies have shown that parole volunteers can substantially lighten the workload of professional parole workers and provide the kind of vital, one-to-one support many youth desperately need. Not only does this foster the needed self-reliance among the youth, but it is the most direct, personal, and least expensive method of providing counseling and supervision. The Parole Volunteer Program provides youth with a trained volunteer to lend guidance and supportive counseling services during the parole period.

Special Programs

Intensive Care Programs: These programs are designed to care for the most violent, disturbed youth or those committed on serious charges. The first program, Andros, more than one year in operation, is attempting, quite successfully, to substitute staff and program for security or repressive methods used at the training schools. Even though the cost for such a program is high (approximately \$280 per child per week), DYS con-

tends that only a small fraction of youth committed to the Department (5 percent) needs intensive care.

Homeward Bound and Forestry Camp Program: This is an intensive outdoor experience designed to increase confidence through exceeding one's own expectations. Serving court referred and first commitments, youth in good physical health are involved in an eight week program of forestry, camping, and counseling periods, concluding with a solo survival component where the youth makes use of his newly acquired skills.

Involvement of New Groups

As mentioned earlier, it is too soon to determine how effective these programs are in the prevention and control of delinquency. However, because these alternatives are so diversified, they have a better potential to meet the individual needs of youth than the institutional system ever had. Most important, these programs had the effect of further opening the system by introducing new people into it.

First, the young people in the institutions also began to play a new, more active role. As more democratic settings developed after the institutions were closed, youngsters were consulted before they were placed into a particular program. A joint decision is made between the youth and a program, with DYS acting as an agent. Thus these young people could now clearly affect the workings of DYS, and thus their own lives. It is hoped that these young people will eventually be a source of support for the new community-based system. As Commissioner Miller puts it, "If we can stay in the community settings for a generation, then the beginning of a democratic process within corrections may guarantee some elements of enduring reform because the clientele, the residents, will be a part of the body politic." To some extent, the youths have already begun to operate as a source of support. Many of them have given talks to groups concerning their experiences in the institutions. Their stories of brutality and repression present a very convincing case against the old system.

Other groups both interested in and capable of helping the DYS reform movement emerged. Most notable among these are the groups of ex-offenders. Since the closing of the institutions, several groups of former offenders have become involved in providing services. First among these is Libra Inc., a self-help group. Andros, a program geared to deal with the hard-core delinquent, is primarily staffed with ex-offenders. It has been in operation for over a year and has proved to be very successful in working with the most violent and aggressive youths in the Department's care.

Two other groups, Self-Development Group, Inc., and the Medfield-Norfolk Project have worked very closely with the department, since its policy has been to encourage such groups to provide leadership in these

areas. The relationship has proven to be mutually beneficial to the department and to the groups. They have provided good services because of their prior experience and their ability to relate to young people. The benefits for the groups have been an opportunity to prove their ability, and the opening a new job market for ex-offenders. This policy has extended to DYS graduates who have been hired by the Department for a variety of roles and are providing meaningful insight and a source of help.

Self-help drug groups have come to assume a more important role since the closing of the institutions. Two programs, Transition House and Spectrum House, are operating on DYS grounds. Many more self-help groups have been receiving financial support from the Department by the placement of DYS youngsters in their programs.

Another segment of the public that has become actively interested in DYS are colleges and college students. Several universities and colleges have developed associations with DYS. First and foremost is the University of Massachusetts School of Education, which has developed three different programs, JOE I, JOE II, and MARY. These programs have involved many students as volunteers, work-study students, and some have been hired as regular Department personnel. North Shore Community College, AIC, Springfield College, and others have developed nonresidential summer programs for Department youth. Thus, students have been instrumental in developing innovative programs for the youngsters, while creating new roles for themselves.

Several of the residential and nonresidential programs affiliated with DYS are using work-study students as well as student volunteers. Most notable among these is the CAP program, which uses mainly students for their operation. Various students are using DYS as a field assignment. Most recent is the use of student volunteers to evaluate programs from which the Department is purchasing care.

Among the traditional agencies, some have been willing and able to revise their practices and develop new intake policies in order to accept placements from DYS, while others have not. The Family Service Agency and YMCA, for example, have traditionally excluded DYS juveniles from their intake on the grounds that they are "unworkable," "psychopaths" or "in need of institutional confinement." However, recently their willingness to experiment has resulted in a change in their policy to accept DYS referrals.

Some traditional programs, such as McClean Hospital and the Judge Baker Clinic, have been unable to work out an agreement with DYS because their traditional approaches and practices stood in the way. They were also turned off by DYS's lack of "professional standards." On the other hand, HRI, a new and aggressive psychiatric private hospital, was able to change its practices in order to accommodate the Department's needs, and thus has developed a working relationship

with the Department. In opening its system, DYS has helped others to open up theirs.

Another way that new people have been introduced to the Department is through a tremendous turnover of staff. A recent look at staff statistics shows that 62% of the current staff members were hired after Miller took office. Many of the older employees left because the old machinery had no hold and no power to resist the changes being introduced. The new staff members generally were attracted to the Department because they were interested in its liberal outlook, and thus they tended to agree with the central administration. The process of change has attracted more progressive people who will want to continue this process. Hopefully new staff will continue to be a source of change.

Insights Gained from the Massachusetts Experience

In Massachusetts the changeover was made. The institutions were closed and new alternative solutions had to be found. The following is a summary of how this came about.

1. A broadly perceived crisis in youth services helped to trigger fundamental changes in the system.
2. The Massachusetts DYS and its commissioner were given the administrative power to set in motion fundamental changes in service delivery, without legislative review and approval, by the Reorganization Act.
3. A transitional neutral setting was needed as a bridge between the closing of institutions and the development of community alternatives. While the youngsters were housed on a university campus for two months, community settings were readied for them.
4. Radical alternatives to institutions began to emerge only after the decision to close the institutions and to move youngsters into the community.
5. Once the institutions were closed, new options based on nontraditional premises and concepts emerged quickly.
6. Deinstitutionalization was a demanding experience for veteran institution staff, required intensive efforts at reorienting, retraining, and placing staff in suitable new roles. Some could not adjust.
7. To a large measure, these new options were developed and sponsored by community groups with little prior experience or history of involvement in the care of delinquents.
8. The decision to deinstitutionalize led DYS to focus on the precommitment phase of youth's contact with the system—detention, court referral, and diversion—in an attempt to reduce the need for residential care and to avoid stigmatizing youngsters as delinquents.
9. Many youngsters who had been labeled dangerous or security risks were in fact successfully placed in community settings.

10. However, special attention had to be devoted to developing community-based intensive-care and secure units for approximately 5 to 8 percent of the institutionalized youths. These secure units had a dual purpose: (a) to reassure the community; and (b) to care for those who either came on severe charges or could not handle an open setting.
11. Institutional facilities and grounds did not have to be abandoned entirely; new uses for them were found. At one training school, for example, the operation of several residential cottages was contracted out to private self-help groups.
12. Purchase of services from private groups, as opposed to government operation of projects, proved feasible on a statewide basis. In coming years, DYS plans to allocate fully 75 percent of its budget to purchase of services.
13. Deinstitutionalization was so fundamentally and disturbing a change that, in retrospect, careful presentation to the legislature, the media, and the public was needed. Yet, no amount of public relations could have substituted for swift and decisive execution of the decision once it was reached.
14. At first, lack of community understanding and support for deinstitutionalization presented a serious obstacle. It was nourished by staff and legislative resistance to change. Developing community support is a prime task of a commissioner and his immediate staff. In order to bring about change it was important for the commissioner not to fall into the role of defending the old programs; instead he had to put himself in the role of a change agent.
15. Involvement of communities in the development of programs in their area is important. However, the process of involvement might in some cases increase rather than decrease opposition by the neighborhood. The experience in Massachusetts shows that sometimes programs can successfully begin with little public attention, although once established public and community support is necessary to maintain it.

New Organizational and Management Function for DYS

The Department of Youth Services has moved from operating one-dimensional institutional programs to a multi-dimensional approach. This makes the administrative management and operation of the department more complex and thus in need of a more sophisticated management and business organization. The purchase-of-care model changes the department's main function from one which delivered services, to one which evaluates and monitors programs. As such, the research evaluation component of the department is increased to meet the need and insure quality control. The department's role as monitors and evaluators of the contracted services can afford the department to move from the position of being the defender of the system to the position of advocate for children and promoter of social change in the community.

As the department's role changed it became obvious that there was increased planning necessary to provide backup support to service delivery. A segment of the program planning includes emphasis on management and administration. Assistance is necessary for DYS to improve its fiscal and administrative functions in support of its developing viable community-based treatment programs. The Office of Management has been directing the overall business management affairs of the department, analyzing budget requests, and preparing recommendations for final decisions by the commissioner.

Another project is underway to develop an Information Support and Program Management Information System for DYS. Under this project, the department began to develop information management capabilities, to support centralized management, planning, research, and evaluation teams are doing extensive evaluations on all DYS funded programs to augment the information into the system. And finally as the role of the department is changing there must be increased efforts to strengthen the plans for regionalization. Support is being provided for the recently created seven regions headed by regional directors who will implement community-based programs. Regional directors function as administrators at the local level, organizers, and conduits of information up and down the vertical chain of command. They are also charged with involving community leaders in prevention programs through regional youth councils, which are being developed in each area. The councils will provide support for the regional director in the mobilization of community-based resident and non-residential services for youth. The membership in the councils represents each of the principal sectors of service the department must tap in order to provide the broadest set of alternatives for treatment.

Conclusions and Implications

Many lessons can be learned from the Massachusetts experience. The changes brought about in DYS would have been impossible without a leadership that combined real commitment to change, the skill to discriminate between positive and destructive programs for youth, and an essential ability to gather political and community support for the change. The leader must be a person who owes few political debts, and is willing to implement changes even if it means the elimination of his own job. Such a person in all probability must come from outside the system requiring change, yet able to rely on those individuals in the system who have been committed to the change.

Using the media both to get public attention to injustice and to build personal support is essential. When radical changes are undertaken, the person making them must have a broad power base in order to insure that they are not reversed. This power base is built not only through the media, but by constantly educating and informing the pub-

lic, the different professional groups and other interested citizen groups seeking causes to rally behind.

Introducing new concepts, ideas and people into DYS caused the loosening of the rigid structures, and the creation of a more favorable environment for change. However, "opening the system" alone could not account for the massive deinstitutionalization and the creation of new and humane alternatives in the three years following the Reorganization Act. One has to look at the different processes and strategies that brought about the changes in the system.

The changes introduced in DYS have been massive and dramatic, and especially unusual for a state bureaucracy. This holds true despite the many elements present that made such change possible, i.e., the mandate for change as expressed in the Reorganization Act, support of vocal interest groups, and the definite commitment of a governor who frequently expressed his support.

Opponents of reform were put in a defensive position, and forced to explain and defend indefensible situations. The commissioner and DYS were continually broadening their base of support, thus moving into a less defensive, more powerful position. This power was gained by depriving guards and institutions of their autonomy, cutting into the power of the bureaucracy and patronage systems with the government, and building upon the growing relationships with outside forces. Similar strategies were also used with the police, the courts, and the communities. This realignment meant involvement of youngsters, staff, ex-offender groups, and private groups from whom the department was purchasing care.

It is more accurate to describe the change process in DYS as *emergent*, rather than *planned*. Changes were often determined by chance, imagination, opportunity, and personal style, this style being mainly that of the commissioner. The strategies used depended largely upon options and solutions that arose spontaneously, and which DYS was flexible enough to try. These options increased with the opening of the system and the introduction of new actors into it.

Frequently the department would adopt a new approach as soon as it proved useful or successful. In the same way, if a program was tried and proved unfeasible it was immediately abandoned or modified. Two examples will illustrate this technique.

There was an early policy decision to open group homes, which would be run by DYS. However, in the process of establishing these homes it became evident that the department's flexibility would be enhanced by contracting these services to private groups rather than operating them directly. The policy was changed. This change from the department's traditional role of providing services exempted DYS from bureaucratic entanglement and the intricacies of staff training and retraining. While

this change in policy created a certain amount of staff alienation, it insured quick and efficient movement toward meaningful alternatives.

A second example of the department's flexibility is shown in the case of the CAP program. A nonresidential after-care program, CAP began as a small operation with the closing of the institutions, and proved to be extremely successful in working with groups of youngsters in storefront operations in the community—providing jobs, counseling, and recreational activities. The success of the program encouraged DYS to increase the number of referrals from 20 to 175 in only one year.

Another approach used by the commissioner was to initiate a multitude of programs, knowing that at least some projects would be successful. Such a shotgun approach to change gave DYS the flexibility to try out a number of options (in many different directions), with a limited amount of resources. This approach was also consistent with Commissioner Miller's belief that the old system was destructive and "insane," and that "any new alternative will be better than what we have."

Thus, the department's lack of plan ultimately proved to be helpful, in that it made it flexible enough to find opportunities and use them when they arose. Different approaches were tried, each with limited success. When the therapeutic-community concept failed, "directed group interaction" was tried. When this showed a limited success, the department introduced the "self-help group" concept into the institutions. Cottages were closed when the occasion arose and staff members were constantly rotated, some for the purpose of training and others for the purpose of starting new programs or assuming new responsibilities. Programs that proved themselves were claimed as new and innovative; and those which did not work were terminated. In this manner, there were always a few good programs that met the criteria of being humane, and were ones DYS could point to as successes.

This shotgun method also explains to a great extent the diversity of the new alternatives. The programs covered a broad scope, and were developed by a wide range of agencies—traditional and nontraditional—including educational institutions, and even recreational programs such as YMCA's.

By espousing a direction rather than a program, the commissioner was able to avoid confrontations on specific issues with staff, communities, and the legislature. Thus, he could gather followers and maintain the department's visibility to the press, the rest of the bureaucracy, and the public, without confronting the most rigid and untractable forces in the system. By denouncing in general terms the institutional failures, Miller was never forced to explain specifically his plans to ameliorate these conditions; neither was he compelled to specify the cost of these changes to staff and other vested interest groups.

In effect, the commissioner's ability to articulate institutional failures forced the defenders of the old system into an impotent position. Who

could argue, for example, with a call to "open up" institutions and "make them responsive to new ideas?" Who could attack his practice of visiting institutions spontaneously and talking with youngsters? Or how could anyone counter the argument, "If you continue to turn out more criminals after treatment, something is obviously wrong"? By placing himself on the side of justice and humaneness, he made it difficult for detractors to criticize him publicly for fear of placing themselves on the side of injustice and inhumanity.

The lobby for change was present even before Commissioner Miller came to DYS. It consisted of the media, professional associations, the legislature, and other interest groups. How did the new commissioner and his core staff utilize, maintain and cultivate this support?

Lacking control over the institutions, the commissioner's first efforts were to broaden the base of decision-making by bringing the public and the press into the debate. An example of this technique is illustrated by his policy decision to eliminate the "lock-up."

The new commissioner recognized that a memo to this effect would not make the change. So, he publicized the decision with a series of press conferences. In a surprise visit to the institutions, he discovered that lock-ups were still used. A series of discussion and negotiations with individual superintendents at the institutions produced a modified policy statement—lock-up would be used only in extreme cases, and then only with the expressed permission of the commissioner. Policy was thus clarified, modified, centralized, and adjusted, but became the clear responsibility of the central office.

The press was also used to document the failures of the institutions and to dramatize the changes introduced by DYS. For example, long after Bridgewater was closed, the physical facility was used as a show-place for the press, to dramatize the plight of the youngsters who had been incarcerated there. When the Shirley facility had already ceased to be used as an institution, the press and the public were invited to a ceremony to destroy the "tombs" or solitary confinement cells, which were a symbol of the old, punitive system. But most dramatic was the closing of Lyman. Attention was drawn to the fact that Lyman was the first training school to open in the U.S. and the first to close. The impressive scene of moving all the youngsters in one day hid the fact that several programs continued on institutional grounds for many more months, that the Lancaster School for Girls was still in operation six months later, and that other institutions had been phased out prior to Lyman.

The practice of dramatizing the changes served several purposes. It maintained the momentum for internal changes, and it attracted outside resources to make the changes possible. But foremost, the drama kept the press interested and thus the public informed. In fact it created in the public mind the image of an aggressive, active, forward-moving

public agency, and made the closing of institutions seem consistent with success and progress.

Outside groups such as ex-offenders, universities, and child welfare agencies provide indispensable in the development of new alternatives because they had no stake in maintaining the old system. These groups were willing and able to make decisions to take actions that DYS staff were unable and unwilling to make because of their vested interest. A notable example is the University of Massachusetts involvement through the JOE II program, which made possible the closing of Lyman School. DYS staff, and especially workers from Lyman, were incapable of making a commitment to close the institution in which they were working. They were interested in developing a rationale for keeping the school open and thus maintaining the status quo.

It is important to note that the University of Massachusetts and other agencies provided the temporary structures necessary for the changeover from institutions to community-based programs. On the regional front, many groups—some new private as well as some public agencies—became a vital resource for the department's new community-based operations. Most of these agencies needed this new venture partly because of their dwindling resources and partly because of their desire to become involved in a new field. DYS ultimately signed contracts with only a small portion of the agencies that submitted proposals for the provision of care to youngsters. However, the interaction with these agencies served to orient them to the functions and needs of the department, and to significantly increase the consideration given to the problems of youth in trouble throughout the State.

The commissioner's main fear was always that a series of critical incidents, radical change in the political climate, or a temporary loss of public support could negate the changes DYS accomplished. To insure that a different administration could not retreat into the institutions several steps were taken to discard them. Some institutional properties were made available to correction, mental health, and private groups. However, most of them are still under DYS's administrative control. The department's plan for the future calls for converting a large number of staff positions into monies for purchase of care, a step that would insure adequate staffing for the maintenance of large institutions. The commissioner also attempted to organize the private sector, now providing care for DYS youth, into an aggressive advocacy lobby for children. However, this lobby can also become self-serving and interested primarily in maintaining their status quo.

Finally, the question that most reform-minded people are concerned with is whether the changes in DYS are here to stay, and if so, whether the process of experimentation and change in the department will continue on a less dramatic scale.

It is too early to answer these questions. However, Commissioner

Miller's departure before the changes have taken hold and while DYS is still struggling with fiscal and administrative problems, could definitely cause the department to revert to a defensive posture, rendering it unable to maintain an advocacy role for the youth in its charge.

