and drugs without regulation or standards.[35] Syndicates "own several state legislators and federal congressmen and other officials in the legislative, executive and judicial branches of government at local, state and federal levels."[36] The syndicate could not exist without the accommodation of certain police and other officials, so that, tho the identities of professional criminals are often widely known, they are rarely dealt with by the criminal (in)justice systems.[37]

Drugs

> After extensive investigation [Isador] Chein concluded that addicts were individuals who had already failed to find alternative solutions to their problems and who had not received any effective help in doing so. [By using drugs, they would be seeking what seemed to them the best available treatment of their distress.
>
> American society, Chein notes, takes extraordinary pains to keep heroin from addicts, thus escalating its price, and it then declares that the addicts are social menaces because they engage in so great a volume of crime-to secure the drugs which have been priced beyond their ability to afford them thru noncriminal activity. Similarly, the drug is outlawed because its use is said to be dangerous to the individual's health and well-being. Thousands of addicts thus die thru overdose or contract serious diseases because they are blocked from trustworthy sources of the

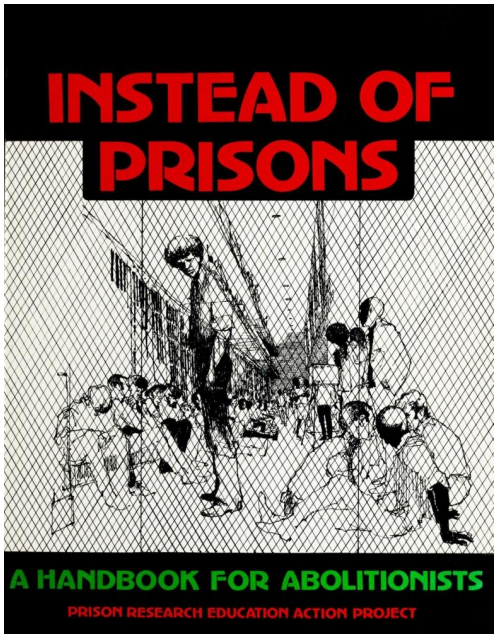
[36] Donald Cressey, Theft of a Nation (New York Harper & Row, 1969) p. xi.

[37] See L. Harold DeWolf, Crime and Justice in America, pp. 20–22, 199–200.

Instead of Prisons

A Handbook for Abolitionists

Prison Research Education Action Project



1976

Organized crime

In considering organized crime we face the difficulty of separating those organized criminal activities carried on by "syndicates" from similar criminal activities carried on by "legitimate" businesses and government agencies. Bribery, extortion and fraud are also practiced by the government and by corporations.

Syndicates involving thousands of individuals operate outside the laws and institutions governing the rest of society. They control whole fields of activity in order to amass huge profits thru monopolization, bribery, extortion and fraud. Their profits—estimated at $6 to $7 billion a year—form the power base of professional criminal activity which extends into every facet of America's social, economic and political systems. The media "cops and robbers" image is largely false. Syndicate relationships with legitimate business and government are such that it is often difficult to differentiate "underworld gangsters" from "upperworid" business people and government officials. Evidence developed in the Watergate scandal and its aftermath has shown that they have often been one and the same.

Gambling, loan sharking and drugs are still the greatest sources of income for organized crime. With the millions of dollars gained thru these activities, syndicates manipulate the price of shares on the stock market, raise or lower prices of retail merchandise, determine whether entire industries will be union or nonunion, control the success or failure of small business people. The power purchased with syndicate money controls the lives of countless numbers of people and affects the quality of life in entire neighborhoods.

By paying off public officials, professional criminals purchase the "right" to murder with impunity, to extort money from business people, to conduct businesses in liquor, food

[35] The Challenge of Crime in a Free Society, p. 439.

> win' debates on the abolition of handguns have become debates on castration... Why should a man's manhood in any way depend on a piece of machinery that propels a drop of metal which hills another human being?[31]

Despite polls showing that more than 70 percent of the public supports stricter gun laws, Congress has failed to act, largely because the gun industries wield such tremendous political and economic power.[32]

The additional issue of racial control is related to those of *machismo* and economic power. Some Black leaders opposing gun regulations argue that "gun control is race control."[33] Recently proposed gun regulations by Attorney General Edward Levi are aimed at disarmament of metropolitan populations (largely poor and Third World) coupled with demands that "law enforcers" remain armed.[34]

To prevent gun control from becoming another possible means of control over Third World people, the poor and those labeled "dissidents"—and to prevent further escalation of violent crimes against citizen—he long range we advocate total disarmament of law enforcement officials as well as civilians. In the interim, we advocate legislation aimed at phasing out the importation, manufacture, sale and private possession of handguns.

