

CORRECTING CORRECTIONS

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Introduction

CORRECTIONS HAS LONG been the neglected stepchild of the criminal justice system. Great attention is paid to the police, their equipment, their attitudes, their education and training, their effective utilization. Similarly, the court system in America represents a massive network of protection of individual rights and assurance of fair trial which should be the envy of the world. In both police and court areas of the criminal justice system criticism focuses almost entirely on operational problems, such as the role of police in community relations, the level of police service in ghetto areas, overcrowded court calendars, trial delay; on the overloading of both police and court systems with cases that really belong elsewhere, such as alcoholics and traffic violators.

In the area of corrections, however, the criticisms go to the heart of the system. In brief, the corrections system in America has so suffered from neglect that our jails and prisons have sunk to a level of humanity that represents a major disgrace in a free society.

The inhuman neglect we show human beings in our corrections system carries with it in rising crime the high cost of that crime.

Some four out of every five felonies are committed by repeaters, people who have already been in contact with the criminal justice system and who were not corrected. The recidivism rate is about 65 percent or higher, and closer to 75 percent where younger prisoners are concerned.¹

Presumably if we could cut recidivism in half — and this should certainly be a practical goal — we could cut serious crime by at least a third, and perhaps more. This was noted in the recent report of the Senate Judiciary Committee on the Omnibus Crime Control Act of 1970, which said in part:

“Of all the activities within the criminal justice process, corrections appears to offer the greatest potential for significantly reducing crime.”

The report then continues:

“Ironically, it has been the most neglected component of the system, principally because of the very high cost of building or renovating prisons and other correctional facilities.”²

And that leads me to the basis of this article, how much it will cost to build a modern correctional system, how long it will require, and most important, what direction the change and improvement should take.

1. UNIFORM CRIME REPORTS, 1969.

2. S. Sep. No. 91-1253 91st Cong., 2nd Sess., 27 (1971).

Improving the System

THERE ARE PRESENTLY some 400,000 prisoners in lockups, detention centers, jails and state and federal prisons. Of the approximately \$7.5 billion spent by local, state and federal governments on the entire criminal justice system each year, perhaps \$1.5 billion goes for corrections.³ That average is about \$3,000 per prisoner — enough to maintain each of them above the poverty line, if handed over in cash.

I am not suggesting that.

We could embark on a massive building program to construct adequate prisons to hold this population of a half a million prisoners.

Modern prison construction cost comes to about \$15,000 to \$20,000 per prisoner. If you assume, and it is a reasonable assumption, that between 50 and 75 percent of prison accommodations are unfit and should be replaced, you are talking about a prison building program of between 3.75 and 7.5 billion dollars, and that makes no allowance for additional personnel needed for adequate administration. In other words, it could cost more to build adequate cell blocks than we now spend annually for the entire criminal justice system.

But I am not suggesting we do that, either.

Some knowledgeable experts have suggested that only between 10 and 25 percent of those now in jails and prisons really belong there — these are the so-called "hard-core" prisoners. At least 75 percent or more of those in jails and prisons make up people awaiting trial, or drug addicts and alcoholics who would be far better off in rehabilitation and control programs or prisoners who should be in properly supervised probation or parole situations.

In other words, we have enough cells now. Certainly most prisons and jails need improvement. There are few model jails — we know; we tried to find them. There are some that must simply be torn down and replaced, they are unfit for any

kind of human habitation, if they ever were. But the need is not for more cells. It is for more community-based corrections programs, more probation and parole systems that really work, more work-release programs, more regional centers designed for rehabilitation, not pure punishment.

Many judges will tell you that they sentence offenders to jail simply because the only alternative is to turn them loose — the judges are well aware that the probation and parole systems which provide adequate and workable alternatives to incarceration could cost as much as \$15 billion, including staff and programs. About \$12 billion of this would be required for construction of regional detention centers, community-based corrections centers, and modern prisons.