There is no doubt, however, that insights gained from the Massachusetts experience and the movement it started will continue to provide example for other states ready for change. DYS in Massachusetts had a binding message to others: Humanize the system of youth correction now, without needless delay, because without risk taking and forcing one's options there is little hope that fundamental change necessary and needed in the juvenile system will ever occur.

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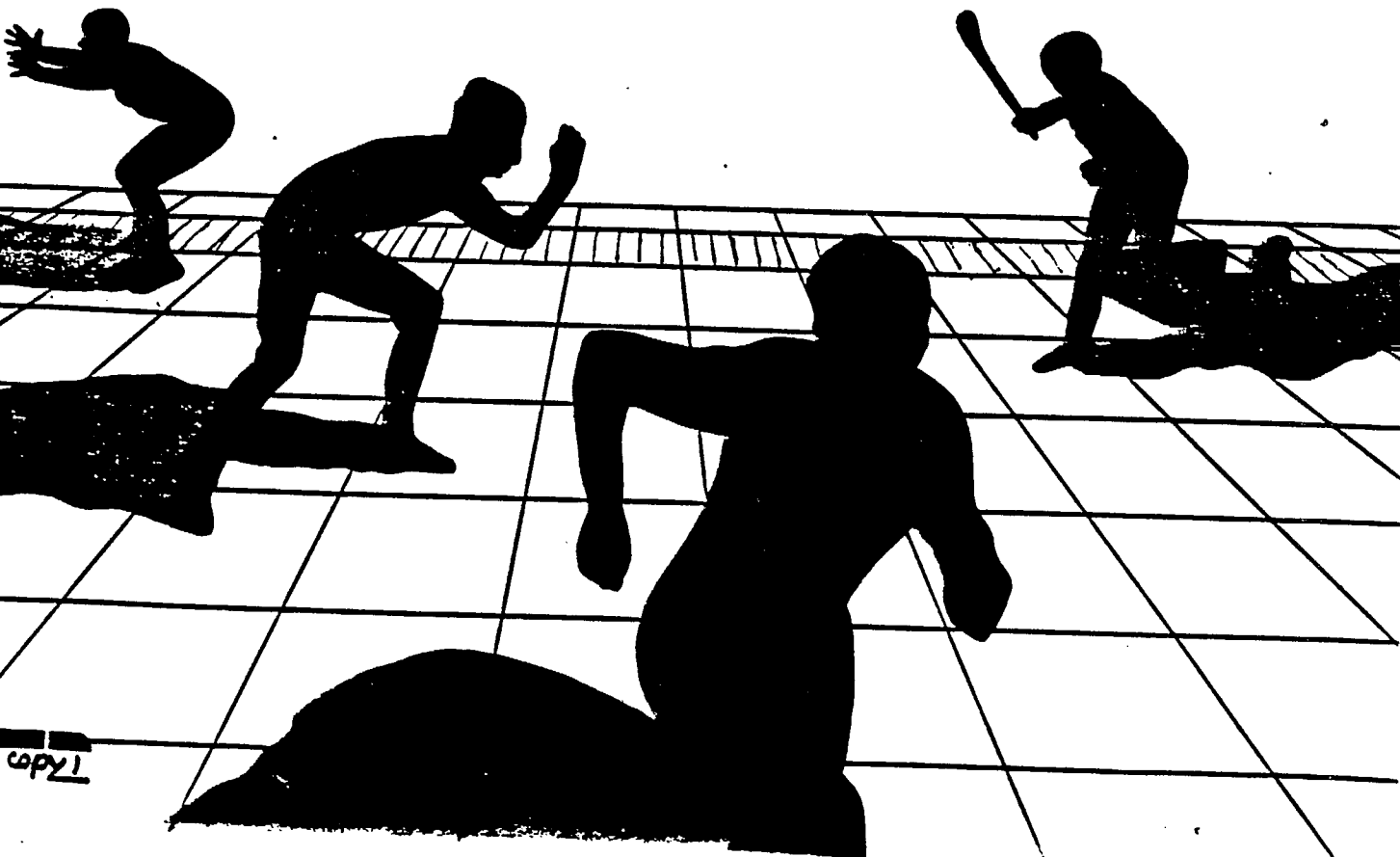
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THE SERIOUS JUVENILE OFFENDER

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SYSTEMS OF CONTROL AND THE SERIOUS JUVENILE OFFENDER

JEROME G. MILLER

The title of this paper, in a sense, speaks to the paradox and indeed the dilemma which confronts those who would understand or deal effectively with the problem of violent offenses committed by juveniles. Most public concern, media comment, and, unfortunately, most scientific research, relate only to one or the other side of the dichotomy. More often than not, we focus on either the systems of control (training schools, new treatment modalities, ideologies of deterrence, etc.) or on the description of the serious juvenile offender (new diagnostic criteria, actuarial or psychological profiles, life histories of potentially or actually dangerous juvenile offenders, etc.). In our constant search on the one hand for the most effective system of control, and our seeking of the most valid diagnostic or labeling process for the serious juvenile offender on the other, we may be redoing the wheel every decade or so to fit current professional ideology or public hysteria about youth, without addressing in any meaningful sense the issues which underly the dialectic. As a result, we are caught up in a dilemma of either prematurely over-defining and overpredicting violence in juvenile offenders, or of overpromising the capacity of our so-called systems of control (or treatment) to deliver effective results.

I propose to examine some of the reasons for this pattern and to make tentative recommendations as to how we might break out of the self-defeating, self-fulfilling cycle in which we are presently caught.

The search for the "answer" in understanding the social deviant, be he/she "violent" or not, is hardly a new one. From the diagnostic indicators outlined in the medieval "Witches Hammer," to Lombrosian theory, to the psychoanalytic approaches of Lindner or Cleckley, to the latest round of "Aha" diagnosis of Yochelson, the futile search continues. Taking an historical perspective, however, one cannot but marvel at how closely the particular diagnoses, labels, and descriptions of behavior coincide with particular public concerns or political ideologies of the day. Denis Chapman, the British writer, has commented, for example, that Lombrosian theory of criminality coincided neatly with the prison regimens of the Victorian times. He notes, for instance, that D. L. Howard, the British criminologist, asserted that the punitive English practice in penal institutions of the late 19th century found a felicitous ally in Lombrosian theory.

The DuCane Regime (named after a British prison administrator), far from following public opinion was successful in directing it to some extent. Men and women went into prison as people. They came out as Lombrosian animals shorn and cropped, hollow-cheeked and frequently as a result of dietary deficiencies and lack of sunlight, seriously ill with tuberculosis. They came out mentally numbed and some of them insane; they became the creatures, ugly and brutish in appearance, and stupid and resentful in behavior, unemployable and emotionally unstable which the Victorian middle classes came to visualize whenever they thought of prisoners. Much of the prejudice against prisoners which remains today may be due to this conception of them not as the common place, rather weak people the majority of them really are, but as a composite caricature of the distorted personalities produced by DuCane's machine.

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Chapman notes that, "the theories of Lombroso and others on criminal types, and Victorian stereotype of the criminal were identical. Prison produced the criminal type, scientific theory identified him even to the pallor of his skin and the public recognized him; the whole system was logical, water tight, and socially functional." ² Chapman believes that the same process exists today in a modified form. The situation is more complex since one part of the public wishes to modify or to abolish the prison and training school systems, while many others believe in punishment and social isolation. He notes that in such a contemporary system, "the change in prison conditions proceeds at a rate rapid enough to satisfy the pressures of reformers while continuing to produce the stereotyped 'old lage', the 'abnormal', the 'psychologically motivated', the 'inner-directed delinquent' whose maladjustment is 'deep-seated' and often 'intransigent to treatment' and who, in his turn becomes the scapegoat needed by society and the data for the latter day Lombrosos whose social function is to provide the 'scientific' explanation required by the culture." ³

In this context, the diagnosis relieves the strain on the social system by diverting attention from its inadequacies, and focussing attention upon the individual deviant or class of deviants who, paradoxically, are largely a product of the inconsistencies inherent in the system. With this as background, the diagnosis of the serious juvenile offender may tell us as much about the culture, quality, and types of controls or treatment options existing in that culture as it does about any scientific or pseudo-scientific entity or characteristic intrinsic to the offender or class of offenders. By stressing primarily the identification and labeling of the serious offender, we may further confuse the possibilities for understanding the greater issue involving the dynamic existing between the diagnostic process and the treatment process (social control). The two are complementary rather than discrete. The labeling of the offender stands opposite the systems of control which already exist and which call for "appropriate" labels. This is not to suggest that there

is no need to understand violent behavior among juveniles or that we cannot do something about those juveniles who engage in such behavior, but rather to question the current one-dimensional approaches to multi-dimensional problems.

Although there appears to be some increase in violence among juveniles in the past years, there is also evidence that this pattern has tended to slow down or decline in the past two or three years. It is questionable that this is the first time in our history that juvenile crime has been of major interest. It is also questionable whether the serious and violent juvenile offender of today is an anomaly not seen before in our own society. The current concern with gang behavior in New York, for instance, effectively forgets and neglects the relatively recent experience in that city with violent gangs of the late 1950's. With such a short memory for historical fact, one would be advised to take a short breath before rushing off to further define current problems surrounding the identification and control of the serious or violent juvenile offender.

Looking at the other side of the dichotomy, the so-called "systems of control," one finds further problems. Functional relationships exist within the helping professions' rehabilitative and treatment settings, from the most closed to the most open. Such settings reflect larger social systems and are at least partially related to social control. Therefore, when one approaches the systems of control necessary to deal with the serious juvenile offender, one again sees how culturally bound such systems are. It matters very little to the person defined as a serious or violent juvenile offender, whether that definition is as the "sinner" of the 17th century; the "possessed" of the 18th century; the "moral imbecile" of the 19th century; the "constitutional psychopathic inferior" of the early 20th century; the "psychopath" of the 1940's; the "sociopath" of the 1950's; the "person unresponsive to verbal conditioning" of the 1960's; or the "criminal personality" or "career criminal" of the 1970's--the treatment is basically the same, a series of variations on a familiar theme of incarceration, isolation, and exile. The systems seem to be designed to prove that we must define and treat this human being as qualitatively different from the rest of us and therefore in need of methods of control or manipulation which we would reserve only for violent strangers, never for violent friends or relatives, and that of course, is the core of the problem. In such a system, "cure" approximates the definition given by the anthropologist, Edmund Leach, in speaking of the treatment regimens in British "approved schools." He says, "cure is the imposition of discipline by force; it is the maintenance of the values of the existing order against threats which arise from its own internal contradictions."⁴

Our systems for labeling and diagnosing serious juvenile offenders therefore call

for certain systems of social control. In a circular way, those very treatment or control systems encapsulate and constrict the potential of the diagnostic process itself. As diagnoses are what Ronald Baing calls "social prescriptions," so existing treatment and control systems constrict and narrow the diagnoses themselves, one ever narrowing and negatively reinforcing the other. Thus, we find ourselves in the current dilemma of a fantastic lack of social control innovations or treatment options on one side, with even less originality in our perception and understanding of the dangerous or violent offender on the other.

This issue is further compounded by the growth and accumulating power of the "helping professions" and the consequent bureaucracies engendered. Many of us, for example, have long bemoaned the inability of the mental health profession to provide helpful diagnostic categories or effective treatment modalities for the violent juvenile offender. However, when one sees the involvement of this profession, for example in applying the medical model to correctional settings, one often sees more maltreatment and disregard of human rights than in many more traditional correctional institutions, penitentiaries, and jails. It has been a personal impression, for example, that medically run facilities for the criminally insane have characteristically the worse tradition of brutal and dehumanizing institutional treatment. One need not look further than the recent history of such facilities as Lima State Hospital in Ohio, Mattawan Hospital in New York, Farview Hospital in Pennsylvania, Camarillo State Hospital in California, or Bridgewater State Hospital in Massachusetts. In the latter situation of "Titicut Follies" fame, one sees the issue distilled in the pleadings of a "patient" to be allowed once again to become a "prisoner," and to be returned to Walpole State Penitentiary (hardly a benign institution) since "treatment" at Bridgewater was driving him insane.

We have often maintained a naive view, taught us in some graduate schools, that the diagnosis of the serious juvenile offender is scientific and the treatment following therefrom is a consequent scientific exercise. In fact, the diagnosis is often a political problem which culminates in a bureaucratic process called treatment. This is not to suggest that there may not be a way to better understand and control violent offenders. It is simply to point out that most of the persons, structures, and systems which are ostensibly set up to do that are in fact doing something quite different; what they are doing muddies the scientific waters so much that the problem is further compounded. As a result, any scientist who steps into this arena is quickly politicized, whether he/she means to be or not. Similarly, his/her data, if drawn from this field, cannot be taken at face value because data collected from this system are often compiled, named, and outlined for purposes other than those given. As a result, "objective" labels such as "assaultive" are skewed in terms of the needs of the various juvenile justice, diagnostic, and treatment bureaucracies, and it is often impossible to know clearly what the "assaultive" behavior is or was.

It seems to me that those who prepared the so-called "Cahill Report" ⁵ on serious juvenile offenders in New York implicitly recognized this problem. They attempted to define violent behavior in very specific behavioral terms, understanding the propensity of the juvenile justice bureaucracies to overpredict violence and to overdefine potential dangerousness. Using strict definitions of proven violence--murder, rape, forcible sodomy, assault with a weapon, etc.--they limited the potential for overpredicting or overdiagnosing violence in a particular juvenile. They thereby limited the use of psychiatric or social work jargon as the fainthearted bureaucrats' means of avoiding accountable decisions or potentially embarrassing incidents which might follow from those decisions.

Despite a current popular misconception, as outlined in New York Magazine and TIME, magazine articles made available by Professor Cohen, the juvenile justice system is hardly a mollycoddling system. What masquerades as permissiveness or bleeding-heartism, is more often than not a matter of neglect or bureaucratic chaos. When we are told that everything has been tried in the case of a particular serious juvenile offender, a closer look will very often reveal that one or two things have been tried a number of times (i.e., probation with warning, detention, commitment to a training school, or referral to agencies which should be "appropriate" but are not, such as childcare group homes or state departments of mental health) culminating in the extrusion of the offender from the agency as "unmotivated," a "character disorder," etc., all of which again point up the intimate relationship between diagnosis and treatment options. In this case, the client must somehow adjust himself/herself to the treatment option as well as the relative comfort of the treatment staff, or he/she will be rather quickly and effectively diagnosed and labeled as "inappropriate" for their treatment. This should be sufficient cause for a mild depression, but the problem does not end there. Rather, it plays on, further compounding the destructive scenario.. If labeling theory has any validity, it cannot be helpful to see the juvenile bounced from setting to setting, with escalating diagnosis as a rationalization for rejection by the agency. The youngster becomes more "violent" or "potentially violent" as the threats for conformity to programs increase. The process is set in motion not so much by the "dangerous" juvenile as by the ineffective or fainthearted "treatment" or social control programs which, in turn, up the ante for violence upon the juvenile, which is likely to be returned by him/her later, in kind.

I can think of no other reason for the standard and common practice of filling maximum security or "intensive treatment" units with large numbers and percentages of youngsters who have committed no violence on the streets, but have become management problems once they are caught-up in the treatment system. I keep hearing of the large numbers of newly violent, unsocialized juveniles who would as easily kill you

as look at you. However, I find very few who could be viewed this way in our state training schools, secure units, or "intensive treatment" programs. This experience has been borne out in varying states in which I have had some administrative authority over programs for adjudicated, detained, or committed delinquent youth. While my own experience gives lie to the popular mythology surrounding the numbers of violent juveniles abroad in the land, it clearly points again to the relationship between our labels and our treatment options. One has the impression with many of these youngsters that the definition of dangerousness has more to do with professional frustration or bureaucratic discomfort than it does with any documented history of violent street behavior. If this were an exceptional or unusual phenomenon, I would not mention it here, but it is my impression that it is indeed the rule, rather than the exception. It may seem presumptuous, but, once again, it is my experience that the average judge or probation officer is as much taken as the media with war stories, horror stories, and the drama of handling difficult cases involving violent juvenile offenders. They are, therefore, not about to downplay, dismiss, or shunt off the juvenile who has murdered, raped, sodomized, mugged, or assaulted with a weapon. One must assume, for a host of reasons, that juveniles arrested, convicted, and sentenced for such offenses receive a good deal of attention and, more often than not, find themselves committed to state juvenile correctional facilities, unless they are "bound over" for adult trial and sentencing. However, when one looks for juveniles convicted and sentenced for such crimes in the average state juvenile system, one finds relatively few such dangerous offenders. Mr. Edelman notes in his paper presented at this conference that, with qualification, the New York law relative to serious juvenile offenders has identified a rather small number (fifty) and has incarcerated only half of those in secure settings in the first six months of the new law. This experience is consonant with what I know personally in other states.

For example, if one used New York criteria for defining the violent or dangerous juvenile offender in Massachusetts, one would find considerably less than fifty such juveniles in the whole state system of juvenile corrections--this in a state where the juvenile age is a year higher than in New York, and where there is very limited use of the adult courts or correctional system for juveniles "bound over," even in cases of murder. Similarly, in Pennsylvania, where the juvenile age is eighteen, we found more than 400 juveniles sentenced by juvenile courts to an adult prison because they had been defined as dangerous. Yet less than one in four were there on crimes against persons, and again, were the New York criteria applied, one would find less than seventy-five such juveniles in the whole state juvenile system for a population of twelve million plus. Despite this, five times that number of juveniles could be found locked in secure settings within the state (including jails, detention centers, and "secure units" on training school grounds) labeled as

"dangerous." What is really meant here is not a "dangerous" or "violent" juvenile, but rather a juvenile who is a "pain in the ass" to the court or agencies; one who repeatedly engages in minor delinquencies and does not stay where he/she is told. The diagnosis of dangerousness is therefore being applied somewhat indiscriminately to those youngsters who are troublesome to programs or are a frustration to the courts, and is unrelated to any history of, or propensity for, violence. This attitude is best spoken by a juvenile judge in Pennsylvania who wrote me a critical letter for pointing out that among the "dangerous" juveniles sentenced to the Pennsylvania adult prison mentioned above, was one teenager convicted of "turning over gravestones." The judge commented that "any youngster who is capable of turning over tombstones is capable of pushing his grandmother off a cliff." So much for the diagnosis of the "potentially violent."