[31] **Ibid**.

[32] See "Gun Crazy," Nation, March 1, 1975; David E. Rosenbaum, "Gun Control Problem," **New York Times,** October 27, 1975; Robert Sherrill, "Gun Controls are not Likely this Year," **New York Times**, March 9, 1975.

[33] See William E. Farrell, "Majority at Hearing in Chicago Urges Congress to Ban Pistols," New York Times, April 16, 1975.

[34] See John M. Credson, "Levi Says U.S. is Studying Ways to Curb Pistols in Urban Areas," **New York Times,** April 7, 1975; "The Gun Culture," editorial, New York Times, October 24, 1975.

Contents

—Clayton Fritchey. *New York Post*, October 3, 1974

> Last Tuesday was a banner day for violent death in New York City, and guns in private hands contributed substantially to the macabre scorecard. Of the nine victims of murder or murder-suicide incidents that day, four were killed by handguns and two by a shotgun … Each time there is the faintest threat of effective gun control legislation, the gun lobby redoubles its efforts to spread its shrill message that people rather than guns kill people. Perhaps so, but it is clear from the nationwide gun death toll that it is much easier to shoot someone than to cause human death by almost any other means.

—*New York Times* editorial, July 13, 1975

> About 65 percent of all murders in the United States are accomplished by means of guns, 51 percent by handguns… in the United States 10 to 20 times as many people are murdered per 100,000 population as in the United Kingdom and other countries with strict gun controls.

—L. Harold Dc Wolf, *Crime and Justice in America*, p. 201

The National Rifle Association warns us of gun control: "Let them follow their counsels of cowardice if they prefer to surrender the privileges and rights of manhood." In the United States the gun has become a symbol of masculinity, a symbol of aggression, control and dominance:

> …The deadly handgun … is power in interpersonal relationships. This is why seven out of ten murders are among families and friends. This is also

Community-run programs and groups-rape crisis centers, drug abuse projects, neighborhood walks, community education and peer counseling centers-have begun to make some of these necessary changes, empowering the entire community as well as potential victims, and lessening the need for police intervention.

Guns

Guns are a time-honored American tradition, as the National Rifle Association continues to remind us. Bloodshed, murder and violent crime are also an integral part of the American heritage. Economic interest, *machismo* and fear of racial control intermingle to prevent the banning of guns. Our culture of violence"[29] persists and easy access to weapons of death remains intact with over 40 million handguns stashed away in the drawers, closets and glove compartments of America.[30]

> The appalling statistics of gun-inflicted homicide—over two-thirds of the approximately 20,000 murders committed annually—clearly justify the view, expressed at the hearings by Representative Bingham of New York that "we are literally out of our minds to allow 2.5 million new weapons to be manufactured every year for the sole purpose of killing people.
>
> —*New York Times* editorial. February 24. 1975

In the last decade, America suffered 95,000 gun murders, 100,000 gun suicides, 700,000 gun woundings and 800,000 gun robberies.

[29] See John Buckley, "Guns: Matter of Machismo and Race" in Fortune News, December 1975.

[30] See materials from National Coalition to Ban Handguns, 100 Maryland Ave., N.E., Washington, D.C. 20002. 31. See Buckley.

Our society cannot promote the values of honesty, cooperation, autonomy, freedom and self-determination and expect citizens to be peaceful and law-abiding when the government carries out violent policies which systematically deny citizens their right to self-determination, and, in some cases, the right to live at all.

Short range abolitionist goals should focus on making the police accountable to the community. Police policies should be set by neighborhood representatives, police should be drawn from the communities they serve and police practices should be reviewed regularly by community groups.[28] Longer range goals include the decentralization and disarmament of police.

There is a need for humanization of the role of the individual police officer. Recruitment and training should be oriented toward the peace-keeping role of the police, with screening procedures to exclude or remove from the force persons who are overly aggressive and violence prone. Training should provide instructions in interpersonal relations, dispute settlement, conflict resolution and other nonviolent peace-keeping techniques. Community members should both participate in and monitor this training. The para-military structure of the police should be broken down so that law enforcement cannot be used for political ends of the "top cops" without input and consent from the rank and file.