George J. Beto, the President of the American Correctional Association, summed up the situation in a recent issue of the *Journal of the American Correctional Association*.

If we are honest with ourselves, we will admit that our massive prison buildings, the expensive jail paraphernalia with which they are equipped, the time-honored, elaborate and almost ritualistic security measures which we practice, are actually designed for a small percentage of our prisoners—25 percent at the most. The best interests of the majority of our inmates, as well as those of society, would be better served by intelligently supervised probation and parole rather than by the artificially contrived rehabilitation programs found in the stultifying atmosphere of most prisons.⁴

What Congress Is Doing

SENATOR ROMAN HRUSKA of Nebraska has long had a keen appreciation of the problem of corrections, as have other members of the Congress. He was the moving force in winning passage of the Nixon Administration's bill to create

3. EXPENDITURE AND EMPLOYMENT DATA FOR THE CRIMINAL JUSTICE SYSTEM, 1968-69, Law Enforcement Assistance Administration, U.S. Department of Justice, Table 3 at 11 (1970).

4. George J. Beto, *Presidential Address*, 32 *American Journal of Corrections* 7, November-December, 1970.

Part "E" of the Omnibus Crime Control Act of 1970⁵ which the President signed into law this year. This provides approximately \$50 million this year, \$100 million next year, and greater amounts in later years to fund new corrections programs, particularly community-based corrections.

Under the provisions of Part E the funds are distributed in two ways: 50 percent directly to the states in the form of block grants and 50 percent at the discretion of LEAA.

However, in acknowledgement of the meager resources available to the typical corrections system, the Congress raised the Federal match from 60 percent to 75 percent, so state and local governments only have to fund 25 percent of the cost of Part E programs.

In order to obtain the block grant funds the states would have to provide certain assurances:

- That the comprehensive State plan sets forth a statewide program for the construction, acquisition, or renovation of correctional institutions and facilities in the state and the improvement of correctional programs and practices throughout the State.

- That there is satisfactory emphasis on the development and operation of community-based correctional facilities and programs, including diagnostic services, halfway houses, probation, and other supervisory release programs for preadjudication and post adjudication referral of delinquents, youthful offenders, and first offenders, and community-oriented programs for the supervision of parolees.

- That advanced techniques in the design of institutions and facilities are used.

- That where feasible and desirable there be a sharing of correctional institutions on a regional basis.

- That the personnel standards and programs of the institutions and facilities will reflect advance practices.

- That the state is engaging in projects and programs to improve the recruiting, organization, training, and education of

personnel employed in correctional activities, including those of probation, parole, and rehabilitation.⁶

Part E also authorized LEAA, after consultation with the Bureau of Prisons, to prescribe by regulation, basic criteria for the administration and use of Federal funds. This provision will enable LEAA to insure that the money will not go into the kind of jails, prisons and programs that will merely perpetuate the past, but into substantial and significant improvements.

In yet another important provision the Congress indicated that the funds distributed under Part E would not be used to substitute for the funds that would normally be allocated to Corrections under Part C, which governs the distribution of all other action funds under the Safe Streets Act.

What LEAA Is Doing

TWO YEARS ago LEAA set improvement in corrections as a major goal. The result was that the total of LEAA funds spent for corrections and corrections-related programs rose from about \$2 million in fiscal 1969 to \$58 million last year to an estimated \$178 million this year. Next year it could go as high as \$250 million.

Under the comprehensive law enforcement plans submitted to LEAA by the states, due provision was made for legal services for offenders involved in the criminal justice process, for the revision of penal codes, and for statutory reforms which would pave the way for the sharing of facilities among geographical groupings of counties and communities, for multi-jurisdictional arrangements for the care and treatment of special types of offenders, and for improvements in the organization and administration of correctional systems.

The National Institute of Law Enforcement and Criminal Justice, the re-

5. 42 U.S.C. 3732 (1971).