We learned in the Camp Hill Prison experience in Pennsylvania (resulting in the removal of over 400 juveniles from that facility) that the diagnosis of "dangerous" was closely related to the ineffectiveness, inappropriateness, or lack of non-incarcerative social control or treatment models. When alternative programs to state training schools did not exist, or when youngsters bombed-out of such programs, or when those same programs rejected them as "inappropriate," then the diagnosis of "dangerousness" or "potentially violent" was escalated as a rationale for program rejection. Program failure is thereby salvaged with a new diagnosis. The diagnosis, in this case, insures that failure is made to rest on the head of the victim, and success is worn as a halo by the helper. In these cases, the diagnosis and labeling of the offender as dangerous validates ineffective social control or treatment programs, and that process, in turn, narrows the potential of the juvenile's being seen in any other terms. To do so would be to question the competence or altruism of those who offered the original diagnosis or treatment program. That is bad form in professions and bureaucracies. The process of "winding down" the diagnosis for "dangerous" to "less dangerous" or, God forbid, to "not dangerous or violent," is as difficult as terminating a governmental agency or cutting-back a bureaucracy. This is because it is the selfsame problem, and has little to do with scientific or consistent criteria. As a result, we have a system which overpredicts violence and which overincarcerates those it has labeled. We have redone, at the systems level, that familiar pattern of ineffective institutions whereby the degree to which an institution is brutal, ineffective, or inhumane determines the degree in which the inmate population of that institution is defined in even more extreme terms as "brutal," "ineffective," or "inhumane"--usually spiced-up a bit with war stories of particularly bizarre incidents affecting an inmate or two. Once again, the poor diagnosis becomes a social prescription for the maltreatment of inmates, and the maltreatment reinforces inmate behavior patterns which, in turn, confirm the originally faulty diagnosis. Paradoxically, the diagnosis becomes more plausible the

longer the offender is subjected to the treatment.

It is not only the poor institution and programs which overly diagnose "dangerousness" in inmates as a means for rationalizing inadequate or poor treatment. Unfortunately, for other reasons, productive or successful programs tend to do the same thing. This is because the system of care for apprehended offenders (captives) is based on a series of disincentives whereby there is little or no pressure from the clientele upon the service-giver to produce results. Good programs will therefore do even better with clientele who are less risky, but who guarantee the state or county per diem coming to the agency. A natural and understandable process of "creaming" sets in whereby the "most likely to succeed" are admitted to programs and kept inordinately long, thereby guaranteeing program peace and financial stability. It is at this point that the diagnostic games ensue, whereby less difficult offenders are seen as potentially more dangerous and in need of the program, while juveniles with histories of violence are rejected as inappropriate. Theoretically, governmental regulatory agencies and funding sources should be able to keep pressure on these better social control and treatment programs to insure that they continue to deal with the "deep end" more difficult juvenile. However, the record of most state agencies in this regard is dismal, since it is not the row to hoe if one wishes to maintain stasis in the political or bureaucratic system by keeping peace with contractors, vendors to institutions, patronage considerations, state employee unions, or Boards of private agencies (often tied to major religious groups, and thereby carrying considerable political influence).

In summary, it is the contention of this paper that we cannot know or understand either the "serious juvenile offender" (his/her characteristics, numbers, intensity, etc.) or the "systems of control" (treatment, secure programs, deterrence, etc.), until we look more closely at the backdrop against which these issues and concerns are defined, developed, and implemented (i.e., the juvenile justice and "helping professions" bureaucracies). To attempt to either define or treat the serious juvenile offender without due consideration for the arena in which the problem is considered is to invite further frustration and failure. I have attempted to point out some of the considerations and issues in this paper. The solutions are, of course, more difficult and, in a sense, it is contradictory to suggest that solutions are possible in this confused system. However, directions might be plotted and for that, to paraphrase Robert Theobald, we need a compass rather than a map. This paper has been an attempt to provide some of those bearings. As one maps the uncharted territory, there are a few suggestions which might be helpful in keeping our directions straight.

As we seek an understanding of the serious juvenile offender and the systems of control which we set up to deal with him/her, we must stress the following--although in the present juvenile justice system context, some of the suggestions might appear absurd. Perhaps it is time to send in the clowns, and perhaps, they might help us keep our bearings. The following must take place:

1. Accountability to the client (in this case, the invalidated, captive "serious" juvenile offender) must be stressed. He/she remains the best judge of the effectiveness and appropriateness of our diagnosis and treatment.
2. The diagnosticians must be changed constantly, and must be from outside the juvenile justice system.
3. Research on the problem of serious juvenile crime must focus on the political and bureaucratic characteristics of the juvenile justice system, while attempting to understand the serious offenders.
4. There must be constant movement of clientele and staff to new roles between, among, and within diagnostic and treatment settings. The movement must be vertical as well as lateral, to the degree to which program consistency and public safety allow.
5. We must build systems whereby there is constant pressure to limit, proscribe, and de-escalate the diagnosis of serious or violent offenders as a means of counteracting the natural bureaucratic process of overusing and overdefining dangerousness as a rationale for social control.
6. We must increase the possibility of choice of treatment, even for those clearly violent and dangerous juveniles who are caught up in the juvenile correctional system. For example, if they have to be in a locked and secure setting, they might be given some choice as to which facility they feel best meets their needs, given a State voucher, and be allowed to "shop" a bit. They also might be allowed to leave an unsatisfactory locked unit for another locked unit, and to take the State's money with them.

FOOTNOTES

1. D. L. Howard, The English Prisons (London: Methuen; 1960).
2. Denis Chapman, Sociology and the Stereotype of the Criminal (London: Tavistock Publications, 1968), p. 237.
3. Ibid.
4. Edmund Leach, A Runaway World, BBC Reith Lectures, 1967 (New York: Oxford University Press, 1968).
5. Governor's Panel on Juvenile Violence, "Report To the Governor From Kevin M. Cahill, M.D., Special Assistant to the Governor on Health Affairs," panel report (Albany, N.Y., 1976).

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The Revolution in Juvenile Justice: From Rhetoric to Rhetoric

Jerome G. Miller

OVER the last ten to fifteen years there has been a dramatic change in our understanding of juvenile delinquency and approaches to juvenile justice in the United States. Beginning with the *Kent* (*Kent*, 1966) and *Gault* (*In Re Gault*, 1967) decisions of the Supreme Court, there has been a growing awareness of the shortcomings of the juvenile court, approaches to understanding delinquency, and the means for dealing with it. Surely there can be no greater indictment of a system of care than to suggest that the best service one can do for a potential client of that system is to divert him or her from it. Yet this was precisely what President Johnson's Commission on Law Enforcement recommended (President's Commission, 1967).

Since the late 1960s this recommendation has led to an emphasis on such reforms as decriminalization, diversion, due process, deinstitutionalization, and the variations on these themes. It has been said that a new revolution for dealing with juveniles has been spawned. Yet it is striking that support for this revolution has come from both civil-liberties-oriented liberals and from conservatives concerned with issues of law and order. This seeming paradox is not only indicative of the degree to which we have become disillusioned with the juvenile justice system of the past half century, but it may indicate that we are dealing with something less than a revolution. A careful review of prior revolutions in the treatment of the young suggests that such may be the case.

Institutionalization: Revolution in the 1800s

The attention to the establishment of the juvenile court in 1899 has often obscured the fact that there was an even earlier revolution in the approach to juvenile offenders in this country. Dating from the early 1800s, a tradition developed favoring the institutionalization of juveniles in facilities ostensibly designed to be different from adult jails and prisons. This tradition had become so entrenched that, long before the turn of the twentieth century, several attempts were made to reform it. Before Dorothea Dix sought better institutional care for the mentally ill, Samuel Howe of Massachusetts was pointing out the unconscionable conditions in existing juvenile institutions in that state. Likewise, one cannot read the descriptions of the Boston House of Reformation by Alexis de Tocqueville and Gustave de Beaumont (1964) without realizing that an earlier revolution had already taken place in the treatment of certain juveniles. In their report to the French government on the penitentiary system in the United States, they described in great detail such experiments as inmate self-government, exclusion of corporal punishment, and what would generally be described—at least until recently—as an enlightened approach to the treatment of delinquents. They noted, for example, that

corporal chastisements are excluded from the [Boston] House of Refuge; the discipline of this establishment is entirely of a moral character and rests on principles which belong to the highest philosophy.

Everything there tends to elevate the soul of the young prisoners, and to render them jealous of their own esteem and that of their comrades; to arrive at this end they are treated as if they were men and members of a free society. . . .

. . . The early use of liberty contribute[s], perhaps, at a later period, to make the young delinquents more obedient to the laws. And without considering this possible political result, it is certain that such a system is powerful as a means of moral education. (Wines, 1910:379)

The founder of the Boston House of Reformation, the Rev. E. M. P. Wells, was a young Episcopal minister whose ideas about "juvenile wickedness" differed considerably from those accepted at the time. In writing about him, a later reformer, Frederick Wines (1910:376), noted:

Wells believed that bad boys were no worse by nature than others and was convinced that a boy "can always be reformed while he is under 15 years old, and very often after that age." He became superintendent in 1828 and first drew attention to himself by introducing an educational curriculum that was wholly unlike anything that the staid overseers of delinquents at that time had ever seen. Regulated play and gymnastics figured prominently in the program and Wells frankly admitted that the "mechanical" parts of education such as arithmetic, writing and spelling, held a low place in his opinion.

Contrast the above description of a training school of the early 1800s with a report on the St. Charles School for Boys by the Illinois Crime Commission in the late 1920s, almost three decades after the establishment of the juvenile court in Illinois:

All whippings were administered by a disciplinary officer who went . . . to each cottage each evening after supper and whipped any boys who had been reported earlier by the house father, or for whom the house father requested punishment at that time. Some boys were punished by being locked up in the "hole" for up to thirty-two days with no shoes and no mattress. They slept on wooden boards nailed to the concrete floor. Some were handcuffed to iron pipes and kept manacled day and night. (Platt, 1969:150)

When comparing this twentieth-century institution for delinquents with its nineteenth-century counterpart, one is less impressed with the revolution brought on by the establishment of the juvenile court. However, we seem to be becoming a nation of lawyers, and it may be that the legal confirmation of certain realities is more important than the realities themselves. Whether or not this is true, it does seem to be the case that, by the time the juvenile courts were established, the reforms intended by the establishment of juvenile institu-

tions in the nineteenth-century had not been successful but had been effectively undone.

Juvenile Court Revolution

We are all familiar with the invention of the juvenile court and with the revolution it was said to represent. Hailed as signaling a new era in the treatment of children, it was established in all states but three by 1917. By 1932 there were over six hundred independent juvenile courts across the land. Yet the evidence is clear that it failed to disrupt the older pattern of confining juveniles in unspeakable institutions.

In 1925 Louise Bowen (Platt, 1969:151) noted that the Cook County Detention Home had "every appearance of being a jail, with its barred windows and locked doors—the children have fewer comforts than do criminals confined in the County jail. They are not kept sufficiently occupied and have very little fresh air." These comments were made seven years after a report to the Cook County Civil Service Commission on the investigation of the juvenile detention home had been submitted. The study commission called upon such persons as Mrs. Bowen, Miss Jane Addams, Amelia Sears, Dr. William Healey, Judge Franklin Chase Hoyt of the Children's Court of New York, Judge Edward F. Waite of Minneapolis, and a variety of others who would probably be characterized today as representative of the child-saver movement. This study group noted that

the [detention] home as taken over by the County was founded largely in the idea that it was wrong to detain children in jail and in police stations with criminal adults. The ideal was to maintain for them a home. The idea has been carried out partly—children are not now detained in jail with criminal adults, but dependent children, children mildly delinquent, are housed together and eat together with delinquents as deteriorating in their influence, as that of many adults in the jail. Neither is our juvenile detention home a home. For the dependents and the minor delinquents it has some of the qualities of a jail. (Cook County Commission, 1917:4)

As a result of their findings, the commission recommended that some juveniles be deinstitutionalized and that settings in which others were confined be made more homelike—recommendations that might as easily have been made in 1978 as in 1917. The commission said:

For the seriously criminal its detention qualities [the Cook County Detention Home] are inadequate. Can the County protect its children by a better separation of the dependents and the tractable from the incorrigible, the immoral, the confirmed juvenile delinquents? Can the Home give to its children or a *deserving* portion thereof a little more of a real home during their detention period? (Cook County Commission, 1917:5, emphasis added)

Consistent with its stance, the commission recommended that the delinquents housed in juvenile detention homes be separated and reclassified, that a strong effort be made to keep children in their own homes, and that children charged with lesser delinquencies might be amenable to mild forms of discipline. It argued that, for those who must be detained and are responsive to discipline, "a special portion of the Home may be reserved where they may receive less custodial care, more recreation and out-of-door play and perhaps simple vocational work. The few attendants necessary for their care should live at the Home with the children."

For all of its progressive recommendations, however, the Commission Report suggested that "*for the remaining children, the immoral girls, the incorrigible and unruly boys and girls, the present juvenile detention home and the present custodial care are none too severe. In Detroit individual separation rooms are installed for and occupied by the incorrigibles who deserve complete isolation, which we also recommend*" (Cook County Commission, 1917:6, emphasis added).

The distinction of the commission between "incorrigible" or "undeserving" delinquents and those who are relatively "innocent" or "deserving" helped to perpetuate a paradox that has characterized reform movements from Elizabethan times to the present. Instead of demanding reforms for all delinquents, the commission proposed to use humane reforms

only for the "deserving," while the "undeserving" would continue to receive the most stringent forms of traditional discipline. Hence, as in the past, reforms were not meant to deal head-on with those labeled as "undeserving," only with those who were "deserving."

Given this stance, the problem then became one of diagnosis and labeling, of deciding who should become the beneficiaries of new and humane services and who should remain isolated from them. The answer to that problem of course, was provided by the ideologies and belief systems of the time. Diagnosis always represents a response to contemporary constructions of social and political reality. But, as Laing points out, these constructions may be relatively unintelligible to the person being labeled, even though they prescribe a particular set of social responses:

The unintelligibility of the experience and behavior of the diagnosed person is created by the person diagnosing him, as well as by the person diagnosed. This stratagem seems to serve specific functions within the structure of the system in which it occurs. . . . The label is a social fact and the social fact a political event. This political event, occurring in the civic order of society, imposes definitions and consequences on the labeled person. It is a social prescription that rationalizes a set of social actions. (Laing, 1968b:18)

It seems quite clear that the definitions made within the context of the new juvenile justice system were not the result of the unique needs of individual children but were the result of treatment options that antedated the creation of that system, primarily institutionalization for the "undeserving." This tended to be the case because the political power and influence of the institutional industry was predominant when the juvenile court entered upon the scene. Consequently, it was that industry which had the greatest impact on the way children were diagnosed and labeled.

By the late 1800s, and certainly by the early 1900s, it was the ruling boards of institutions who were largely responsible for designing our systems of treatment, not only for juveniles but for the mentally ill, the retarded, and, to a large degree, even the poor:

These authorities were created to meet two great groups of problems: 1. The diversity of practice, inadequacy of equipment, competitive relationships and often wasteful methods characteristic of the care of wards for whom institutions, whether state or local, had been established; and the same lack of uniformity, the same inadequacy of service, the same wastefulness characteristic of the "outdoor" care of persons in distress given by local authorities. (Breckenridge, 1927:32)

Even though "outdoor" care as well as institutionalization came under the purview of these boards, Francis M. Rush, Jr. (1978:31) shows quite clearly that their major concern was with the latter. In Massachusetts, for example, the new board had general responsibility for "the local almshouses, a state hospital on Rainsford Island, three state lunatic asylums, a state prison, a state reform school, a state industrial school for girls, and a school ship (*The Massachusetts*), and partially controlled by the state, the Massachusetts General Hospital, the Massachusetts School for the Blind, and the Massachusetts School for Idiots." Rush (1978:32) comments further that emphasis was "*on administrative rationality that would result in efficiency and economy.*"

This emphasis was carried over into the Conference of Boards of Public Charities, formed in 1874 when the members of the boards of New York, Wisconsin, Connecticut, and Massachusetts met with the American Social Science Association to share views. The Conference (The National Conference of Charities in Corrections after 1879), which ultimately became the professional organization of social workers, emphasized administration and practice rather than scientific inquiry. By the 1870s, therefore, it was evident that the care of the mentally ill would be determined less by superintendents of individual institutions and more by centralized boards seeking to develop comprehensive and unified policies toward dependent groups of all kinds. (Rush, 1978:32)

One sees here the degree to which administrative and practical institutional considerations would influence later approaches, ideology, and even so-called scientific inquiry into issues of concern, such as juvenile justice. Indeed, Platt suggests that they led to the demise of theories of the born criminal: "The concept of the natural criminal was modified with

the rise of a professional class of correctional administrators and social servants who promoted a medical model of deviant behavior and suggested techniques of remedying 'natural' imperfections" (Platt, 1969:35). It was within this context that the juvenile court and the so-called helping professions emerged.

In summary, it is clear that the revolution heralded by the founding of the juvenile court could have been of great importance. Roscoe Pound's famous statement (1950) that the juvenile court represented one of the most significant advances in the administration of justice since the Magna Charta reflected his awareness of the profound issues that *could* have been forced upon the scene by the establishment of the juvenile court. Likewise, George Herbert Mead (1961), in his classic article "The Psychology of Punitive Justice," noted that the juvenile court had forced a breach in the wall of the criminal justice system. Unfortunately, the ambivalence Mead saw reflected in the society around him—whether to treat or to punish—permeated the establishment of the juvenile justice system and the traditions of the juvenile court. This ambivalence was amplified by the bureaucratic structures which had been set up for treatment or punishment and which *already existed* at the time the juvenile court was created. Predictably, the clientele were soon receiving the worst of both worlds—no due process, followed by punishment labeled treatment. Seen in retrospect, therefore, such decisions as *Kent* and *Gault*, which guaranteed elements of due process and equity in sentencing, were probably inevitable.¹ The fervent hopes

¹ It now seems odd now that a system seen by the Supreme Court as essentially punitive—one which called punishment "treatment"—should more recently be perceived as mollicoddling young offenders. Even more interesting, much of the current revolution in juvenile justice is seen as responsive to both the above-mentioned criticisms. This is accomplished by shifting official response, depending upon the target population involved: reserving the benefits (diversion, deinstitutionalization, prevention) of the revolution for the "deserving" delinquent and the strict sentences (due process, waivers to adult court) for the "undeserving." This is, of course, repeating the pattern which turned out to be the major weakness of the child-saving movement and of the juvenile court begun in the early part of this century.

surrounding the juvenile court were undone by bureaucratic growth and practice.