Once the caring community has been developed, then members will be individually and collectively responsible for crisis situations. Given this consciousness, the educational system and the media will encourage nonviolent crisis intervention and counseling to all people, firmly placing value on cooperation, support, trust and collective responsibility. With this preparation, the need for an elite group trained to "police" the community will diminish.

[28] Ibid., pp. 186–88.

trol in minority communities; when they are rarely held liable for their violent crimes; when Black and other Third World people have no effective way to protest or stop this brutality and harassment, then the resultant feelings—intense resentment against law enforcement officials, frustration, anger, fear, hostility and alienation—are a predictable reaction to such social pressures.

The police form the front line of repressive control of potentially disruptive groups. Their main function is the preservation of a social order based on class, racial, sexual and cultural oppression that undergirds our present economic system.[27] Thus individual instances of police violence are part of a deeper pattern of repressive roles assigned to police to control groups labeled "criminal," a pattern which is inseparable from the needs of the dominant culture.

> The existence of vague laws and overextensive laws, which must be interpreted and enforced selectively at the lower echelons of the criminal justice system-at the level of the police-has given rise to a serious problem: the misuse of discretion by police. Following their unofficial mandate and utilizing the discretionary power granted to them, police in America do not primarily enforce the law. Instead they maintain order, often heavy-handedly. In accomplishing this goal they selectively enforce laws against individuals and classes who they, or the dominant political and economic interests, see as threats to the social order.
>
> —*Struggle for Justice*, p. 130

Social Justice, Spring/Summer 1974, pp. 29–30.

[27] See Center for Research on Criminal Justice, **The Iron Fist and the Velvet Glove: An Analysis of the U.S. Police,** pp. 8–9.

violence, these official acts have fostered alienation, hostility and a lack of faith in American justice.[24]

The United States Civil Rights Commission "has received hundreds of complaints charging that policemen have barged into homes and terrorized inhabitants, beaten suspects far beyond the point of resistance, shot fleeing juveniles suspected of minor offenses, and broken up nonviolent demonstrations in a violent way."[25] While the public is made very aware of the murder of police officers by civilians, they are rarely informed of the murder of civilians by the police, particularly Black civilians:

> What is generally not known by the public, and either not known or certainly not publicized by the police and other officials, is the alarming increase in the rate of deaths of male citizens caused by, in the official terminology, "legal intervention of police." ... Black men have been killed by police at a rate some nine to ten times higher than white men... In proportion to population, Black youngsters and old men have been killed by police at a rate 15 to 30 times greater than that for whites of the same age. It is the actual experiences behind statistics like these that suggest that police have one trigger finger for whites and another for Blacks.[26]

When the police use excessive and often fatal force as part of the "war against crime;" when they use violence indiscriminately to punish suspected "criminals" and to maintain con-

[24] Schur, p. 156.

[25] Robert M. Fogulson, "From Resentment to Confrontation" in Social Action, No. 6, February 1969, pp. 10–11 (reprinted from **Political Science Quarterly,** Vol. 83, June 1968).

[26] Paul Takagi, "A Garrison State in 'Democratic' Society," **Crime and**

be "masculine" is to dominate and control thru force; to be feminine is to submit and be controlled. Children are considered to be property of the parents, and wives property of the husband. This traditional property right is translated into the right of the parent or husband to physically control and punish the child or wife.[22] While the culture romanticizes womanhood and childhood, forcible control of women and children is an integral part of our lives."[23] Often people who have been abused as children engage in violent behavior as adults-thus repeating the cycle of violence.

Crimes against women and children—physical abuse, emotional abuse and sexual abuse—occur at every socioeconomic level. Abuse of women and children in affluent families seldom comes to public attention because these families are not scrutinized by public agencies and their "problems" are often not reported to central registries by private physicians, teachers or clergy.

Official violence

The government itself is a leading promoter of violence. In the past decade, Americans have seen their government conduct a brutal and illegal war in Southeast Asia, exonerate the murderers of Kent State and Jackson State students, cover up the My Lai massacre and support the harassment, subversion and murder of foreign leaders. In addition to serving to legitimize

Penguin, 1973) pp. 117–23.

[22] See Margaret Mead, **Male and Female** (New York, Morrow, 1949) pp. 301–302. Also Karen DeCrow, Sexist Justice (New York Vintage, 1974) pp. 176–207. Also Betsy Warrior, "Battered Lives" in Houseworker's Handbook (c/o Leghorn & Warrior, Woman's Center, 46 Pleasant St., Cambridge, Massachusetts.)

