

DISCUSSION

ROBERT MCKAY, MODERATOR*

Thank you one and all for excellent presentations. We've had very interesting suggestions here. I don't want to promote conflict where it may not exist, but it seemed to me that Mr. Solomon was suggesting the need for a management model in terms of classification systems, prison planning, and so on. Dr. Irwin seemed to be rejecting such a model and saying that we should use a self-respect model. We heard the fascinating suggestion that there should be nostalgia for Alcatraz as it was in former days when the thugs walked around the prison with pride and respect, as Dr. Irwin put it, doing their time in silence and eating their three squares, as Mr. Trivisono put it. I suspect Al Bronstein might have something to say about reinstituting exactly that model. I was fascinated also with the suggestion that if federal judges could be persuaded to reduce sentences by ten percent, the problem would be solved. There was a general consensus, I think, that the problems could be solved at the up-front level, the take-in level, by shortening sentences ten percent or thirty days, or by some other device. I note that everyone on the panel today comes from the correctional side, so it's not surprising, I suppose, to think that somebody else is at fault for putting too many people in prison.

There are a lot of areas for discussion, and I want to throw it open right now for you to begin.

AUDIENCE COMMENT: My name is Marjorie Burgess. I work in the prisons and it has always amazed me that we always think in terms of overcrowding and how to end it. But we never seem to think of who's coming to our jail in the first place. Why don't we dry up this source? Why don't we get the kids before they get into the jail system? By the time they get into the system, it's very hard to get them out. But if we could get the kids back into the school systems, we wouldn't have overcrowded prisons. Now you're talking about building jails, which is going to take years. You should take that time and get the kids off the streets, and into the school systems.

AUDIENCE COMMENT: I'm the "bat-boy," Alvin Bronstein. A specific question to Jack Manson. There's been a lot of discussion, particularly yesterday, about the purposes of incarceration: why should we use prisons; who should we send there? Many of the people here may know, and some may not, that the Department of Corrections in Connecticut has recently hired a philosopher, a resident philosopher to study that particular problem. I think it would be interesting to me and perhaps to the rest of the people here if you could comment briefly on what that person is doing, and what, if anything, you've discovered about these issues.

* Director, Institute of Judicial Administration, Inc.

JOHN MANSON: One of the reasons that we have an in-house philosopher and can do that politically is that he's there, not at general fund expense, but through a humanities grant. Had he not come in by that route, those folks out there who wonder about how we spend money would condemn the whole process. Dr. Lovell is with us primarily because so many of us who are correctional administrators, right down to line officers, are so constantly overwhelmed with the nuts and bolts of what we're doing, that it's rare that we can even take time out for a day such as this to get beyond the nuts and bolts. The ten months that he will spend with us will be devoted primarily to interacting with inmates, with staff at staff meetings, and with the other actors in the criminal justice system. He will be attempting to frame, not answer, but just frame some questions. We have more problems with the questions than we do with the answers. We certainly do not have the wherewithal, although we should, either emotionally or energetically to frame things very well. We hope he's going to be able to frame some interesting questions for us that we can address, questions that we would not be able to frame for ourselves.

AUDIENCE COMMENT: My name is Bruce Corey, and I have a question for the panelists who urge greater political involvement by correctional administrators. I'd like them to respond to some remarks made by Kenneth Schoen in another workshop yesterday. Schoen's afraid that there's a diminishing political constituency for prison reform or for alternatives to incarceration, for the same reason that there's a diminishing constituency for improvement of the public school systems; both prisons and public school systems are increasingly populated by minority citizens. If that's the case, how do you calibrate your politics to that reality?

JOHN IRWIN: I think he's absolutely right. It seems to me that it even goes deeper. It doesn't start with the unwillingness to support humane or reformed prisons. The fear of crime explains a lot of the crisis which underpins the expansion of prison populations. I don't think that we have addressed that head on, and we should have in this conference. Really the basis of overpopulation is the fear of crime.