6. U.S.C. 3732 (1971).

search arm of LEAA, made a grant to the University of Arizona to produce a casebook on post-conviction legal practices. The casebook will deal with the legal problems in prisoner representation, and will be designed as a text for law school seminars and as a reference work for state attorneys general and public and legal aid offices. This effort should not only bring about an improved respect for the rights of prisoners but also reduce frivolous litigation.

The Institute also made a grant to the South Carolina Department of Corrections which, with the help of the University of South Carolina's School of Law, will study the various court decisions which have been made in the field of law with the objective of formulating the principles which underlie these decisions. The product is intended to provide correctional administrators, legislators, and the courts with a resource to guide their future decisions, and in the case of the administrators, to avoid litigation. The project workers have so far identified approximately a thousand such decisions.

A third grant has been made by the Institute to the College of Law of the University of Nebraska to develop a Handbook on Correctional Law Reform. Under the terms of the project the University will analyze the correctional laws of the fifty states, provide a critique, and outline the needs, goals and procedures for reform efforts. On the basis of this effort it will also formulate a model correctional code.

In conjunction with the foregoing, the Office of Criminal Justice Assistance, the action arm of LEAA, has approved a discretionary grant for a national conference on correctional law reform, which would involve the participation of state attorneys general, law enforcement planners, and legislators. The conference will be co-sponsored by the University of Nebraska, the American Correctional Association, and the American Bar Association's Commission on Correctional Facilities and Services.

The Future of Corrections

WE CAN EXPECT that the needed legal reforms can be accomplished within the next four or five years, at least if it is possible for money and efforts of the ABA Commission to bring this result about.

We can also expect, with the priority being exercised by LEAA and the states, substantial expansion and improvement of probation and parole. It will be feasible within available funding to establish probation departments where they do not now exist and to strengthen them and to provide significant resources where they do exist.

The projections of the states and the priorities of LEAA also suggest that the good start made in 1970 on the establishment of community-based programs will result in the proliferation and common establishment of such programs over the next five-year period. The communities should end up well endowed with such resources as halfway houses, group homes, court diversion projects, and community programs for the education, training, guidance, and employment of probationers, parolees, and other ex-offenders.

The jails present a different kind of problem. They are the shame of almost every community and county in which they are located. But considering the amount of money required for their replacement and the long lean times involved in any new construction, we should see only a start made on this problem within the next five years.

LEAA is funding the preparation of technical assistance materials in the planning and design of community and regional correctional facilities. These will replace the jails with community centers which will provide rehabilitative services to misdemeanants. LEAA is also funding the development of specific projects of this kind in a number of communities. But a recent survey by the Bureau of the Census under an LEAA contract suggests that a great many jails need to be either replaced outright or substantially rebuilt

for rehabilitative purposes. The task will require at least a generation, and probably more.

Until LEAA's jail survey, information in this area was totally lacking. Few state law enforcement officials could even tell you how many jails exist in their state.

The jail survey shows:

- There are 4,021 locally administered jails with 48-hour retention authority, and they house about 153,000 adults and 7,800 juveniles.

- About 550 of these were constructed during the 19th century and six in the 18th century.

- Jail authorities report they anticipate spending a total of \$170 million on construction and renovation this year.

- Some 130 jails were built to house 300 or more prisoners, and of these, about one-third are overcrowded, almost all of them large jails in big cities.

A facilities survey was made of the 3,300 jails located in cities or counties of more than 25,000 population. This showed:

- More than 85 percent had no recreational or educational facilities of any kind.

- About 50 percent had no medical facilities.

- About 25 percent had no visiting facilities.

- Of the 97,500 cells in the 3,300 jails, almost 25,000 were more than 50 years old, including 5,400 more than 100 years old.⁷

The prison also presents a unique problem and many of the considerations that apply to the jails also apply to them. Also, there are no prison programs that have really proved to have achieved significantly efficient results in rehabilitating offenders. Until we have valid findings identifying such programs, we have no basis upon which to plan new facilities. Furthermore, the costs of a national broad-scale effort to replace our prisons is prohibitive, and is likely to remain so under any foreseeable level of Federal funding.