[23] Vincent J. Fontana, M.D., **Some where a Child is Crying** (New York, Macmillan, 1973): "It is a myth that we, in this nation, love our children." p. 37.

> In T.V. entertainment, children may observe countless acts of murder and mayhem, may learn thru observation how to perform these acts and may even learn that such acts are admired by other people. Thus commercial television itself is a school for violence.[19]

In the three years since the Surgeon General's report:

> ...watchers have been treated to uncounted thousands of brutal homicides, rapes, robberies, fist fights, muggings and maiming ... One scientist estimates that by the age of 15 the average child will have witnessed 13,400 televised killings.[20]

Movies, magazines, comic books and newspapers often provide heroic models of criminals and a glorification of their violence. Too often the media makes violence appear to be the first alternative.

Patriarchy & violence

In our patriarchal culture,[21] girls and boys gain their first understanding of what it means to be feminine or masculine. To

[19] Alberta E. Siegel, Ph.D., Prof. of Psychology, Stanford University, in the Surgeon General's Report by the Scientific Advisory Committee on Television and Social Behavior. Testimony before the Subcommittee on Communications of the Committee on Commerce, U.S. Senate, 92nd Congress, 2nd Session, March 21–24, 1972 (Washington, D.C., U.S. Government Printing Office, 1972) p. 63.

[20] Neil Hickey, "Does T.V. Violence Affect our Society-Yes," T.V. Guide, June 14, 1975.

[21] By patriarchy we mean a social organization marked by the supremacy and domination of men over women thru systematic and institutionalized physical and psychological force. See Kate Millett, Sexual Politics (Garden City, New York, Doubleday, 1970) pp. 24–25. Also Sheila Rowbotham, **Woman's Consciousness, Man's World** (Middlesex, England,

businessmen into being a major source of corruption.

—John Burns, Vice-President of Urban Affairs,
Westinghouse Broadcasting Company, as
reported in *Fortune News*, August 1975

Options for solving economic problems vary according to age, race, sex and economic status. The severity of the problems differs accordingly. What is constant is the backdrop of values which accepts the choice of illegal options over legal ones. Legal options are extremely limited for the poor. For the middle class, more options are available but as they move up the ladder of "success," their economic needs-real or artificially imposed-increase. Many people from all strata of society are willing to break the criminal law in pursuit of their economic goals.

The culture of violence

Certain violent crimes are condoned by prevailing values. The use of violence is widespread and accepted as a means of solving problems and disputes, of acquiring wealth and of establishing power over persons and groups.[18] From the brutal extermination of Native Americans to the murder of early labor leaders; from lynch law brutality to destroy and terrorize Black Americans to the racist gang rape of southern Black women by white men during Reconstruction, violence has long been a part of the American tradition. Being a victim of violence is nothing new to the powerless in America, just as being the violent aggressor is nothing new to the powerful.

The media contribute to violent crime thru ceaseless repetition of the concept that human problems can be solved by violence and aggression. In the *Surgeon General's Report on Television and Social Behavior*, Alberta E. Siegel points out:

[18] See Edwin M. Schur, **Our Criminal Society**, p. 125.

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The reader's eye might trip over a few unusual spellings—words such as "tho" and "thru." We have made these modest beginnings toward spelling reform because we are made uncomfortable by the idea of cutting down forests to make paper to print silent letters. —The editor

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ladder, competitive individualism and personal success, all of which are defined in monetary terms. Such values provide a framework in which some individuals-both rich and poor-choose illegal options to solve economic or status problems.

Decisions made on an individual level can play an important role in the commission of a criminal act. However, in a culture where "Everyone has a price," where "If you stay legal you stay poor," where "Everyone is on the take" and "Everyone has his/her game," the ultimate message is "Do what you can, but *don't get caught* "survive by any means necessary.

> Exxon, Gulf, Mobil, Northrop, Del Monte, I.T.T., United Brands and others have learned the lesson the hard way. But it remains to be seen whether they and others will conclude that the only lesson is "Don't get caught!"
>
> —*New York Times* editorial, April 20, 1975

> Mr. Casey [a food store owner and manager in Connecticut] told me, "The reason I buy stolen goods is, somebody's gonna buy them anyway, so why not me?... The government never cares about the small businessman, so we have to care about ourselves, legal or not legal ..."
>
> This theft is similar to employee theft. The stock boy, Al ... figured it was a part of his salary, and, after all, Mr. Casey was making money on stolen goods, so why not him?
>
> —Ellen Wheeler, "Boosting Poverty," NEPA News, November 1973

> The business community, thru the ethic of "anything for a price," has unwittingly established a climate in which corruption is rationalized as just something "everybody" is doing. This ethic has led

unemployment, poverty, slums and crime. Individual developmental patterns, family disorganization, faulty training and poor education are singled out as contributing causes of crime. Therefore, responses to "criminal" behavior must be directed not only at the individual "offender" but also at the "malfunctioning" of the individual's environment—the "community."