If you look at public opinion polls, and look at questions such as support for the death penalty, you see a remarkable flipover from 1967 to 1975. Sixty-seven percent or thereabouts were against the death penalty in the mid-sixties and it's reversed now. I think a lot of that change is not because the crime problem increased; it's my general feeling that crime levels have remained about the same in America. I have to admit that the kinds of crimes that we collect the most data on, did increase. But we only collect data on a narrow sliver of the crime phenomena. Those are not necessarily the most serious crimes. I mean that's a matter of subjective definition. I think the racial issue feeds in here.

I think that several things happened in the United States between 1965 and 1980. One is that a lot of crime was forced into the street. Street crime increased, not because more people got into the crime business, but because

the kind of people who got into the crime business couldn't commit any other crimes but street crimes. Street criminals would rather be embezzlers, I guarantee you. I've talked to a lot of them, and they'd like to be successful safe-crackers, and skilled armed robbers, and all the kinds of criminals that used to exist in our society. We had a much better sense of humor about such crime. We wrote books and made movies about it. But mugging is the number one opportunity in crime, and it's the kind of crime that society dislikes and fears.

It also has the quality of being seen, although this is an untrue picture, as more of a nonwhite-on-white crime. I believe very strongly that people don't think about getting mugged by whites as much as they do about getting mugged by nonwhites. I think a lot of the fear of crime is a demonstration of racial prejudice. That leads also to the unwillingness to pay for the consequences of a stepped-up criminal justice operation.

Many Americans want arrests increased, they want more people jailed, but they don't want to pay very much money for the management of these people once they are captured. They want them removed from sight. The jail is the social trash heap. Society wants that arrangement; it wants to sweep the streets of the trash and then dump the trash and forget about it. I think that's reflected in the way that people are unwilling to support sensible, rational, humane prison policy.

ROBERT MCKAY, MODERATOR: At the microphone is an interesting trio from the Association of the Bar of the City of New York, although they come in separate capacities. I'm going to introduce them separately in case they don't give you all that you need to know. First is Judge Leon Polsky, formerly of the court of claims in New York, and most recently the executive director of the commission that was studying determinate sentencing among other things.

AUDIENCE COMMENT: I would like to pick up on the question of how many beds we should have, and relate that to the position taken in the opening paper that we should adopt a cap on prison population such as was done in Minnesota. First, since we're apparently in a period of either declining or static crime rate, and yet a period of a rising prison population, and since the most grotesquely inefficient parts of the criminal justice system are arrest, prosecution, and adjudication, do we not, by setting a cap on the number of people who will go to prison, provide a disincentive to law enforcement, prosecution, and the courts to clean up their acts?

Second, while the Minnesota cap has, at least in its first few years of operation, succeeded in keeping the prison population stable, it has led to a thirty percent increase in the jail population. Now, what are we doing, if by setting the cap in one area of overcrowding, we are merely shifting the problem somewhere else less able to deal with the problem?

And third, and more philosophically, aren't we in a sense having the tail wag the dog? Does the criminal justice system exist to serve the correctional system, or is the correctional system merely an ancillary service of the

criminal justice system? If we do what has been done in Minnesota, do our scarce resources mean that we give first offenders a presumptive sentence of probation or community service or some less severe sanction? Do we not, by doing that, remove the deterrence aspect from all persons who are not now committing crimes because of fear of imprisonment? By saying to the robbers, or to the environmental polluters, "you will go to prison for two years if you commit such an offense," we may give those people some feeling of what will happen to them if they do what they propose to do. But what if we say to the embezzling bookkeepers, people who get speeding tickets and would like to give the police officer ten dollars to forget it, or the building owners who would like to give a building inspector fifty dollars to overlook a defective sprinkler system, that because we've established this cap on imprisonment, the presumptive sentence for you—unless you have a criminal history score of three or six or whatever—is going to be probation. Have we not removed a very significant deterrent? And, if we're doing this only because we're concerned about the number of people in prison, are we not coming back to having the tail wag the dog? Are we not destroying one of the principal purposes of the criminal justice system, in order to accommodate the ancillary service?