There are some experts in the correctional field, and some outside it, who feel that the realization of widespread community-based services and the strengthening of probation and parole, particularly for juvenile delinquents and youths, will minimize the need for new prisons and major state institutions. The dictates of reality will provide an opportunity to find out whether they are right.

In any event, it can be forecast that the next five years will see an abrupt shift in emphasis in the field of corrections from the traditional reliance on custodially-oriented institutions to rehabilitation-oriented community based programs. The prisons will remain, hopefully with reduced populations, but those who are incarcerated should experience a more humane and legally-supervised regime. Meanwhile, LEAA will continue to commit adequate funds for experimentation in the search for methods and techniques of salvaging the hard-core offenders for whom the prisons are really intended.

Lawyers, bar associations, and even judges have an important part to play on this two-fold attack on the problems of the corrections system.

During the next several years, they can help substantially as their states attempt to establish and improve probation and parole programs.

For all practical purposes, probation has never been tried in the United States. The cost of probation supervision is now about \$250 a year, and it should be raised to at least \$1,000 or more, but even at this it is far cheaper than the \$4,000 to \$5,000 estimated annual cost of keeping a man in prison.

Lawyers — and judges as well — should be as active as possible in taking part in the criminal justice planning activity in their state, and they can use their influence in the community to promote not only attitudes about the changing face of corrections, but programs as well. If they take the trouble to familiarize

7. Law Enforcement Assistance Administration, U.S. Department of Justice, 1970 NATIONAL JAIL CENSUS. Table 7 at 17, Table 8 at 18-19 (1971).

themselves with jail and prison facilities and problems they will find the general lack of information so widespread they will become experts in the field without realizing it.

Bar associations can appoint committees to look into local and state problems and programs and make recommendations. State and regional criminal justice councils will welcome their interest and support.

Lawyers, bar associations and judges will also have an important role in urging greater use of probation and parole systems once they are operating, as well as encouraging work-release programs, and helping to coordinate them with the community, and win public and employer acceptance so they operate successfully.

Finally, during the years it will take to rebuild or replace the broken-down jail system, lawyers, bar associations, judges and the courts can play a more active role in seeing to it these facilities are maintained in as humane a manner as possible. This means not only court

concern — since the court sends a prisoner to prison in the first place — but informal supervision of conditions by lawyers and bar associations, to bring matters to court attention where necessary, and to improve them without legal action where possible.

Two years ago, President Nixon directed the Attorney General to marshal federal resources in an all-out effort to improve corrections.⁸ LEAA and the Bureau of Prisons and other concerned agencies have responded, with the result that we now have the first comprehensive national effort to improve our corrections system in our history.

How urgently the states respond, how promptly and effectively they move, how soon probation and parole systems can be set up and the long-haul business of construction planning begun, will depend a great deal on how much attention courts, judges, lawyers and bar associations focus on corrections.

⁸ Presidential Directive to Attorney General Mitchell on Corrections, November 13, 1969.

EDITOR'S NOTE: The Law Enforcement Assistance Administration was created by the Omnibus Crime Control and Safe Streets Act of 1968. Its mission is improving the nation's criminal justice system. The agency has control over and sets policy for distributing millions of dollars to corrections systems throughout the land. By defining minimal standards for existing systems, by economically bolstering those prison practices offering the best chances for de facto rehabilitation, by providing economic incentives to the more backward systems to imitate those rehabilitative efforts, by sponsoring retraining and upgrading of prison staff, and by encouraging experimentation and flexibility of approach, the agency *could* play a pivotal role in hewing out the path of prison reform. It is in light of the agency's potential that the JOURNAL solicited the article from one who could humanely shape prison reform in our time.