Rather than terminating existing institutional child care or treatment bureaucracies, the juvenile court sustained and nourished them. Indeed, as new bureaucratic systems developed around the court, they began to escalate the labels and programs by which the net of the juvenile court could be thrown even wider. Under early banners of delinquency prevention, the juvenile justice system became involved with larger numbers of lesser, but "deserving," offenders. Meanwhile, legal statutes in most states permitted the court to bind "undeserving," and presumably more serious, delinquents over to adult courts. Indeed, in states such as New York, the age levels for the juvenile court were made so low as to insure the extrusion of most "undeserving" offenders into the adult system. Although "incorrigible" as well as "delinquent" children had always been seen as fit clientele for intervention or commitment to a reform school, such intrusions became virtually guaranteed as the system grew more formalized and bureaucratic.

Professionalism in Juvenile Justice

Along with bureaucracy, professionalism became the handmaiden of juvenile justice. There has always been a strong belief in this country that professionalization in and of itself guarantees quality services and scientifically informed problem-solving. Hence, large numbers of psychiatrists, psychologists, and particularly social workers were introduced into the juvenile justice field. Indeed, it still remains true that if an administrator of a juvenile correctional agency wishes to gain credibility or to deal with the problems of a hostile legislature or press, he can usually do so by introducing greater numbers of "qualified" personnel and "professional" consultants. Meanwhile, his approaches or ideology need not change, nor, in fact, do these consultants need to affect the institutional equilibrium of his operation. As a result, it has been a common

administrative ploy in the juvenile justice field to professionalize ineffective or, at times, brutal systems.

Given these conditions, professionalism provides a paradox in fields that have a captive clientele. Although professionals can at times advance the humaneness of a system, an indirect effect has been to give credibility to those that are ineffective and to insure their survival. In short, the professional is more likely to be used by the bureaucracy than he or she is likely to change it. The screening processes for selecting professionals, for culling out the obstreperous ones, and for socializing the remainder to the institutional world have all served to dilute conflicts and to bless and ratify the system.

We have often maintained the naive view that professional treatment of the juvenile offender is an objective, science-based exercise. In fact, diagnosis in the juvenile justice system is in large part a political problem that culminates in a bureaucratic process we call treatment. The terms attached to the clientele are skewed toward maintaining equilibrium within the juvenile justice bureaucracies. Indeed, some labels, such as "psychopath," fairly demand maltreatment! Thus, manageability is the issue, and the labels are enrolled to that end. Professionalization gives a rationality to the jargon that effectively masks the process.

Mead understood well the value and normative issues that would predispose the child-saver revolution in juvenile justice to failure. Although he had hoped the juvenile court would provide some means of breaking out of the traditional criminal law system—something that Roscoe Pound probably perceived as possible—Mead's own analysis of the role of the criminal in our society should have warned him otherwise:

Seemingly without the criminal the cohesiveness of society would disappear and the universal goods of the community would crumble into mutually repellent particles. The criminal does not seriously endanger the structure of society by his disruptive activities and on the other hand he is responsible for a sense of solidarity, aroused among those whose attention would be otherwise centered upon interests quite divergent from those of each other. Thus, courts of

criminal justice may be essential to the preservation of society even when we take account of the impotence of the criminal over against society, and the clumsy failure of criminal law in the repression and suppression of crime. I am willing to admit that this statement is distorted, not, however, in its analysis of the procedure against the criminal, but in its failure to recognize the growing consciousness of the many common interests which is slowly changing our institutional conception of society, and its consequent exaggerated estimate upon the import of the criminal. (Mead, 1961:882)

Mead suggests, in short, that society could not tolerate the removal of a significant segment of the population (adolescent offenders) from the criminal labeling process. To do so would threaten the underpinnings of society itself. It would also give meaning to the trend of moving certain juvenile offenders into the adult criminal justice system while at the same time justifying the juvenile court's spreading a wider net into non-criminal behavior, dependency, and incorrigibility.

If Mead had investigated the internal dynamics of the system, it is likely that he would also have noted how they reinforce the broader macrodynamics. An instance here are the problems of the interplay of appointed or elected judges with the politically sensitive court and correctional bureaucracies that comprise the juvenile justice system. Such arrangements are skewed toward professional conservatism because of the bureaucratic risk involved in moving too far away from traditional criminal justice procedures. Consequently, there has been a built-in bias against dealing in new and innovative ways with "undeserving" offenders—those whose problems are the greatest and whose acts are the more serious. Instead, there has been much to gain by concentrating upon "deserving" children—those who resemble one's own middle-class offspring. If one is to justify treatment, one must show success, and there is no better way for doing that than to deal successfully with those who would probably be a success anyway. Meanwhile, the system can demonstrate its commitment to the protection of society by continuing to isolate and to immobilize its "undeserving" failures. As a result, those "undeserving" individuals who have always populated our detention

centers and reformatories have remained largely unaffected by the professionalization of juvenile justice.

The Growth of Professionalism

As noted earlier, professional theory and practice first gained a foothold in this country through their ties to the institutional industry of the nineteenth century. After the turn of the twentieth century, however, professionalism became increasingly academic and gained a measure of independence because of its ties to hospitals and universities (Rush, 1978:42). The consequences of this development for the profession of social work are dramatically demonstrated by comparing the themes around which its national conferences in 1893 and 1928 were organized. Clearly, there was a marked shift from a concern with administering institutions to a concern with a broader set of academic and substantive issues (Rush, 1978:42):

*National Conference of
Charities in Corrections
1893*

1. State Boards of Charities
2. Charity Organizations
3. Indoor and Outdoor Relief
4. Immigration
5. Child-Saving
6. Reformatories
7. The Prison Question
8. The Feeble-Minded
9. The Insane

*National Conference of
Social Work
1928*

1. Children
2. Delinquents and Correction
3. Health
4. The Family
5. Industrial and Economic Problems
6. Neighborhood and Community Life
7. Mental Hygiene
8. Organization of Social Forces
9. Public Officials and Administration
10. The Immigrant
11. Professional Standards in Education
12. Educational Publicity

Concomitant with this change was the development of standardized professional methodologies, such as Mary Richmond's book *What Is Social Casework?*² (first published in 1922). Regarding these standards, Willard stated in 1925 that

social work no longer attends chiefly to the confinement and management of state wards, but derives its problems from community processes far beyond state institutions. . . . On account of the necessary reference to social ends involved in social work thus broadly conceived, those ends must be fixed through appreciation of the social processes themselves in any state, and their merits defined in terms of social values. (Willard, 1925:55-56)

In theory, at least, social work joined the professions of psychiatry and clinical psychology in widening its perspective and in fostering the rehabilitation ethic. Yet there are several grounds on which it might be argued that professional theory continued to differ widely from professional practice.

First, there is the fact that institutional management bureaucracies, backed by a century of experience, heavily influenced the on-the-job training of professionals. The categories, labels, processes of management, and interorganizational relations of these bureaucracies have often been far more influential in determining the actual practices of professionals than the theories they have learned in the classroom. A child-saving ideology, for example, is more likely to be swallowed up or diluted by a complex bureaucratic system than it is to change that system.

Secondly, there is the seductive tendency to justify the continued use of coercion by the manipulation of new diagnostic labels. In a 1947 essay, Lionel Trilling argues that "some paradox in our nature leads us, once we have made our fellow men the objects of our enlightened interest, to go on to make them the objects of our pity, then of our wisdom, ultimately of our coercion" (see Rothman, 1978:72). Trilling's perception is accurate so far as it goes, but it does not go far enough. Although the helping professions have used coercive methods with enthusiasm, there are other, more complex, ways for dealing with unresponsive and undeserving juveniles—ways

that avoid the risk of moral conflict between stated professional and democratic goals and the use of coercion.

A safer response by professional helpers in a bureaucracy is to adjust diagnostic categories and thereby to remove the need for the coercion of the clients with whom professionals deal. This insures that failures are defined as being outside the expertise and responsibility of the helping professional. That is why the deep-end diagnoses and the hard-core labels survive whatever professional or ideological era we find ourselves in. Furthermore, that is why treatment systems reserved for the "undeserving"—extrusions, exclusions, and isolation—also persist. Labels change, but the process remains essentially the same.

Ironically, these inhumane systems also serve to validate the label. D. L. Howard (1960), for example, has shown how English practices of the late nineteenth century dovetailed nicely with Lombrosian theories regarding the identification and labeling of the criminal. Although entering a punitive and brutal prison machine as people, men and women later emerged as Lombrosian animals, easily recognizable as criminal types by the Victorian middle classes. Thus, as Denis Chapman (1968:237) notes, the whole system was "logical, watertight, and socially functional." Furthermore, while our systems today are more complex, the same social dynamics tend to persist.

While there are a large number of persons who would change or abolish punitive institutions, there are others (perhaps the majority) who see the correctional system as one of punishment and social isolation. Unfortunately, it is at this point that the self-interests of professionals often dovetail with those of bureaucrats. In their diagnostic labeling processes, they dance a ritual choreographed to fulfill latent functions of social control while touting the manifest functions of science and care. The professions provide the new labels that change from decade to decade, while the basic treatment of the "undeserving" continues unchanged; for example, the treatment of the "moral imbecile" in the late nineteenth century, the "constitutional psychopathic inferior" in the early 1900s,

the "psychopath" in the 1930s and '40s, the "sociopath" in the 1950s, the "antisocial personality" in the 1960s, the person "unresponsive to verbal conditioning" in the 1970s, and, most recently, the "criminal personality" of the middle 1970s. In this sense, Chapman (1968:237) is probably correct in referring to the helping professions as "latter-day Lombrosos whose social function is to provide the 'scientific' explanations required by the culture."

Such labels also remove the professional from responsibility for dealing with the phenomenon he names. He is thereby able to withdraw from the situation or enter into it at will, wearing success as a halo and placing failure on the head of the client. The degree to which the professions become involved with those juveniles seen by the society as violent or most dangerous becomes a function of bureaucratic and political considerations, though couched in professional jargon. One can anticipate that psychiatrists, psychologists, and social workers will become involved to the degree that clientele with lesser or virtually no problems are unavailable. It is a seller's rather than a buyer's market emerging from a system with a captive clientele to be redefined, reassigned, or extruded from the system by those who, paradoxically, claim the expertise for dealing with the problem.

It is important, therefore, to question whether the nomenclature, training, and treatment modalities of the helping professions are relevant to dealing with serious juvenile delinquents. This leads to more telling questions. For example, if professionals cannot deal with these youngsters, will they leave the field (and the budget) open for other agents of change? But, rather than engaging in the difficult self-appraisal inherent in trying to answer this question, they have characteristically switched focus, usually finding a more felicitous target group of clientele with whom to deal—middle-class, "neurotic" delinquents or status offenders. Hence, the sad truth is that, despite the rhetoric, we have had an inverse system whereby those who are most likely to present major problems to society in terms of violence or repeated crimes are systematically excluded from the system of care by professional diagnosis and are thereby relegated to the largest and

most impersonal human warehouses—jails, prisons, training schools—places where they find the fewest and least qualified professional helpers. At the same time, those who are *least* likely to become involved in serious crimes are most likely to be dealt with by professional helpers. The rationale given is that of a diversionary or preventive exercise. This is why the new revolution with its emphasis on diverting status offenders or deinstitutionalizing programs for them has been so fully embraced by the professions.

Trilling's fear that we tend to move toward the coercion of those most in need of care is well-founded. One might make a case for the thesis that professional coercion in juvenile justice follows naturally from professional inadequacy. First, labels (e.g., psychopath) that cry out for coercion are coined. Then, paradoxically, the coercion that follows, having been prescribed by professionals, is usually dispensed by nonprofessionals in lower-level staff positions. One can only conclude, therefore, that this whole exercise is more a measure of the inadequacies of the professions than of the appropriateness of the coercion. Moreover, it also points to a certain fragility in the power of the juvenile justice professions. If Hannah Arendt (1970:56) is right when she says that power and violence are opposites—"where the one rules absolutely, the other is absent"—then the history of the involvement of psychiatry, psychology, and social work in juvenile justice over the past fifty years has not been felicitous either for the clientele or the professions. "Loss of power becomes a temptation to substitute violence for power—and that violence itself results in impotence" (Arendt, 1970:54).

In summary, disillusionment with the child-saving movement and cynicism with the juvenile justice system are well-founded. This disillusionment, however, is more a function in the nature of reality than of the ideals that were promulgated. The treatment actually afforded juveniles has never approached the goals envisaged. Perhaps it never could, given the characteristics of a system that is accountable only to those who run it rather than to its captive clientele. And perhaps it is of the essence of juvenile justice that captives can never have legitimate power. If that is so, reform will always be

subject to the altruism of those who provide the service. Yet, as experience teaches, altruism is notoriously undependable and eventually is worn away in bureaucracies. Indeed, the product of unresponsive bureaucracies is apathy and finally violence. And that, of course, has been the history of the juvenile justice system from 1900 to the present.

Why haven't we broken out of this vicious cycle? The reasons reside in the system itself. Even its widely touted cures are not so much cures as they are means of providing reassurance to the rest of society. Too often, as Edmund Leach (1967) points out, they represent "the imposition of discipline by force—the maintenance of the existing order against threats which arise from its own internal contradictions." To the degree that this is so, the success of revolutions in juvenile justice has been, and will continue to be, limited.

The New Revolution in Juvenile Justice

In much the same way, many of the issues surrounding the current revolution in juvenile justice have to do more with rhetoric than with substance. Its principal catchwords—decriminalization, diversion, due process, and deinstitutionalization—are part of that rhetoric. There is little evidence that youth service bureaus, for instance, set up as diversionary, have lowered the numbers of juveniles going into the criminal justice system. Generally, they have dealt with other, more "deserving" youngsters. Thus, it is difficult to prove that they either prevented delinquency or diverted delinquents.

Likewise, Vinter and Sarri (1975:46), in their massive national study, have shown that deinstitutionalization has not occurred on a uniform basis. It is certainly clear that it has not happened in adult corrections, with its record numbers in prisons and jails, and, though there are states in which institutional populations in training schools have fallen dramatically, there are others which have maintained or increased the numbers of juveniles in institutions. The reasons for this failure, moreover, are usually bureaucratic in character rather than academic or ideological. Indeed, there are some

who say that we traditionally institutionalize a certain percentage of the population in our society (Brizius, 1976). As we close one type of institution, we fill another. Similarly, William Nagel's study (1977) on prisons implies that we fill prisons to occupy empty cells. Those states that build more prisons have more prisoners, those that do not build more prisons have less prisoners—and both phenomena are unrelated to crime rates.

All of this is not to suggest that diversion, deinstitutionalization, and other reforms are not important. It is simply to point out that such reforms are seldom applied to the target population for which they were initially justified. For example, state correctional bureaucracies rarely dramatize their support for new reforms by transferring appropriate portions of their budgets from institutional programs to community-based alternatives. Furthermore, their reasons for failing to do this are eminently practical: the juveniles ordinarily assigned to diversionary or preventive programs are generally not those already in institutions or likely to be sent to them. Instead, new programs require *additional* budget because existing monies are needed to service the institutionalized youngsters who use up the bulk of most state juvenile correctional budgets (usually over 90%). Thus, only if state correctional agencies were disposed to *terminate* ineffective institutional programs could one anticipate the transfer of institutional budgets into alternative programs. However, this does not happen because (1) alternative programs are not really *alternatives* for institutionalized juveniles, and (2) institutions survive whether or not they are effective, since they are there to provide for other needs, such as employment in remote areas, contracts with vendors, political patronage, and a sense of safety and solidarity for the public.

Ideology and the New Revolution

Along with the now familiar statements that juveniles have received the worst of two possible worlds and that more fair and effective ways must be found for dealing with them, there

are a number of less well known ideologies that should be considered in examining the so-called revolution in juvenile justice. The first is Robert Martinson's (1974) assertion that "nothing works"—an assertion that dovetails nicely with the position of the helping professions vis-à-vis corrections.² These professions, though perceived by the public as expert in the area of juvenile delinquency, have, as indicated earlier, tended to withdraw from dealing with more difficult delinquents. Hence, Martinson simply provided confirmation of the ineffectiveness of the professions with serious delinquents and insured that whatever involvement they might have in the future could be limited by them to the more expensive, professionally well controlled pilot and research-demonstration projects.

Another issue contributing heavily to the rethinking of the juvenile justice model has been the recent emphasis upon rising juvenile crime—particularly violent crime. Although there are a number of indications that this problem is receding and that it peaked somewhere between 1973 and 1975, the media, particularly the liberal media, have projected the problem as a continually growing, if not exploding, one. This projection has coincided with the growing interest in the conservative views of James Q. Wilson (1975), Ernest van den Haag (1975), and others who argue that a more practical (punitive) approach to crime should be taken.

Significantly, Wilson is a Harvard professor and van den Haag, who presents himself as a psychoanalyst and social critic, is one of the founders of the New York Conservative Party. Although their neoclassical views might be questioned on theoretical grounds, the most significant thing about their writings for our purposes is their ideological character. Wilson (1975:60) has criticized the field of criminology for being polemical and nonscientific, and he is correct. What masquerades as science is often, in fact, the bias of individual criminologists who are influenced by personal ideological convictions rather

² Martinson's (1974) views have become increasingly ideological as they have received acceptance in the media—though more recently he is saying "everything works."

than by facts or objectively based theories. Wilson's work, no less than van den Haag's, is in the same genre. The only difference is that it is conservative whereas other criminologists have been liberal.

Even more striking is the extent to which formerly liberal criminologists have moved to the right in recent years as the liberal media have hyped the violence issue. Without doubt, the current revolution in juvenile justice is confronted with a conservative counterrevolutionary thrust that would warp current changes into its own reactionary mold.