LAWRENCE SOLOMON: Regarding your first question, I don't think a cap is a disincentive to police and prosecutors. I think that so few people wind up in prison now, only about one to five percent of those who are arrested, that it's really hard to say that some kind of cap would be a disincentive to police and prosecutors. From the correctional point of view, the idea of a cap, of course, forces recognition of limited resources. It says to the public and the legislature that they can decide to increase the cap by voting and passing legislation and appropriation.

Minnesota is one of the few states that took on the issue of trying to set up policy around incarceration, and trying to translate that into rational decision-making policy. It said that for management and humane purposes you have to set some kind of a cap.

There's no question that we learned in Minnesota that just like anything else, a given balloon can hold only so much air; when you push on it in one place, that air moves somewhere else. In Minnesota when they focused on controlling prison population, they found that judges used jails as alternative incarceration resources. Now Minnesota is trying to establish a policy that will consider the use of both jails and prisons. I would suggest that a policy should go further, and talk about the use of both jails and prisons. I would suggest that a policy should go further, and talk about the use of a full range of sanctions including community programs as well as institutional punishment, I think that's yet to be done. But, they've learned by implementing the sentencing guidelines in Minnesota, that you can't just focus at the state level, you've got to consider the jail, because that is an alternative incarceration resource.

In terms of the deterrent aspect of presumptive sentencing, I'm still trying to figure out if we can deter or not. As you are aware, we talked about general deterrence, the idea that by symbolically punishing so many people, we will deter others. I don't think we've ever proven that that really is the case. In terms of specific deterrence, it's quite clear that taking someone off the street and incapacitating her is specific deterrence. The question is whether a person who knows that she's only going to be away for two years will feel such deterrence. Most offenders know quite well if they're unlucky enough to get caught, roughly what period of time they'll serve. Whether we have presumptive sentencing or not, we all figure out average lengths of stay anyway. However, I do think that the presumptive sentencing approach is a way to bring some more rationality to the criminal justice system. Yet, it may be a fad. We may eventually start heading back to indeterminate sentences.

ROBERT MCKAY, MODERATOR: Steve Rosenfeld is chair of the Corrections Committee of the Association of the Bar.

AUDIENCE COMMENT: That just means that I spend a lot less of my time thinking about these problems than most of the other participants in this conference. I would like some elaboration from those members of the panel who mentioned improving the classification procedures in correctional institutions as a possible way of easing overcrowding by getting more people into minimum security or partial release programs. That interested me, because in the little bit that I've been in this area in the last year, I've heard correctional administrators say that the overwhelming characteristic of people who are being sent into their custody by judges, at least in New York State, is that they can't be sent to minimum security institutions, that they are generally violent people with long records.

We asked Commissioner Ward why the Hart's Island work camp in New York City, and other alternatives, are under capacity, while the general system is, of course, over capacity. He said that although he was very proud of the classification system that the New York City department has—it has computers and everything else that you'd want—that not enough people are being sentenced to the custody of his department to enable it to classify people for these kinds of lower incarceration alternatives. I don't know where the truth lies, but is it that we need to send more people into the correctional system so that we can have people that administrators are willing to classify for these minimum-security institutions?

LAWRENCE SOLOMON: I guess we have to go back to Georgia and talk about having a better class of offenders. I can't comment on New York City, but I can comment on experiences I've had when we've been called in by the federal courts, or where we have done some work in classification. I think generally what we're finding is that there is "overclassification"; there are more people being held at higher custody levels than required. You have to understand that basically the way we classify in this country reflects the

type of beds we have. If we have maximum and medium security institutions, most of our offenders are maximum or medium. The other side of the coin is that just because someone is arrested for a violent offense doesn't mean she's necessarily going to escape or be violent in the correctional institutions. The two don't necessarily go together.