Along with the movement to the right has been a rising moral indignation in society around the issues of crime. Some have pointed out that when a nation is not united in war against other outside nations, it will look inwardly for scapegoats, concentrating primarily upon the poor and the criminal. Perhaps the law-and-order sources of the current revolution in juvenile justice owe something to the cessation of the Vietnam war. For example, Svend Ranulf (1964), a Danish sociologist, argues that the expansion of criminal law is attributable to moral indignation. Such indignation, in turn, is connected with the rising power of the lower middle classes. He notes, for instance, that the reform of German criminal law, advocated by the national socialists and published by the minister of justice in 1933, proposed a widening of crimes to be punished with severity. The minister's memorandum on this issue reads like the comments of today's conservative critics of juvenile justice. "It is even doubted," he said, "that the state had a right to punish at all. It seemed that the welfare of the criminal, and not the welfare of the people, was the main purpose of the criminal law" (Ranulf, 1964:11). Even though history reads otherwise, comments of this type enjoy increasing popularity.

With reference to the joining of the right and the left around the present revolution, perhaps the most telling issue has been the decline of faith in the indeterminate sentence. We appear to have come full circle on this issue. Havelock Ellis, in his treatise on the criminal in 1903, states that the great fault of our prison system is its "arbitrary character." In recommend-

ing reforms for the treatment of the criminal, he notes that "the first reform necessary is the total abolition of the definite and predetermined sentence. The indefinite sentence is no longer new, either in principle or practice; all that is needed is its systematic extension. It has been adopted by many of the American states, including Illinois, Massachusetts, Pennsylvania, Ohio, Wisconsin, Minnesota, and Colorado. It was first introduced at the famous state reformatory of New York at Elmira by an act passed in 1877" (Ellis, 1903:321).

Although the indeterminate sentence is attacked by contemporary critics as an artifact of the helping professions—primarily psychiatry—it was in fact begun by *institutional managers*. Ellis pointed out that the establishment of the indeterminate sentence "was due to the genius and experience of Mr. Z. R. Brockway, who had had a long practical training in prison management, and who was well acquainted with the nature of criminals" (Ellis, 1903:321). In truth, the indeterminate sentence was developed out of needs for control and management in prison bureaucracies, not out of the needs of offenders. The professional helpers who embraced it needed it in their roles as managers. But, as has happened so often in the history of corrections, early discussions centered around the rhetoric—or what Robert Merton might call the "manifest values" of the case; that is, whether rehabilitation or punishment is appropriate. Unrecognized was the fact that correctional systems rested on more latent issues related to bureaucratic calm and political peace—issues which provided the glue for those systems. Rehabilitation versus punishment is not the issue, since rehabilitation has rarely been tried.

Ironically, both sides of the political spectrum have made exactly the same mistake today. Andrew Von Hirsch (1976), in his book *Doing Justice*—a report of the predominantly liberal Committee for the Study of Incarceration—draws conclusions similar to those of Ernest van den Haag (1975) in his conservative tome *Punishing Criminals*. The Committee for the Study of Incarceration concluded that rehabilitation in prisons and institutions does not seem to have worked. Hence, they recommended that it be abandoned and prison sentences

shortened. Of course the opposite will in fact happen. The committee was legally correct but politically naive.

The committee would have dealt more squarely with the issues if it had refused to discuss altogether the rehabilitative model—since it is for the most part rhetoric in prison settings—and dealt rather with the management issue, which is what the indeterminate sentence is about. But, having failed to do that, its report, along with *Punishing Criminals*, was welcomed by conservatives as rejecting the “two myths that have vitiated so much of the discussion about criminal justice—the view that criminals are ‘sick’ individuals who are not morally responsible for their offenses, and the view that criminals are political rebels struggling against oppression. In place of these myths, both authors affirm the eminently sensible proposition that criminals are lawbreakers who deserve to be punished for their illegal actions” (Plattner, 1975:114).

These comments accept as fact the belief that prisoners generally have been treated as sick—which, of course, is not true. Though the rhetoric of certain criminologists may have stressed this sort of issue, the budgets of the correctional bureaucracies have always fostered systems of neglect or punishment—jails, training schools, and prisons. If one wishes to understand the latent realities of a system, therefore, one must not look to the manifest rhetoric but to more mundane considerations, such as how the money is spent. For the most part, in juvenile or adult corrections, it is not spent on rehabilitation or in dealing with the concerns of political rebels. Those are catchwords meant for use by politicians and academics.

The Ideological Middle Ground

A middle ground in the current revolution, which walks a tightrope between abolishment of the juvenile court and total support of the juvenile court system, seems to have been taken by the Twentieth Century Fund Task Force on Sentencing Policies Toward Young Offenders. This report states bluntly:

The theory behind the juvenile court is not merely obsolete; it is a fairy tale that never came true. The court has helped some young offenders, but it has punished others. From the beginning, juvenile court judges have considered the interests of the state as well as those of the offender. It is pointless to pretend that social policy toward youth crime is based solely on the best interests of the young offender or that the best interests of the offender and those of the state are always the same. But the juvenile court need not rely on hypocritical rhetoric to justify its jurisdiction over youths charged with crime. (Twentieth Century Fund, 1978:6)

The report then goes on to justify a "discrete policy" toward youth crime which includes the principles of culpability, diminished responsibility resulting from immaturity, providing room to reform, and proportionality. It recommends parameters of sentencing dictated primarily by the level of the offense and supports the idea of custodial confinement and limited waiver to adult court of selected cases. It also recommends reform of the management principles which have governed institutions and criticizes the attitudes, actions, and professional inadequacies of certain judges, police, corrections officers, and magistrates.

Despite its recommendations, the conclusions of the task force represent a compromise—the kind of compromise one expects from the membership of a task force consisting primarily of lawyers, retired judges, commissioners of youth service, and academics. Consequently, there is little that is new in the document. Rather, it simply represents a realignment of issues on a continuum between the existing juvenile court system and the existing adult correctional system. Indeed, it appears in many ways to be a retreat or rear-guard action against what is perceived as a law-and-order backlash. Certain types of crimes and certain delinquents are moved closer to the adult system, while others are seen as more appropriate to the juvenile system. Very few new or alternative approaches are suggested—the tack being one of wedding proportionality of sentence to seriousness of crime rather than wedding effective and humane methods of treatment to those who need it most.

The Techniques of the New Revolution

Along with the traditional hope that delinquency can be prevented, the current revolution has actually concentrated most upon diversion and deinstitutionalization, with due process being seen as integral to these. Except in rare instances, however, the decriminalization of status offenses has not been widespread.

Prevention. In considering so-called delinquency prevention, Lundman and Scarpitti (1978) estimate that since 1965 alone over 6,500 different attempts at prevention have been launched. The authors found 1,000 citations in the literature regarding delinquency prevention programs and set about trying to examine 127 of them in careful detail. In only 25 previous projects, and 15 continuing ones, however, did they find useable information on the nature and results of these projects. Based on this information, therefore, they concluded:

. . . Most projects reported in the professional literature did not permit reliable assessment of results. And those projects with experimental designs and objective measurement of delinquent behavior had not successfully prevented delinquency. . . .

. . . We found little reason to believe that a major breakthrough in delinquency prevention is forthcoming. (Lundman, 1978:207)

The authors did find other things, however, that should interest those involved in the current revolution in juvenile justice, a revolution seen as throwing off the coercive protectiveness of the earlier child-saver revolution. One example is that of a Georgetown University psychologist, Juan B. Cortes (1972), who proposed a delinquency-prevention project based upon early—and largely unsupported—theories about the relationship between body-type and delinquency. In Washington's "wickedest" precinct, he maintained, a program should be organized and aimed at identifying families who have children under the age of seven, determining those who are "potentially delinquent" families, studying those families, and

classifying them into two main groups: (1) those with parents who would not or could not cooperate, and (2) those with parents who would and could cooperate. Techniques for "tactfully and helpfully informing and training the parents of the second group in the necessary modifications of their child-rearing practices and in their relationships with each other" were suggested. Both cooperative and uncooperative families, he concluded, should be helped.

Significantly, Cortes's approach was based upon the Glueck Delinquency Prediction Scale, which Lundman and Scarpitti found had a prediction error of 84 percent. Hence, they were sufficiently impressed by its questionable merits that they felt constrained to warn against its intrusive potential: "Generally, these subjects have not been found guilty of anything beyond possession of characteristics or behaviors which someone believes are predictive of delinquency. In our zeal to help, we must not lose sight of the fact that juveniles who have not been adjudicated delinquent have the right to refuse that help" (Lundman, 1978:220).

Another approach to prevention and diversion was that advanced in 1972 by the Youth Development and Delinquency Prevention Administration of HEW (Gemignani, 1973). The YDDPA recommended a national strategy for the prevention of juvenile delinquency that had largely evolved from a meeting called by YDDPA in early 1970. It called for the nationwide establishment of youth services systems "which will divert youth, so far as possible, from the juvenile system by providing comprehensive, integrated, community-based programs designed to meet the needs of all youth, regardless of who they are or what their individual problems may be." Preventive programs would be implemented for troubled but predelinquent youth, while community-based rehabilitation programs would be used as alternatives to incarceration for those who were delinquent.

Commendably, the strategy projected a 25 percent decrease in the rate of youth in court delinquency cases with an annual saving of the same amount. If enough services were supplied, it was argued, the numbers going into the juvenile justice

system would inevitably decline. It is unfortunate, however, that, in placing blind faith in the rationality of the bureaucracies that would administer the new strategy, its progenitors failed to heed Durkheim's (1964) conclusion that any society continues to criminalize a certain proportion of its membership, even though its standards of morality may move markedly upward:

Imagine a society of saints, a perfect cloister of exemplary individuals. Crimes, properly so-called, will there be unknown; but faults which appear venial to the layman will create there the same scandal that the ordinary offense does in ordinary consciousness. If, then, this society has the power to judge and punish, it will define these acts as criminal and will treat them as such. For the same reason, the perfect and upright man judges his smallest failings with a severity that the majority reserve for acts more truly in the nature of an offense. Formerly, acts of violence against persons were more frequent than they are today, because respect for individual dignity was less strong. As this has increased, these crimes have become more rare; and also many acts of violating this sentiment have been introduced into the penal law which were not included there in primitive times. (Durkheim, 1964:68-69)

Durkheim's remarks suggest why it may be that diversionary and preventive programs are usually reserved for other populations than the more serious juvenile offender. If the latter were reformed, penal populations would drop and it would be necessary to assign labels and penalties to other, less serious, groups in order to fill the jails, detention centers, and prisons reserved for the "undeserving" members of society. As a result, it is unlikely that the usual clientele of juvenile justice could be reduced.

Diversion. Diversion is generally defined as the channeling of cases to noncourt agencies or systems in instances where these cases would ordinarily have been processed by the juvenile court. Nejelski (1973) says that the most significant part of this definition is the second half, namely, that diversion should involve those who would normally have been handled by the juvenile court. What he found, however, was that the

children who were actually being diverted were *not* those who fit into this category. Rather, they were persons who ordinarily would have been released. Meanwhile, the usual cases continued their parade through the court. Hence, he concluded that "these projects may be useful in themselves because they aid juveniles, but they increase state intervention without reducing the workload of the courts. They are supplemental, but they are not diversionary" (Nejelski, 1973:83).

Nejelski's findings were not unique. As with preventive programs, there is little to show that diversionary programs lower the numbers of juveniles being inserted into the deep end of the juvenile system. A truly diversionary program should be able to show one less detained or institutionalized youngster, or at least one less person on a juvenile court docket, for every person diverted. Allowing for shifts in population and unusual surges in crime rates, this would mean that if a particular community diverted a thousand youngsters in a given year, the juvenile court docket would fall by at least a thousand. Of course, such measures are seldom if ever applied. Instead, most new programs only widen the net of official bureaucracies, not decrease it.

There are also other questions that merit close scrutiny with respect to diversion: (1) Who will be diverted? and (2) How much intervention, with or without coercion, can be tolerated without due process? There is question, for instance, whether referral to a youth service bureau is actually voluntary when the alternative is to be labeled a juvenile offender and to be threatened with a training school or reformatory should the diversion fail. But, while juveniles are now provided with some of the benefits of due process in court proceedings, such is not true when they are placed in the hands of diversionary bureaucracies.

The resulting potential for destructive labeling is great. As Nejelski (1976:108), points out, "Diversion does not absolve society from making diagnoses. Diversion merely redesignates or shifts the responsibility for making these decisions. Fundamental questions remain. By whom are these individuals to be judged and upon what evidence? By focusing on diagnosis

as he does, Nejelski immediately turns it into a "due process" issue. Diversion *does*, in fact, shift the responsibility; whole new systems, formal and informal, come into play. These systems, in turn, base their use of diagnostic labels upon the options they have available for treating juveniles. Hence, there is potential for either good or bad.

If those making the diagnosis have at hand a wide range of treatment alternatives, the chances are increased that the diagnosis itself will become less rigid and less restricted to either-or types of choices (e.g., either home or an institution, either probation or training school). The possibilities are enhanced for greater choice, less bureaucratic risk, and ultimately less coercion. Conversely, the possibilities for negative labeling and punitive reactions are greater where the helping bureaucrat has fewer options available. The juvenile is more at risk. Furthermore, it should not be forgotten that, even when alternatives exist, a conservative bias is usually inherent in the choices made. In short, if a long continuum of options is created by the diversionary ethic, due process is less an issue, but, if it is limited and short, it poses a series of age-old problems.

Unfortunately, those concerned with diversion often see matters in terms of a dichotomy rather than as a continuum. Nejelski (1976:114) comments that the notion of due process runs counter to the social-contract theory suggested in the *Gault* (1967) decision. "That theory," he says, "may be interpreted as arguing that the juvenile court could dispense with due process if in fact the court were treating and correcting its clients." Nejelski (1976:115) argues, however, that "a sounder basis for according due process is simply the fact that the state is coercively intervening in the life of its citizens." Wherever coercion appears, due process should be guaranteed, whether in diversionary or court programs.

A final issue with respect to diversion has to do with the target population it proposes to help. To often it has simply been a means for carrying out the traditional pattern of separating the "deserving" from the "undeserving." For example, in the case of the New Jersey Juvenile Conference Committee

(a diversionary program), criticisms were levied that, while local communities had been successful in diverting middle-class youth, they had not been successful with those in the urban ghettos. The juvenile courts continue to be flooded with poor kids from minority backgrounds (Nejelski, 1973:89). Given the history of reforms in this country, one might have anticipated this result. To the degree that the pattern is solidified, therefore, the current Revolution may be sowing the seeds of its own destruction.

Deinstitutionalization. Deinstitutionalization is another catchword in vogue. It has to do with the removal of juvenile offenders from institutional settings (detention centers, training schools, and jails) and their placement in a variety of community alternatives. Although it would be difficult to find another issue over which so much has been said, the existing evidence relative to its implementation is difficult to find and to interpret.

The first problem has to do with the lack of reliable statistics. In a study conducted in the state of Pennsylvania (Office of Children and Youth, 1977), for example, it was found that the numbers of juveniles in jails were underreported by as much as ten times by the official reporting body, the state Juvenile Court Judges Commission. Only by going to the jails, reading the log books, noting the ages of inmates, and counting heads were investigators able to find out how many were actually being kept in jails.

Secondly, it is by no means clear that systematic efforts are being made to deinstitutionalize existing programs. Although the National Assessment of Juvenile Corrections (Vinter, 1976) showed some drop in institutional populations in the early 1970s, there are other indications of a rising population in juvenile institutions in the late 1970s. Indeed, the whole picture is clouded by the absence of standardized and reliable information. For example, the first report by the National Assessment Project (Vinter, 1976) indicated that Utah ranked fourth in its efforts to deinstitutionalize its programs. Yet, when this writer visited Utah in 1978, there were close to

200 juveniles in the state boys' school. At that rate of incarceration, a state the size of Massachusetts, with an average institutional population of 75 to 100 (in closed facilities), would have had between 1,600 and 2,000 in institutional settings.

Even then the Utah data were questionable for another reason. On the one hand, that state could show a dramatic decrease in the number of juveniles committed to the training school by the courts. Yet, on the other hand, that same facility became the site for a rapid increase in the number of juveniles being held either for diagnostic workups or simple detention. Thus, although the labels had changed, the numbers in the Utah institution actually rose in late 1978—though if one were to read official reports, one would find a drop in juveniles committed to the state training school.

Similar ploys have been seen in other states. For instance, the California Probation Subsidy Program showed a dramatic drop in youth committed to state Youth Authority institutions. Yet, at that very same time, California was harboring in its detention facilities—county-run and state-approved—the largest per capita population of any state in the union (California Youth Authority, 1975).

Finally, in some states there is evidence that conservative trends will contribute to a deliberate increase in the use of institutional facilities. The state of Washington, for example, projects a doubling of its institutional population over the coming years. This is a result of a new determinate sentencing law backed by civil libertarians that got out of hand in the legislature. Although the new law provides for the transfer of jurisdiction over status offenders from the juvenile court to the Department of Social and Health Services, it mandates the use of structured sentencing procedures for delinquents, based primarily on prior record and instant offense. Gone is the notion that the court should treat the offender and not the offense. Furthermore, a cynic might predict that the transfer of status offenders to the Department of Social and Health Services will simply result in many of them continuing to be institutionalized under a child welfare, rather than a juvenile court, rubric.

Such changes lead one to conclude that there has been no massive deinstitutionalization movement in the United States. The recent concentration by LEAA in the Office of Juvenile Justice and Delinquency Prevention upon the so-called status offender, though laudable, is but a variation on the theme of the "deserving" versus the "undeserving" delinquent. It is doubtful that the effort to remove status offenders from institutional settings will in fact lower the total numbers of juveniles in institutional settings. Indeed, if the usual bureaucratic processes come into play, one can anticipate one of two possible outcomes.

If, on the one hand, status offenders are removed from institutions, labels applied to other juveniles will be escalated to justify a given number of youngsters to fill a given number of slots in institutional settings. If, on the other hand, it is too risky bureaucratically to redefine the needed number of juveniles by escalating their diagnoses, the labels placed on institutions will be de-escalated to justify their continued usage. For example, when it became illegal in some states to assign nondelinquent youth (PINS) to training schools for delinquents, the schools were simply renamed as treatment centers for "persons in need of supervision."

Perhaps the most tragic example of this kind of euphemistic manipulation recently occurred in Ohio, where the legislature actually passed a law that required the Fairfield School for Boys at Lancaster to keep a minimum number of boys (300) in that school whether they were "appropriately" assigned to it or not. As a result, the chairman of the Ohio Youth Commission is on record as having said that he has had to "practically kidnap" boys in order to keep the minimum called for by the legislature and has had to keep them long past their release dates in order to obey the law.

Although the amendment mandating this procedure was introduced by a legislator from the district in which the training school is located, he has denied that it had anything to do with jobs or employment in the area. Instead, he insists that he was motivated by a need to keep "quality vocational programs" in the facility and that to do so he had to keep

its population at a given level (Institutions, Etc., 1978). Whatever the rationale, one seldom sees the issue so well defined.

There have been studies that exhibit an understanding of the Parkinsonian dynamics just described. For example, consider the report produced by the National Association for the Care and Resettlement of Offenders in Great Britain, chaired by Peter Jay, formerly British ambassador to the United States (Jay, 1977). This group concluded, first of all, that it might be possible to remove as many as 95 percent of the 12,000 children in Great Britain presently in residential care (including group homes):

Those of us who favor the approach in this chapter (decarceration) believe that there is sufficient evidence to reach the practical conclusion now that, even for the 12,000 minority of young offenders now adjudged to be in need of residential treatment, any approach based on institutional care and theories of individual "treatment and cure" do not have a sufficiently good prospect of general success to warrant the huge deployment of resources, to say nothing of the dedicated application of the staff involved, which present arrangements imply and would imply under any conceivable development in reforms of the current approach. (Jay, 1977:49)

Secondly, the group concluded that any use of incarceration for juveniles should be confined to those who are "dangerous"—"not more than about 400 children throughout England and Wales on any given day." But, unlike considerations of this type in the United States, be it of the old or the new revolution, the British group went on to conclude that *"the definition of the 'dangerous' child is a politically negotiable one."* Hence, it recommended a regular and scrupulous review of the necessity for continued detention based on statutory criteria relating to "dangerousness":

We have said that on the best estimates available to us there are not more than 400 children in this category (dangerous). To an extent the decision will be arbitrary. What is crucial is that no amount of persuasion and pressure should allow the number to increase except in the light of a fundamental review of the strategy. In practice the effect of such a limit will not be very different from the position that faces magistrates and social workers under our present system.

[As it is now], a child cannot be sent to a community home unless a place is available or the management is willing to accept him. While we fully appreciate the constraints that a limitation on numbers in secure accommodation will seem to impose, we firmly believe that if a strategy of decarceration is to be adopted, this is the only way to ensure that the number of young offenders in institutions will not escalate. (Jay, 1977:52)

Of interest to those proposing reform in the American system should be the fact that the only dissenter to this conclusion among the ten-person working party was the chairman of the London Borough's Childrens Regional Planning Committee, who suggested that institutional care must be tied to consistent social work practice in the field.

All of the foregoing is by way of illustrating the difference between the manifest and latent functions of institutions for juveniles. Usually these institutions are justified on the basis of their manifest functions, couched in terms of law and order, public safety, or in terms of child welfare and proper treatment. Actually, latent functions are often of much greater importance—employment in remote areas, political patronage, contracts with vendors of services, arrangements between specific institutions and the particular courts, or the self-interests of professional and custodial groups. Much of the juvenile justice system remains geared to these considerations, not to its manifest functions.

In order to attack this problem, programs such as diversion and prevention should be tied to deinstitutionalization in practice, not just in rhetoric. As it is now, however, they seldom deal with the youngsters who actually populate our institutions. If they did, deinstitutionalization for most juveniles would occur as a natural by-product of proposed reforms, and only the most serious offenders would be confined. Were that done, we would be free to discuss alternative types of residential care for those who need such control, those juveniles on the deep end of the delinquency continuum who are the most dangerous and violent offenders. We could develop caring, decent, small residential settings which, on the one hand, would guarantee the control society demands but which, on

the other, would mitigate the violence that currently flows from the monolithic, single-sex settings in which offenders are now confined. Furthermore, the same criteria that should underlay an effective diversionary or preventive program should underlay effective deinstitutionalization: some element of choice, guarantees, and the accountability of the service-giver to the client—in this case, the offender.

The Future of Juvenile Justice

It is hazardous to try to predict the future course of events in juvenile justice. Yet, on the basis of past events, one might expect a repetition of the cycles of the past hundred or more years. Public scandals and unrest, followed by calls for reform, followed by increased funding, followed by a reformed system, followed by scandals and unrest, followed by calls for reform, and so on. Although a case could be made for the idea that, as the cycle has turned over and over, a certain progressiveness has characterized the treatment of juveniles, it is doubtful that juvenile justice has done little more than lag along behind the larger society in reflecting the current life-styles, norms, and values, keeping up only to the degree that the basic dichotomy between insiders and outsiders is maintained and the solidarity of society sustained.

Although from a contemporary vantage point one might see a great difference between the whipping of a youngster in a reform school of the late 1880s and the cutting off of a youngster's hair in a training school of the early 1970s, the subjective experience may not be all that different. Even in those cases where there is clearly some advance in humanitarian handling of juvenile offenders, it lags behind the treatment of young people who are the offspring of society's privileged groups, the insiders. For example, it is unlikely (but not impossible) that we will return to flogging of adolescents; yet the systems which we have substituted for flogging have maintained the basic labeling process, social prescriptions, and the patterns of isolation and rejection which follow therefrom.

Robert Theobald once commented that what we need these days for understanding the future is not so much a map as a compass. The problem with this analogy, true as it is, is that in the juvenile justice system our preconceived maps actually create the terrain that we then later explore. If we could drop our maps and set out sketching what we find, rather than what we have created, the future for juvenile justice might hold more promise.

What Will Happen

Having said this, let me venture what I think will happen and then distinguish it from what could or perhaps should happen. One can anticipate the introduction of new technologies into the juvenile justice system over the next few decades. One can further predict that those technologies will gain widespread acceptance and will be justified by one or more ideologies. Nonetheless, whether the rhetoric is "rehabilitation," "just desserts," or some other, the new technologies will lend themselves to more control in management: juvenile corrections will appear more humane and professional while being less incident-prone and chaotic, and the punishment-rehabilitation argument, being a sham issue, will probably become diluted as legal and therapeutic bureaucracies become more effective and clientele are made less obstreperous.

Their innovative character notwithstanding, the new systems of control will provide the same functions detention centers and training schools have always provided—though they will be harder to recognize. In addition, one can also anticipate growing professionalism in the field that will further fix-in the system. It will include interesting approaches and models for the "deserving" offenders—the general rule of thumb being that the more the offender looks like, talks like, and acts like a judge's or legislator's son or daughter, the more likely he or she will be to receive help from the more progressive models of professional care. Meanwhile, as the determinate sentences of the "justice model" replace the indeterminate

sentence and become longer and more punitive, "just deserts" will become more and more the fate of the "undeserving" youngsters. Their isolation from the benefits of humane and decent programs will become even greater.

What all of this suggests is that the child-saver revolution of the early 1900s and the rethinking of these issues in the current revolution are but two sides of the same coin. The current revolution has picked up on those youngsters that the child savers saw as their proper clientele. As the juvenile court has lost credibility, another system has come into play to deal with "deserving" delinquents, whereas the "undeserving" were always meant to be handled not as one would deal with a threatening acquaintance but as a threatening stranger. This pattern will likely continue. The only variation will be associated with the greater use of due process for the "undeserving." Court adjudication will be followed either by acquittal or imprisonment. But, in either event, "undeserving" delinquents will be denied the understanding and help envisaged by the child savers and hopefully anticipated by Mead.

Meanwhile, our rhetoric will continue to bounce back and forth between rehabilitation versus punishment and the bureaucracies and political constituencies which that dichotomy engenders. Yet it is not likely that either the child saver or the legal bureaucracy will ultimately win—at least not for any sustained period of time. Indeed, the very existence of these bureaucracies will itself restrict the parameters of the debate and will make it difficult to break out of existing parameters. Mead (1961:882), put it another way:

But the two attitudes, that of control of crime by the hostile procedure of the law and that of control through comprehension of social and psychological conditions, cannot be combined. To understand is to forgive and the social procedure seems to deny the very responsibility which the law affirms, and on the other hand the pursuit by criminal justice inevitably awakens the hostile attitude in the offender and renders the attitude of mutual comprehension practically impossible. The social worker in the court is the sentimentalist, and the legalist in the social settlement, in spite of his learned doctrine, is the ignoramus.

That is the problem for the future.

Finally, the current idea that "nothing works" has in it the seeds of despair, what medieval theologians called the ultimate sin. For with the assertion that nothing works (probably a false assertion) we turn our backs on the possibility of helping another human being. The consequence is more tragedy than premise.

Giving up the rehabilitative model negates the hope (admittedly unrealized) of understanding (not excusing) deviant behavior. Perhaps because of the rigidities of professionalism, such understanding was not about to occur. Certainly recent approaches to criminal deviance based upon clinical practice would indicate that it is not presently occurring. Perhaps, therefore, we should deprofessionalize "help." Yet to do that would be to discard the hope that educated, intelligent persons can learn something from their clients, can give moral and intellectual meaning to that knowledge, and can carry it back to the larger society. But even then such hope is threatened by the popular abandonment of the rehabilitative ideal and the potential it bears for learning.

In summary, it does not seem unlikely that in 2078 a convention of correctional experts will be convened to determine why the ideals of correctional experts in 1978 were not realized. If they do, they will be repeating history. The American Correctional Association met in 1970 to determine why the enlightened principles of the Cincinnati Prison Congress of 1870 were not implemented. Indeed, had they been implemented, they would have already resulted in the dissolution of the correctional system as we know it.

What Should Be

With reference to what could or should be, let me set forth a few possibilities. The problem is not one of techniques or technology, not knowing what to do or how to do it. As the chapter by Professor Glaser in this book shows, certain approaches work with certain clientele and we know what they

are. The research of Ohlin, Coates, and Miller (1978) shows clearly the directions that an effective and humane system of juvenile corrections should take. It should: (1) follow the principle of the least restrictive alternative consonant with public safety; (2) place stress upon family supports; (3) provide residential care in the most familylike setting possible; (4) see that group living situations should have strong community linkages; (5) make secure care a last resort (knowing that there is little evidence one can do more than provide a least harmful program); and (6) apply the definition of "dangerous" or "in need of care" only when all other avenues have been exhausted.

However, the problem of designing an effective and humane system for the future is more basic than the above. It is not a question of not knowing what to do or in which directions we must turn to provide humane and effective juvenile corrections. The problem is that, in taking those steps, we must impinge upon a network of political, professional, and bureaucratic relationships now so deeply imbedded as to make the very notion of basic change sound revolutionary—which, rationally, it need not be. To move toward an effective system, certain basic steps must be taken.

The most basic relates to the introduction of some elements of the democratic ideal into the juvenile correctional system. The problem is one of building some element of choice into a system designed for keepers and captives. It is a problem of accountability to clientele who have no power to demand such accountability. It is not whether one should become involved in more punishment or more treatment: shorter terms versus longer terms or discipline versus permissiveness. Variations on this theme have been with us as long as human memory. By the same token, it is not a question of specific types of helping or therapy—behavior modification versus transactional analysis, therapeutic communities versus psychoanalytic regimen, or institutional versus community-based programs. Variations on these themes have also been with us in one form or another for the last century and a half. Rather, any new possibilities in corrections will have to emerge from a

close look at the bureaucracies that define and treat the outsiders. Unfortunately, present reforms do not consider this.

If one were to look for a model, it would approximate that proposed by Etzioni which, though applied in another context, has meaning in juvenile corrections. Speaking of an ideal of "authentic societal guidance," Etzioni (1968:619) says: "We refer to the combined sources of social regulation and change, the downward and the upward flows, as social *guidance*, while we reserve the term *social control* for downward flows and consensus formation for upward ones." It is precisely this reciprocity in authentic social guidance that is lacking in our juvenile correctional system. It suggests that we think the unthinkable—the possibility of de-escalating levels of social control and building in some elements of consumerism. In the introduction of authentic consumerism, there is hope for meaningful systems change.

From this it follows that there must be in the labeling and diagnostic process a potential for *authentic* listening whereby those who apply the labels develop a capacity for understanding more clearly the world the juvenile offender brings to the juvenile justice system. The categories of reference must be constantly readjusted by this experience. Whatever social prescriptions emerge from the labeling processes must themselves be subject to at least some elements of consumerism. The youngster must be able to influence the labeling categories and have some choice between and among prescribed courses of action. A wide variety of options and programs heightens the possibility of informed choice and diminishes the potential for rigidity and coercion. There must be built into this the potential for a least restrictive alternative and for movement into more restrictive alternatives only on a staged basis—with due process entering as freedom diminishes.

But even those at the deepest end—those who have committed the most heinous crimes—must be (1) understood, and (2) given some element of choice in their treatment. There is no reason, for example, if a decision is made that a person who has committed a violent crime cannot be free for a given

period, that that person could not have some choice over the conditions under which his or her freedom will be denied. Further, there should be the possibility for movement between and among alternative settings (even secure settings) based upon the perceptions of the client rather than the service-giver. Those programs and facilities that can guarantee public safety and still be the choice of dangerous offenders (admittedly a choice among lesser evils) should be sustained. Those facilities and programs that cannot should be closed. It is not a question of permissiveness versus control but rather one of making our correctional bureaucracies in some way accountable. Even Phillips-Exeter Academy, given a solely captive population of students, would deteriorate over time. The best of educators, therapists, or administrators will not sustain their altruism without some means of accountability to clientele being in the structure.

In whatever correctional system might evolve in the future, there should be an understanding that certain problems must remain insoluble, for their very solution invites tragedy. The category, for example, of the "most dangerous" offender must remain a negotiable one, open to constant reconsideration. This is not to say that such offenders do not exist but to point out that they represent, as well, the quintessential outsider. They are, thereby, those individuals upon which bureaucratic and political careers can be made through mistreatment, neglect, and scapegoating. Juvenile offenders who fall into this category are the keystone of the juvenile justice system. They must be treated deftly. This sad group carries the potential of telling us more about our society and ourselves than of themselves. They also provide the only legitimate test of our labeling and treatment systems.

Finally, none of this can happen until there is a wide variety of alternative resources available. With growing awareness of how limited our resources are, we are not likely to sustain many new approaches until we can reallocate existing resources. This means taking money from where it is—primarily in institutions—and giving it to new approaches and programs. That, in turn, means the termination of certain existing bu-

reaucracies. And this, of course, is the major barrier to any substantive change. Anyone who would attempt such changes could aptly be described as foolhardy. But there is a time for fools. Send in the clowns.

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tionalization had not left enough time for the full development of alternative programs.

The civil-service bureaucracy Miller had inherited could not be expected to build another system speedily. So Miller took a second fateful step. He removed the child-saving business from the hands of the state. Then he created a market for private providers of community-based programs and asked for bids, retaining for DYS the role of buyer and overseer.

Enter the Wolfe brothers—Scott at Harvard and Bill at Clark University—with a vital idea and Harvard Business School methods to implement it. They formed Community Aftercare Program, Inc. (now the KEY Program, Inc.) and hired other students to work with the delinquents—to help solve the problems that had sent them to reform schools. Within a year the program was serving 175 clients.

As Jerry Miller searched for providers, ideas sprouted. To Miller's market for community-based services came a vast array of entrepreneurs—with more than 200 kinds of programs. In place of the treat-em-all-alike operations of reform schools, the new network of private providers offered services tailored to the teen-ager's individual needs.

But some three years into the new era, judges, prosecutors and social workers raised the flag of counter-revolution; and legislators threatened to re-open the reform schools. Jerry Miller left for a

Youth Service director's job in Illinois. And it fell to two successors, Joe Leavey and Jack Calhoun, to preserve Miller's revolution.

Calhoun's first move was to ask the counter-revolutionaries to hold their fire while a Task Force on Secure Care determined how many of his agency's charges needed to be locked up. An impressive panel of judges, legislators, Children's Services representatives, university criminologists and prosecutors came up with a startling finding: only about 10 percent of those delinquents previously institutionalized by the DYS required incarceration. Critics had contended that 50 percent of delinquents needed to be institutionalized. The task-force report silenced the counter-revolution's guns.

Symbol of Decency. Fourteen years have passed since Massachusetts began freeing its children from the jail-like reform schools. Harvard Law School's Center for Criminal Justice has given its seal of approval in four volumes of research findings. Edward M. Murphy, commissioner of Youth Services, says, "We're here to stay. Judges and law-enforcement people now have faith in what we are doing."

So far, a few states—among them Iowa, Missouri, Wisconsin, Utah and Kentucky—have dramatically reduced their reform-school populations by 50 percent or more. And while every state can exhibit some alternative programs, these only supplement—they don't replace—

institutions.

"Years ago, Supreme Court Justice Louis Brandeis observed that a society can be judged by the way it treats its most vulnerable," says Jerry Miller, now head of the Washington-based National Center on

Institutions and Alternatives. "And to me, the most vulnerable are the children. In this sense, Massachusetts stands as a symbol of decent treatment for its troubled and troublesome children."

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Fourteen years ago, in a bold experiment, Massachusetts began closing its reform schools and placing all but its most dangerous delinquents in privately run, community-based programs. The result: Costs—and crime—went down.

By Lester Veen

CALIFORNIA locks up more young criminals per 100,000 of its youth population than any other state. Massachusetts locks up the least. In which state has youth

crime tumbled?

If you picked California, you are wrong. Massachusetts's juvenile crime has fallen 26 percent since 1978; California's, only 12 percent.

THE STATE THAT FREED ITS YOUNG FROM JAIL

Repeaters? In California, one out of every four felons entering state prisons in 1982 was an ex-delinquent. In Massachusetts, it was one of every seven.

The two states are at opposite poles in dealing with crime by the young. California sends its bad kids to reform schools, which overflow with 30 percent of the entire country's incarcerated youth. Among inmates, ages 14 to 21, are rapists, arsonists, murderers. The delinquent's life is prison life; his schooling, the art of prison survival.

Massachusetts has shut down its reform schools. Alone of all states, it relies primarily on community-based treatment to reduce youth crime. Massachusetts can teach the rest of the country how to get more for corrections dollars, how to substitute humane, effective treatment for the all-too-frequent warehousing and child abuse in institutions and, above all, how to get the young to kick the crime habit.