What we have found is that because we classify by available beds or by hunch, we have more room to play with in the system. That is, many people can be held at lower custody levels. I think the point that John [Manson] raised before is a good one. The approach that we've taken is to use more statistical or more objective methods. Even the federal courts are saying, in these conditions of confinement cases, that due to the lack of objective or rational classification, people are overclassified. People who are violent are not separated from people who are peaceful, predators are not separated from nonpredators. Basically, we have found that using an objective approach is a way of selecting people into these different groups, and that there is a lot of play in the system to do that.

John's point concerns how we go about doing that. He suggests that classification is a management tool and sometimes we become overzealous in using it. I think overcrowding exacerbates that. It makes us want to get things done very efficiently, and it doesn't always end up being so efficient, and sometimes we don't take into consideration the client population we are dealing with.

JOHN IRWIN: May I pick that up briefly? I commented only on some of the injustices that were done by trying to move people towards minimum classification, but I can look at the other end too. If you operate with one of those classification schemes, you lock into maximum custody maybe a very small group, depending on how you use it, but still you've locked them in. I think a much more sensible approach is based on self-determination, on a view towards the prisoner. We should make minimum classification available to everyone in stages. You start everyone off in maximum security, and very rapidly move them to minimum custody, unless they are found guilty under due process of certain acts. I think when this is applied, it works very well. Prison administrators are often surprised when they move people who have been classified or seen as extreme troublemakers. It is often shocking how calm they become when they're moved to minimum. Then you see that the troublemaking was merely an artifact of the system of incarceration.

JOHN MANSON: We did an interesting thing recently; we looked at our maximum security population. About five years ago we found out we had about thirty percent violent offenders. We now have somewhere between sixty-five and seventy percent. Does that mean prisoners are more violent today? Or doesn't it mean that five years ago we had many more nonviolent prisoners at maximum security level? These prisoners were not sent into lower security statuses because crowding pressure was not on the system. Pressures are there now; nonviolent people now move more quickly into medium- and minimum-security levels.

ANTHONY TRAVISONO: I'd like to suggest one practical problem with that. A correctional administrator who believes in a proper classification system would perhaps use minimum security a lot more than it is used now. But much of it is surrounded by the political process. When you have escapes, your liberal friends who recommend minimum security leave you rather quickly. The administrator is all by himself, and usually his feet are cut off. So if the liberals who want more use of minimum security would back you up all the way down the line, even when the heat is on, there'd be better use of minimum security.

ROBERT MCKAY, MODERATOR: Will Hellerstein is the chief of the Criminals Appeals Bureau of the Legal Aid Society of New York, among other things.

AUDIENCE COMMENT: I'd like to address my question primarily to Messrs. Manson and Trivisono. I think I might know John Irwin's view. About twelve years ago, we at the Legal Aid Society represented the prisoners' labor union at Greenhaven at a time when there was some labor union movement within the prisons of Michigan and California. It was our thinking and our hope that they would be found to be certified as a union under the Public Employees Relations Law in New York. They did perform public employment, and the statute would not give them the right to strike. It was our hope that the union would not only build dignity within the prison by providing a model similar to a union on the outside, but might also help build bridges to industry and business that have never developed in any institutional setting. Is it your view that the union model, collective bargaining within an institution, is an idea that died an appropriate death? Or is it your view that it died a perhaps early and tragic death?

JOHN MANSON: It is my feeling that the death was appropriate. And I hope there's no resurrection. Part of the problem I had with that idea, and I'm not known as the hardest line administrator in the world, are the uses that particularly very long-term inmates can make of a union kind of format. The little experience we've had with it—and, in fact, we had a case which was litigated and which we fortunately won—seemed to indicate that the very long-term entrenched inmates grabbed the union bag and ran with it. The democratic process was not about to be used.

ANTHONY TRAVISONO: I think you know my background. I allowed the union to exist in Rhode Island for a couple of years. They called themselves a union, I called it an advisory committee. However, the public called it a union. And for John Manson's reason, it did die. I saw no way around the strong-arm guy taking over. In the early seventies, we thought it perhaps had some life to it, or had some future. It just didn't go that way. The brutality that was inflicted out in the yard by the leaders was even greater than what one might expect from correctional officers.