A New World. Under Massachusetts law, in every case except those involving serious crimes for which a juvenile has been tried as an adult, the Department of Youth Services (DYS), not a judge, determines the delinquent's placement. First, its classification panel decides whether the delinquent is among the dangerous ten percent who should go to secure treatment or is among those who can be treated in a community-based program.

The average national cost to maintain a reform-school inmate is

\$22,534 a year. Among the alternatives offered in Massachusetts are: intensive treatment in a secure facility, which costs the state \$34,446 a year per youth; specialized foster care, \$6100; tracking (constant monitoring of outside activities), \$4256; and family therapy, \$3773. With the money saved by locking up only a fraction of those confined in reform-school days, Massachusetts has been able to broaden the types of services available while staying within fiscal constraints.

Consider the case of Richard, a non-violent offender, who at 15 had stolen several dozen cars and burglarized a dozen homes. Arrested four times, Richard was put on probation each time. Yet, when the juvenile-court judge committed Richard to state care as a delinquent, the youth still wasn't locked up. He went home again. But this time he left with a "tracker"—a 24-year-old college-trained employee of KEY Program, Inc., a company that sells an "outreach and tracking service" to the state.

As a ward of the state, Richard had to sign a joint contract with the DYS and KEY to: stay out of other people's homes and cars and out of violence; avoid drugs, including alcohol; go to school or work; and constantly report his whereabouts to his tracker.

On Richard's first day home, the tracker shepherded him to a special education program to help him catch up in reading and math. Evenings and weekends, the tracker

THE STATE THAT FREED ITS YOUNG FROM JAIL

helped him with his homework and took him to games and movies to keep him off the streets. Slowly, Richard glimpsed a world he had never known: one of education, values, goals. Since reaching the juvenile-discharge age of 18, he is pursuing a high-school diploma with the aid of his tracker.

An accident of geography had decided Richard's fate. Had he committed his depredations in Oregon, he could have landed in the MacLaren School for Boys, with its beatings, mactings, and long bouts in solitary. There, Richard could have followed in the footsteps of MacLaren's famous alumnus, Gary Gilmore. Sent to MacLaren at 14 for throwing a brick through a school window, Gilmore emerged after 18 months to vow, "I'll never stop hating people." Two strangers suffered murder for his hate. Or, until February of last year, Richard could have been hog-tied and beaten at one of Florida's three training schools.

Intensive Care. What does Massachusetts do with its violent young? Like other states, it takes them off the streets—but with a difference. Consider John, a 17-year-old arsonist. Assigned to the Robert F. Kennedy School near Westborough, Mass., one of the state's four 15- to 20-bed secure-treatment centers, he joined other boys who had raped, kidnapped, robbed with a deadly weapon, or attempted murder.

The place was a two-story,

weathered red-brick building with no bars on the windows. John was greeted at the door by the director, Michael Welch, a former high-school principal, who addressed him by his first name and told him: "This is a school, and you're a student, not an inmate. You'll be in class three hours in the morning, two in the afternoon, with lunch and outside recreation in between."

The length of John's stay at Kennedy would depend on how well he progressed. In a year, John would no longer be a juvenile. If it was considered unsafe to release him to a community program, he could be returned to court and face adult prison.

John would have a room to himself, could come and go as he pleased, but would be locked in from 11 p.m. to 7 a.m.

The next morning John became a student. He had not been in a classroom for years. When a teacher asked him to read aloud from a newspaper, he couldn't even read the headlines. And multiplication tables were a mystery to him. John, it turned out, was suffering from a learning disability.

I asked John's teacher if she had any other learning-disabled charges like John. The answer: 10 out of the school's 15 youngsters.

Curious, I checked with the DYS. The average delinquent in its care, I found, was a functional illiterate. Ironically, John and his fellow illiterates could get the special attention they needed only after

THE STATE THAT FREED ITS YOUNG FROM JAIL

committing crimes.

At first John was rebellious. (Twice he was locked in a bare room for a 24-hour stretch.) But after 11 months, John had mastered multiplication and fractions, and could read at fifth-grade level. Counseling by a psychologist and friendly attention had cooled his smoldering anger.

When I met him, John was about to be released to live with relatives. But as a continuing ward of the state, he would be under the watchful eye of a tracker.

Had John been sent to a reform school, he would probably have emerged as he came in—an educational and emotional cripple, incapable of supporting himself and ripe for further mischief. Intensive care, Massachusetts-style, had put him on the way toward self-support.

Under the Massachusetts concept of repair rather than revenge, no person is believed beyond redemption, not even a rapist or a killer. Since it opened in 1979, the Kennedy School—the state's only long-term juvenile unit—has had nearly equal proportions (40 percent) of each. One of these, a killer named Peter, arrived in a rage. He had fatally knifed a drug dealer.

Patiently the resident psychologist explained Peter's anger to him. He was the product of a broken home. At the time of the murder, he was downing as many as 40 Valiums a day and smoking angel dust.

As part of its intensive care, Ken-

nedly assigns a staff worker or teacher to befriend each delinquent. Defused and with a fortified self-esteem, Peter made a gradual return to freedom, first through a shelter with limited access to the street, and then through a halfway house that set him up with a job, drug therapy, and night classes in a community college. "There is no guarantee Peter will go straight," said one official. "But by spending no more than it would have cost to maintain him in prison, we achieved the possibility of a crime-free life."

Silenced Guns. The Massachusetts DYS was not always so successful. At the Lyman School for Boys in Westborough, 70 percent of the graduates returned to lives of crime. In the 1960s, the state's reform schools were overcrowded. Discipline and control often came via shacklings and beatings. Press disclosures of brutality and mismanagement at other schools led to reform legislation in August 1969.

Two months later, the state appointed Jerome G. Miller, an associate professor of social work at Ohio State University, as Youth Services commissioner of the newly constituted agency. His mandate: reform the state's scandal-ridden reform schools, taking advantage of federal funds.

When reform proved impossible, Miller made a dramatic decision. Within three years he had closed the state's five training schools. But the abrupt de-institu-

The Ontario Legal Aid Plan Ottawa - Carleton Special Services Project.

Project Description

This project was intended to assist the defense counsel in legal aid certificate cases by providing social work services that would not otherwise be available to the defense counsel. The ultimate goal of the project was to "improve the quality of the legal defense services offered to Ontario Legal Aid Plan clients in a cost-effective manner", and "the objective of the service was to obtain the most favourable disposition of the legal case" (Project Manual). The project operated from April 1982 until April 1984 and serviced the Ottawa area.

A critical aspect of the project was the requirement that the project worker be bound by the lawyer-client privilege and that consultations be requested in writing on a request form. The assessment report would be given to the lawyer in confidence and the lawyer would decide whether it would be in his clients best interests to enter the report in court. This, of course, is different from the pre-sentence report which is ordered by the court and will be entered irrespective of the defense counsels impressions as to its utility.

Referrals to the project were made by legal aid certificate lawyers in the Ottawa-Carleton area. The project provided a range of services including: social assessments, sentencing alternatives, referrals to social agencies, short-term counselling, and overall co-ordination of social programs for the accused and his family.

At the beginning of the project, staff consisted of a full-time Director, two project workers and a full-time secretary. Towards the end of the project the Directors involvement was reduced to one day a week.

Use of the Service

An evaluation of the project was done based on the first fifteen months of operation. On average, 43 clients/quarter were referred to the project for some type of service. Roughly 50% of those lawyers who were issued legal aid certificates during the fifteen month period used the service at least once. It was found that those lawyers handling the greatest number of legal aid certificates were more likely to use the project than those who handled fewer cases. Of those who used the service, the most frequent requests were for social assessments, which

involved the gathering of records and background information, and sentencing alternatives.

Those lawyers who used the service frequently, rated it very highly on all counts. Those who didn't use it or used only once, considered it not to be relevant for their clients or were unaware of the service and what it did.

Many lawyers indicated that they referred their "difficult" cases to the project ("difficult" in the legal or social/psychological sense), but there was no independent evidence obtained by the evaluator to confirm a selection bias of this sort.

The project reports were not actually compared with the pre-sentence reports, but lawyers commented that the project reports contained more useful information than that contained in a typical pre-sentence report.

Outcome Evaluation

The evaluation sought to ascertain whether the disposition of project cases was different from what it would have been in the absence of this service. An attempt was made to construct a comparison group from the untreated legal aid cases in the Ottawa-Carleton area. This group was matched according to offence, prior offences, age, marital status, education and employment status. Unfortunately, "comparison controls" could be found for only 36 of the 131 cases referred to the project from August 1982, to April 1983. Sentences received by those 36 project cases were compared to those received by the 36 controls.

The findings indicated that 15 of the 36 project cases and 17 of the 36 controls received carceral sentences. None of the 15 project cases were sentenced to penitentiary while 2 of the 17 controls were sentenced to penitentiary.

The average length of sentence for the project cases was 155 days; for the controls, it was 264 days. The total days of incarceration for the 15 project cases was 2,864 and for the 17 controls was 4,448.

The evaluation does not provide a statistical test of the difference between these two groups with carceral sentences. However, it appears that the difference in total days is due largely to the two persons in the control group who received penitentiary sentences and that apart from these two outliers the distribution of the two samples is probably very similar. In short, these findings should be viewed as tentative evidence indicating the potential positive impact of this project on carceral dispositions.

The community agencies involved with the project viewed it as being valuable, unique and able to make appropriate referrals.

In terms of costs, based on the program in its later stages, it was about \$170.00 per case. This, at the time of the evaluation, represented yearly operating costs of about \$125,000. Based on the disposition of the 36 project cases and the 36 control cases, and by assigning the appropriate costs for the disposition, it was estimated that the net savings for one year were around \$400,000. It should be noted that these costs savings should be viewed as tentative, inasmuch as the outcome data is also tentative.

The Winnipeg Client Specific Planning Project - 1983

Project Description

The judiciary faces a dilemma, regarding the sentencing process, on the one hand they are obliged to respond to the fundamental need of protecting society, while at the same time ensuring that the needs of the offender are met. The Client Specific Planning Project (C.S.P.) is an attempt to redress these conflicting goals by providing the courts with an "individually designed community-based, detailed, non - incarcerative plan that is acceptable as a viable option to prison" (Winnipeg Project proposal).

The project acknowledges that there are a number of community-based alternatives currently in existence, but emphasizes that they are often not broad enough in scope and thus not applicable to the more serious cases. The C.S.P. provides support and functions as an additional resource for the defense lawyer who often is constrained by time and a limited knowledge of available programs.

The C.S.P. is oriented towards those whose guilt, through admission or trial, has been ascertained and as a result are facing a significant period of incarceration. Key components of the C.S.P. involve voluntary participation/cooperation on the part of the offender, creation of a plan specific to the characteristics of the case and the needs of the offender, and a realization that certain public needs must be incorporated into the plan. Community involvement is viewed as an essential catalyst leading to the successful implementation of the program. It is hoped that, through the use of a C.S.P., the public would realize that a carefully chosen, non-dangerous offender can be successfully rehabilitated without imposing a carceral sentence. The C.S.P. services are offered to both the adult and juvenile offenders.

The program is designed to provide assistance, at the request of lawyers or advocates for the offender, in developing an alternative to prison. The specific goals of this program are: to develop a system which is truly rehabilitative, to develop a systematic and preventative response to crimes committed by the mentally handicapped, to offer a restitutive

and integrative response to crime within the community, to develop a more cost-effective response to crime and to initiate the development of a model which could be adopted in other communities across Canada.

The venture was co-developed by the Children's Home of Winnipeg and the Mennonite Central Committee and from the outset was supported by the judiciary, crown prosecutors, defense lawyers and a number of social service agencies.

The project was to be implemented in three stages over three years (from 1983-1986) with an estimated total expenditure of approximately \$300.000.



June, 1985

HIGHLIGHTS OF THE CORRECTIONAL LEGISLATION PACKAGE

These legislative proposals have been introduced in two Bills which will deal with:

- (1) Conditional release of federal inmates
- (2) Technical amendments to existing legislation.

The changes to federal correctional legislation contained in these bills will further rationalize the current correctional system, make important changes to conditional release programs, ensure greater fairness in the system of parole and generally modernize the legislation through a number of technical amendments to the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act. Provincial correctional authorities have long sought changes to the latter.

These are short-term measures to improve the federal correctional system, and may be considered a second phase, following administrative changes implemented by the Solicitor General in the autumn of 1984. The Corrections Law Review Project established within the Ministry of the Solicitor General is considering more comprehensive reforms.

CONDITIONAL RELEASE

These measures will:

- authorize the National Parole Board, according to established criteria and procedures, to retain in custody until warrant expiry, or place under strict residential conditions, those inmates considered to pose a clear risk of violent conduct beyond a release date that would have been established by earned remission,

Canada



- allow inmates convicted of those violent offences specified by the criteria only one chance for release on mandatory supervision by denying them the opportunity to earn remission following a revocation of a first release,
- establish procedural safeguards and criteria that would limit the application of the foregoing measures to only the most dangerous,
- ensure that the procedures and practices of the National Parole Board comply with the duty to act fairly and provide equality of treatment, and to equip the Board to manage better its operations.

These measures will be balanced by the use of existing statutory authority to accelerate the release of low-risk inmates into community programs with strengthened supervision and assistance.

The specific provisions of these changes are:

- (1) the National Parole Board will be empowered to order the detention until warrant expiry of any inmate who meets the criteria set out in the legislation.
- (2) An inmate could be identified as posing a high risk to public safety if he meets the following criteria to be set out in the Parole Act:
 - (a) current offence(s) for which the offender has been convicted resulted in serious personal harm such as loss of life, major physical or psychological damage.
 - (b) reasonable grounds exist to conclude that the person is likely to commit, prior to the expiry of his/her sentence, a violent crime that will result in harm, and

- (c) even if an inmate does not meet criterion (a), if the Commissioner of Corrections has reasonable grounds to believe that an inmate is likely to commit, prior to the expiry of sentence, a violent crime that will result in violent harm, he may refer the case to the Chairman of the National Parole Board for a detention hearing.
- (3) Inmates who meet criteria (a) in Section (2) but are not judged to pose a high risk and are released on mandatory supervision, will not be entitled to earn remission again if that first release is revoked by the Parole Board. This will effectively allow them only one chance for such a release.
- (4) The Parole Act will be amended to clarify the nature of remission and its impact on a sentence served in a federal penitentiary; remission constitutes a credit against sentence which will entitle an inmate to release from confinement under mandatory supervision unless the National Parole Board deems that the inmate must be kept in detention until expiry of the sentence.
- (5) The Penitentiary Act will be amended to establish that an inmate under a detention order would not be entitled to earn remission.
- (6) The Parole Act will be amended to entitle all inmates under detention order to a yearly review of their cases to determine if the detention order should be varied. Eligibility for parole after their remission-based release date has passed will be removed.
- (7) The Parole Act will be amended to permit the lifting of the detention order.
- (8) A hearing before three Board members will be required.

- (9) The Regulations will establish the guidelines to be used for making decisions in these cases.
- (10) The Parole Board will be empowered to establish residency requirements as a condition of release.
- (11) The following procedures will be set out in the Parole Act:
- not later than six months prior to possible release date of an inmate who meets the criteria, The Correctional Service of Canada will send to the Parole Board information about that inmate which addresses possible release plans, the information upon which it is felt the criteria would apply and other information the Board may require.
 - Two months prior to the possible release date the inmate will have received in writing the decision of the Parole Board, the reasons for the decision and detailed conditions of release if such is the decision.
- (12) In addition, authority will be provided in the Parole Act to make regulations necessary for such matters of procedure and time requirements to ensure fairness in the decision-making process, and to establish provisions for re-examination of the decisions.
- (13) The Parole Act will be amended to make organizational changes needed to bring into effect the other recommendations of this proposal:
- increase the maximum size of the Board from 26 to 36,
 - expand the term of Temporary Board members to a maximum of three years,
 - Temporary Board members will be appointed during good behaviour as are regular Board Members.

(14) A certain number of changes will make supervision more effective and efficient:

- all inmates will be entitled to a review of their case by the Parole Board, and a hearing prior to their first parole eligibility date (usually day parole eligibility after one-sixth of the sentence has been served),
- the Parole Board will be relieved of its obligation to grant an inmate a hearing when he first becomes eligible for full parole if the inmate has received a hearing for day parole within the previous six months,
- the Chairman of the National Parole Board will be authorized to prescribe terms under which a designated person may exercise his delegated authority,
- the execution by peace officers of warrants of apprehension issued by the Parole Board will be enlarged and facilitated,
- the Governor-in-Council will be authorized to make regulations prescribing that certain conditions be mandatory upon release on parole or mandatory supervision with provision for individual cases to have exemption.

TECHNICAL AMENDMENTS

These are amendments to the Parole Act, Prisons and Reformatories Act, and Penitentiary Act and certain other Acts. They will clarify the administration and calculation of sentences, and facilitate the operation of The Correctional Service of Canada, the National Parole Board and provincial corrections departments. Some amendments will eliminate simple redundancies and obsolete provisions.

Under the Parole Act:

- the definition of "magistrate" will be deleted since the substantive section to which it related was previously repealed,
- two paragraphs, both dealing with aspects of the same regulation-making power over the review of parole applicants, will be merged,
- the term "reasonable" will be substituted for the term "desirable" with respect to conditions for granting or suspending conditional release,
- it will be clearly stipulated that an inmate must sign his parole or mandatory supervision certificate, but where he refuses to sign, he will nonetheless be bound by its terms,
- the granting of parole will be deemed to terminate a sentence under the Extraditions Act and the Fugitive Offenders Act in the same way it currently does under the Immigration Act; and
- certain sections of the Penitentiary Act dealing with conditional release will be transferred to the Parole Act, so that all matters pertaining to the jurisdiction of the National Parole Board will be found in the Parole Act.
- the Chairman of the Board will be empowered to designate another Member of the Board to select community Board Members to vote in certain cases;
- the right of Community Board Members to vote on the review of the case for which they were selected will be clarified;
- the voting rights of the Executive Committee will also be clarified.

- amendments will be made to procedures regarding calculation of sentence when an additional concurrent or consecutive term of imprisonment is imposed on a person under sentence;
- an inmate to be released on mandatory supervision will be allowed to be released on the last working day prior to his release date and he will be deemed to be on mandatory supervision from the last working day;
- the National Parole Board will be empowered to recredit remission earned on day parole if conditional release is revoked and provincial parole boards will be empowered to recredit remission; and
- specific regulation-making power will be provided with respect to procedures to deal with parole applications, the sharing of information with conditional release applications, suspensions and revocation and eligibility for parole in special cases.

Under the Penitentiary Act:

- provisions from the Appropriations Act will be incorporated so that the regulation-making authority for payment of disability compensation to inmates will now be found only in the Penitentiary Act.
- Some amendments will bring the statutes into line with current practice.
- The 1977 amalgamation of the Canadian Penitentiary Service with the National Parole Service will be reflected in amendments to terminology:
- all officers and employees of CSC will be designated as "members", as there is no basis for distinction in title;

- peace officer status will then be restricted to those members of The Correctional Service of Canada so designated by the Commissioner;

Some amendments will clarify and formalize certain existing procedures.

- the common law definition of "custody" will be added to the definition section;
- the English version of the Act will be corrected to clarify that the crediting of remission is a right once an inmate has fulfilled the relevant conditions, and
- the French version of the Act will be corrected to clarify that an inmate convicted of a disciplinary offence is liable to forfeit remission.
- Some amendments will also correct oversights and gaps.
- the power to transfer inmates will rest exclusively with the Commissioner, who may delegate this authority to members of CSC;
- the Correctional Service will be authorized to lodge an inmate on conditional release temporarily and at his own request in a penitentiary during periods of difficulty;
- the CSC will be permitted to discharge an inmate from custody from a place other than a penitentiary.

Technical amendments requested by the provinces will be made to the Prisons and Reformatories Act:

- the use of the term "order" will be deleted and replaced by correct use of the terms "rules" and "regulations";

- the common-law definition of custody will be added to the definition section;
 - provisions regarding the reception and transfer of prisoners, the regulation-making authority of the Lieutenant Governor and the forfeiture of contraband will be amended to reflect provincial jurisdiction;
 - obsolete provisions referring to statutory remission will be repealed; and
 - terminology will be amended to accord with the Young Offenders Act.
- (6) The Criminal Code will be amended with respect to the definition of "peace officer", as a consequence of the amendment of the Penitentiary Act.

XXXXXXXXXX

POPULATION PROFILE-FEDERAL FEMALE INMATES

SOURCE: OIS
07/02/85

Age	Population by Age	
	Number	Percentage
<19	3	1.27
20-24	44	18.72
25-29	61	25.95
30-34	51	21.70
35-39	33	14.04
40-49	26	11.05
50-59	11	4.68
60+	6	2.55

Offence	Major Offence Analysis	
	Number	Percentage
Murder	43	18.29
Narcotics	43	18.29
Robbery	38	16.17
Manslaughter	29	12.34
Other Criminal		
Code Offences	23	9.78
Fraud	17	7.23
Assault	9	3.82
Theft	5	2.12
Break and Enter	5	2.12
Offensive Weapons	4	1.70
Kidnapping/		
Abduction	3	1.27
Wounding	3	1.27
Other Sex Offences	2	0.85
Prison Breach	1	0.42
Possession of Stolen		
Goods	1	0.42
Food and Drug Act	1	0.42

Province of Residence		
Province	Number	Percentage
Not Stated	6	2.55
NFLD	2	0.85
PEI	0	0.00
Nova Scotia	10	4.25
New Brunswick	2	0.85
Quebec	46	19.57
Ontario	67	28.51
Manitoba	11	4.68
Saskatchewan	8	3.40
Alberta	28	11.91
B.C.	45	19.14
Yukon	0	0.00
N.W.T.	1	0.42
Outside Canada	9	3.82

Type of Admission		
Admission Type	Number	Percentage
Warrant of Committal	219	93.19
Prov. Transfer	5	2.12
Parole Rev	2	0.85
Parole Forf	0	0.00
Parole Rev W- Off	3	1.27
MS Revocation	0	0.00
MS Forf	0	0.00
MS Rev W- Off	4	1.70
Fed Prov Contract	0	0.00
Other	2	0.85

Time Served Since Admission		
Amount of Time	Number	Percentage
0-3 mths	35	14.89
>3-6	21	8.93
>6-9	17	7.23
>9-12	22	9.36
>12-18	34	14.46
>18-24	16	6.80
>2-3 years	26	11.06
>3-4	15	6.38
>4-5	5	2.12
>5-10	22	9.36
10+	14	5.95

Length	Length of Sentence	
	Number	Percentage
<2	5	2.12
2<3	43	18.29
3<4	45	19.14
4<5	24	10.21
5<6	19	8.08
6<10	43	18.29
10<15	8	3.40
15<20	2	0.85
20+	2	0.85
Preventative		
Detention	0	0.00
Life	44	18.72
Indefinite	0	0.00

Number of Previous Commitments		
	Number	Percentage
0	202	85.95
1	18	7.65
2-4	15	6.36
5-7	0	0.00
8+	0	0.00

Marital Status		
Status	Number	Percentage
Single	106	45.10
Married	37	15.74
Common Law	42	17.87
Widowed	8	3.40
Separated	17	7.23
Divorced	24	10.21
Not Stated	1	0.42

Race	Race Number	Percentage
Not Stated	0	0.00
Caucasian	181	77.02
NA Indian	27	11.48
Metis	10	4.25
Eskimo	2	0.85
Asiatic	1	0.42
Black	4	1.70
Other	10	4.25

Year	Probable MS Release Date by Quarter Within Calender Year				Total
	Quarter 1	2	3	4	
<1985	5	6	6	5	22
1985	1	3	9	7	20
1986	19	11	13	14	57
1987	15	17	9	8	49
1988	4	6	4	4	18
1989	6	5	1	1	13
1990	0	1	0	1	2
1991	1	2	0	1	4
1992	0	0	2	0	2
1993	1	0	0	0	1
1994	0	0	0	1	1
1995	0	0	0	0	0
1996	0	1	0	0	1
1997	0	0	0	1	1
1998	0	0	0	0	0
1999	0	0	0	0	0
2000	0	0	0	0	0
2001	0	0	0	0	0
2002	0	0	0	0	0
Indef	0	0	0	0	0
Life	44	0	0	0	44
PD	0	0	0	0	0

*** Total Number of Federal Inmates on Count in Federal and Provincial Institutions: 235

POPULATION PROFILE-FEDERAL MALE INMATES

SOURCE:OIS

02/07/85

Population by Age		
Age	Number	Percentage
<19	439	3.53
20-24	3158	25.53
25-29	3114	25.17
30-34	2222	17.95
35-39	1500	12.12
40-49	1330	10.75
50-59	465	3.75
60+	140	1.12

Major Offence Analysis		
Offence	Number	Percentage
Robbery	244	21.57
Break and Enter	2002	16.18
Murder	1474	11.91
Other Criminal		
Code Offences	882	7.13
Assault	854	6.90
Narcotics	664	5.36
Manslaughter	631	5.10
Rape	411	3.32
Fraud	343	2.77
Theft	316	2.55
Attempted Murder	283	2.28
Other Sexual Offences	251	2.02
Possession of Stolen		
Goods	233	1.88
Offensive Weapons	195	1.57
Kidnapping/		
Abduction	150	1.21
Wounding	95	0.76
Criminal Negligence	64	0.51
Prison Breach	48	0.38
Food and Drug Act	42	0.33
Dangerous Sex		
Offenders	39	0.31
Other Statutes	25	0.20
Habitual Criminal	5	0.04

Length	Length of Sentence	
	Number	Percentage
<2	669	5.40
2<3	2553	20.64
3<4	1981	16.01
4<5	1223	9.88
5<6	1000	8.08
6<10	1819	14.70
10<15	911	7.36
15<20	304	2.45
20+	285	2.30
Preventative		
Detention	14	0.11
Life	1599	12.92
Indefinite	10	0.08

	Number of Previous Commitments	
	Number	Percentage
0	7758	62.72
1	2169	17.53
2-4	2149	17.36
5-7	257	2.07
8+	35	0.26

Status	Marital Status	
	Number	Percentage
Single	6593	53.30
Married	1566	12.66
Common Law	2921	23.61
Widowed	154	1.24
Separated	468	3.78
Divorced	632	5.10
Not Stated	34	0.27

Province	Province of Residence	
	Number	Percentage
Not Stated	211	1.70
NFLD	184	1.48
PEI	63	0.50
Nova Scotia	658	5.32
New Brunswick	374	3.02
Quebec	3409	27.56
Ontario	3080	24.90
Manitoba	578	4.67
Saskatchewan	381	3.08
Alberta	1559	12.60
B.C.	1680	13.58
Yukon	19	0.15
N.W.T.	47	0.38
Outside Canada	125	1.01

Admission Type	Type of Admission	
	Number	Percentage
Warrant of Committal	9944	80.40
Prov. Transfer	439	3.54
Parole Rev	200	1.61
Parole Forf	78	0.63
Parole Rev W- Off	421	3.40
MS revocation	259	2.09
MS Forf	47	0.38
MS Rev W- Off	782	6.32
Fed Prov Contract	112	0.90
Other	86	0.69

Amount of Time	Time Served Since Admission	
	Number	Percentage
0-3 mths	1375	11.11
>3-6	1254	10.13
>6-9	1174	9.49
>9-12	1058	8.55
>12-18	1812	14.65
>18-24	1035	8.36
>2-3 years	1484	11.99
>3-4	794	6.41
>4-5	469	3.79
>5-10	1096	8.86
10+	491	3.96

Race	Race Number	Percentage
Not Stated	9	0.07
Caucasian	10740	86.83
Native Indian	822	6.64
Metis	299	2.41
Eskimo (Inuit)	23	0.18
Asiatic (Mongoloid)	78	0.63
Black (Negroid)	248	2.00
Other	149	1.20

Probable MS Release Date by Quarter Within Calender Year

Year	Quarter				Total
	1	2	3	4	
<1985	51	50	46	53	200
1985	39	145	960	958	2102
1986	985	1019	1083	782	3869
1987	664	524	404	380	1972
1988	293	249	212	214	968
1989	184	148	107	124	563
1990	108	60	95	75	338
1991	67	62	47	41	217
1992	58	27	38	34	157
1993	58	27	38	34	78
1994	27	18	16	17	62
1995	15	14	15	18	40
1996	18	8	10	4	21
1997	9	3	5	4	15
1998	5	4	3	3	13
1999	1	4	7	1	10
2000	2	2	3	3	4
2001	1	0	2	1	2
2002	1	1	0	0	4
>2002	0	3	0	1	10

***Total Number of Federal Inmates on Count in Federal and Provincial Institutions: 12,368

POPULATION PROFILE-ALL FEDERAL NATIVE INMATES

SOURCE:OIS
04/01/85

Age	Population by Age	
	Number	Percentage
<19	54	4.75
20-24	336	29.70
25-29	318	28.11
30-34	189	16.71
35-39	123	10.87
40-49	85	7.50
50-59	22	1.94
60+	4	0.34

Major Offence Analysis		
Offence	Number	Percentage
Robbery	244	21.57
Break and Enter	185	16.35
Assault	165	14.58
Homicide	142	12.55
Murder	124	10.96
Rape	60	5.30
Other Criminal		
Code Offences	34	3.00
Attempted Murder	30	2.65
Other Sex Offences	22	1.94
Wounding	22	1.94
Offensive Weapons	22	1.94
Possession of Stolen		
Goods	21	1.85
Theft	19	1.67
Fraud	12	1.06
Criminal Negligence	9	0.79
Kidnapping/		
Abduction	7	0.61
Prison Breach	5	0.44
Narcotics	3	0.26
Other Statutes	3	0.26
Dangerous Sex		
Offenders	1	0.08
Habitual Criminal	1	0.08

Province	Province of Residence	
	Number	Percentage
Not Stated	12	1.06
NFLD	0	0.00
PEI	2	0.17
Nova Scotia	20	1.76
New Brunswick	16	1.41
Quebec	5	0.44
Ontario	154	13.61
Manitoba	180	15.91
Saskatchewan	186	16.44
Alberta	316	27.93
B.C.	182	16.09
Yukon	13	1.14
N.W.T.	35	3.09
Outside Canada	10	0.88

Admission Type	Type of Admission	
	Number	Percentage
Warrant of Committal	931	82.31
Prov. Transfer	32	2.82
Parole Rev	12	1.06
Parole Forf	4	0.35
Parole Rev W- Off	15	1.32
MS Revocation	39	3.44
MS Forf	2	0.17
MS Rev W- Off	71	6.27
Fed Prov Contracr	11	0.97
Other	14	1.23

Amount of Time	Time Served Since Admission	
	Number	Percentage
0-3 mths	116	10.25
>3-6	133	11.75
>6-9	101	8.93
>9-12	108	9.54
>12-18	158	13.96
>18-24	129	11.40
>2-3 years	129	11.40
>3-4	59	5.21
>4-5	29	2.56
>5-10	88	7.78
10+	31	2.74

Length	Length of Sentence	
	Number	Percentage
<2	83	7.33
2<3	267	23.60
3<4	200	17.68
4<5	135	11.93
5<6	106	9.37
6<10	132	11.67
10<15	53	4.68
15<20	14	1.23
20+	7	0.61
Preventative		
Detention	1	0.08
Life	132	11.67
Indefinite	1	0.08

Number of Previous Commitments		
	Number	Percentage
0	687	60.74
1	171	15.11
2-4	220	19.44
5-7	51	4.49
8+	2	0.16

Marital Status		
Status	Number	Percentage
Single	614	54.28
Married	83	7.33
Common Law	366	32.36
Widowed	10	0.88
Separated	30	2.65
Divorced	27	2.38
Not Stated	1	0.08

Race	Race Number	Percentage
NA Indian	808	71.44
Metis	303	26.79
Eskimo	20	1.76

Year	Probable MS Release Date by Quarter Within Calender Year				Total
	Quarter 1	2	3	4	
<1985	3	7	3	2	15
1985	20	122	105	114	361
1986	94	92	86	60	332
1987	57	38	24	32	151
1988	15	15	13	21	64
1989	7	6	10	5	28
1990	6	5	6	6	23
1991	1	2	3	0	6
1992	0	2	1	0	3
1993	2	1	1	1	5
1994	1	0	0	0	1
1995	1	0	0	1	2
1996	1	0	0	0	1
1997	0	1	0	0	1
1998	0	0	0	0	0
1999	0	0	0	0	0
2000	0	0	0	0	0
2001	0	0	0	0	0
2002	0	0	0	0	0
Indef	5	0	0	0	5
Life	132	0	0	0	132
PD	1	0	0	0	1

*** Total Number of Native Inmates on Count in Federal and Provincial Institutions: 1,131.

SUMMARY OF DOUBLE OCCUPANCY / RÉLEVÉ DE L'UTILISATION DOUBLE

As At/Au 1985-10-30

REGION INSTITUTION/ ETABLISSEMENT	1. BUNK CAPACITY/ DES LITS SUPERPOSÉS	2. NORMAL CELLS CELLULES RÉGULIÈRES				3. SPECIAL CELLS/ CELLULES SPÉCIALES				4 TOTAL
		2a)		2b)		3a		3b		
		Cells Occupied/ Cellules Occupées	Inmates in Bunks/ Détenus en Lits Superposés	Cells Occupied/ Cellules Occupées	Inmates in Bunks/ Détenus en Lits Superposés	Cells Occupied/ Cellules Occupées	Inmates in Bunks/ Détenus en Lits Superposés			
		G	* R	G	* R					
ATL										
Dorchester	10								-	
Springhill	59	25	11	50	22				72	
Westmorland	33	8	-	16	-				16	
Sub-Total/Partiel	102	33	11	66	22				88	
QUE										
FTC										
Cowansville										
Sub-Total/Partiel										
ONT						SEG	DISS	SEG	DISS	
Kingston Pen	24	3	-	6	-				6	
Collins Bay	60	21	-	42	-	7	4	14	8	
Joyceville	60	14	30	28	60	2	12	4	24	
Warkworth	79	37	32	74	64	6	-	12	-	
Beaver Creek	-									
Keele	-									
Sub-Total/Partiel	223	75	62	150	124	31		62		
PRA						SEG	PC	SEG	PC	
Saskatchewan	60	56	-	112	-					
Edmonton	30					8	5	16	10	
Stony Mtn	32									
Drumheller	81					13	DISS	26	DISS	
Sub-Total/Partiel	203	56	-	112	-	26		52		
PAC						SEG	PC	SEG	PC	
Kent	48	22	-	44	-	-	21	-	42	
Matsqui	30	13	-	26	-	2	20	4	40	
Mission	22									
Mountain	-									
Wm Head	10									
Sub-Total/Partiel	110	35	-	70	-	43		86		
TOTAL:	638	199	73	398	146	100		200		

COMPILED and PREPARED

BY: Inmate Population Mgmt Division
SECURITY BRANCH* G = General Population
R = Reception

$$2a + 3a = \frac{4}{2}$$

$$2b + 3b = 4$$

DONNÉES COMPILÉES et PRÉPARÉES

PAR: Gestion de la Population carcérale
DIRECTION DE LA SÉCURITÉ

Explanation: "Summary of Double Occupancy"

Column 1 - Bunk Capacity

- a "bunk" in this context is defined as a second bed in a space normally occupied by one bed.
- the number represents the number of "bunks" installed in the institution.

Column 2 - Normal Cells

- this represents the general (G) and the reception (R) population in "normal" cells.
 - a "normal" cell is a cell not designated for segregation, disassociation, or protective custody.
- 0
- 2(a) indicates the number of cells occupied by two inmates.
 - 2(b) indicates the number of inmates involved in double bunking.

$$(i.e. 2(a)(G) \times 2 = 2(b)(G))$$

Column 3 - Special Cells

- this represents the inmate population detained in "special" cells.
 - a "special" cell is a cell designated for segregation, disassociation, or protective custody.
- 3(a) indicates the number of segregation, disassociation, or protective custody cells occupied by two inmates.
 - 3(b) indicates the number of inmates in segregation, disassociation, or protective custody that are involved in double bunking.

$$(i.e. 3(a)(Seg) \times 2 = 3(b)(Seg))$$

Column 4 - Total

- this number represents the total number of inmates involved in double bunking by region and nationally.

NOTES

SUL GEN CANADA LIB/BIBLIO
0000023212

Storage

[illegible]