JOHN IRWIN: Let me add a footnote to John's and Anthony's characterization of the union movement failure in the prison. There is another side to

that. We were engaged in a protracted discussion with the California Department of Corrections. These were very serious discussions over two years. We talked with very key persons. Not so much with Jerry Anamoto, he was kind of wishy-washy on this issue, and he quickly backed away as soon as it started to become a little bit touchy in the public arena. But George Jackson, who was second in command, was very serious about it. People like Walter Craven, who is a hard-line prison administrator, ex-warden of Folsom, were raising all kinds of concerns.

I would just like to finish with the suggestion that the prisoner union was never really tried. The previous characterizations were not really seriously constructed union experiments. They were already corrupt organizations that came forth and characterized themselves as "prisoners representative organizations." Of course, they were going to fail. But it could have worked out very, very differently. There has to be the possibility for prisoners to organize themselves for their self-expression. It will be possible, and I think it is inevitable. The history of organizing groups from below tells us that. We're just in a little hiatus that may be extended, but we will return to prisoner organizations whether we call them unions or something else.

AUDIENCE COMMENT: My name is William Strachan and for the last seven years I've been working in the New York State prison system with a program called Alternatives to Violence Project. We try and teach conflict resolution techniques with inmates in potentially violent situations. We also work with some correctional officers. Older inmates are literally saying: "I have to make it on the outside, on the street. I can't afford to come back in here, because if I do, I know that within the next three to five years, the kids who are coming in now are going to waste me." They cannot manage the kids. The older ones who are in their mid-thirties can't handle the kids who are coming in at sixteen and seventeen.

What can prisons do to give inmates the necessary tools so that they don't recidivate and continue to add to the overcrowding problem as well?

JOHN MANSON: I can try a short answer. I don't know what we can do, but in terms of recidivism for the older inmates, that new breed of inmates may be the best form of deterrence that anyone has come up with.

JOHN IRWIN: I have a very short answer. The only thing they can really do is to shorten sentences. The shorter the sentence, the better. All a prison can do is ill-equip a person for returning to society.

AUDIENCE COMMENT: My name is William Griffin; I'm the administrative coordinator for the Pre-Release Center at Ossining Correctional Facility. We have had a very arresting demonstration of what overcrowding is all about. While we have been talking about institutional response, we have sometimes talked about the individual institution, and at other times talked about the community of institutions. The individual institution really cannot do much, if anything, about overcrowding. That was the difficulty at

Ossining. We need the help of a community of institutions. I'd like to hear some comment from Professor Irwin or Mr. Solomon with respect to that.

LAWRENCE SOLOMON: Most of what I discussed was not focused on single institutions, but on the correctional administrator at the top who deals with the policies, procedures, and regulations that are in place and tries to regulate crowding across the system. I'm not certain, however, that individual administrators of institutions cannot also provide some leadership. They can also bring issues to the correctional administrator in charge of all those institutions.

AUDIENCE COMMENT: My name is Al Alston; I'm the superintendent of a community-based facility. I'd like to direct my question to Mr. Trivisono. Perhaps he could help me with a problem that I'm wrestling with as an administrator of a type of separation facility. What do we do with the inmate or the parolee once he's back on the street? What do we do with the man who's appearing before the bench and he's given a short sentence? If we shorten the sentences, if we get people out the "back door," we're only returning the people to the community to possibly commit the same types of offenses that brought them into the facility.

ANTHONY TRIVISONO: Community programs have been caught up in the same thing that institutions have been for years. We promise the sky to everybody. We say, send somebody to my halfway house, and he'll be cleaned up and he'll get a job. We know that doesn't work. We're not honest with everybody, we had to lie a little to get the halfway house into the community. You did that, I'm sure. So I think you have to be like the rest of the system, just realize that you can't help everybody and do the best that you can in a brokering arrangement. When you fulfill your brokering arrangement, when you've led some people to some programs that might be helpful to them, you're off the guilt trip. Don't hang onto it.