But only certain communities are singled out as criminogenic. The most commonly cited is the "slum." The "criminal" is the "slum-dweller." The President's Commission on Law Enforcement and the Administration of Justice explains that we must "eliminate the conditions in which most crime breeds … Warring on poverty, inadequate housing and unemployment is warring on crime."[17]

We agree that much responsibility for crime lies within the community, but we take a broader view of "community" and "crime." We concur that poverty, lack of meaningful employment and educational opportunities, disease and lack of medical care, malnutrition, poor and dilapidated housing all contribute to feelings of hunger, rage, alienation and powerlessness. These feelings can encourage a person to commit a crime.

However, we must go further in identifying the causes of crime. The entire social value system, not just that of the "slum dweller," must be examined. Crime-including violent aggressive crime-is found at all levels of society, among all classes of people, all races, and in all neighborhoods. There is no one explanation of criminality, no one cause of unlawful behavior. The dominant culture is the predominant key to crime.

The most obvious way our social structure encourages crime is by creating and perpetuating economic disparities. The economic and social system fails to provide equal opportunities for meaningful work and adequate income and fosters a value system which emphasizes consumption, moving up the economic

poverty programs, or neutralizes it thru promises of legal redress.

[17] **The Challenge of Crime in a Free Society**, pp. 6469.

Preface

Many prison reformists yearn for the end of imprisonment but find themselves confronted by questions which seem difficult to answer:

- What do we do about those who pose "a danger" to society? Don't we have to solve that problem before we can advocate the abolition of prisons?
- Is it possible to work for short term prison reforms without being coopted?
- If we devote our energies to abolition, are we not abandoning prisoners to intolerable conditions?
- How can we work for needed prison reforms which require structural change within the society, *before* a new social order comes about?

As some of these important questions are addressed, we will discover that many reforms can be achieved in an abolition context. The primary issue for abolitionists is not always one of reform over/against abolition. There are "surface reforms" which legitimize or strengthen the prison system, and there are "abolishing-type reforms" which gradually diminish its power and function. Realizing the differences requires some radical shifts in our perceptions, lest we fall into the trap which has plagued earlier generations. Our goal is to replace prison, not improve it.

Many criticisms of abolition arise from confusion about time sequences. Prisons are a present reality; abolition is a long

range goal. How do we hasten the demise of prisons while creating an alternative which is consistent with our ideals?

We perceive the abolition of prisons as a long range goal, which, like justice, is an ever continuing struggle. Tho voices for abolition have been raised over the centuries, until today no cohesive movement for abolition of prisons has emerged. We have observed how countless revolutions have emptied the prisons, only to fill them up again with a different class of prisoner. Our goal, on the other hand, is to eliminate the keeper, not merely to switch the roles of keepers and kept.

As Americans of varying backgrounds and ages, we are required to re-evaluate: (1) our society and its relationship to those it labels "criminal;" (2) our personal values and attitudes about prisoners and the prison system; (3) our commitment to wider social change. It is important that we learn to conceptualize how a series of abolition-type reforms, partial abolitions of the system, and particular alternatives can lead toward the elimination of prisons. Abolitionists advocate maximum amounts of caring for *all* people (including the victims of crime) and minimum intervention in the lives of *all* people, including lawbreakers. In the minds of some, this may pose a paradox, but not for us, because we examine the underlying causes of crime and seek new responses to build a safer community. *The abolitionist ideology is based on economic and social justice for all, concern for all victims, and reconciliation within a caring community.*

This handbook is written for those who feel it is time to say "no" to prisons, for those open to the notion that the only way to reform the prison system is to dismantle it, for those who seek a strategy to get us from here to there.

Instead of Prisons: A Handbook for Abolitionists was also written for ourselves – a small group of the already convinced - who have gathered together to clarify and record the insights gleaned from our prison experiences. "We" are ex-prisoners, prison changers, prison visitors, families of prisoners, prison

increasingly technological society.[16] It also provides employment and a degree of political control, by surveillance, patronage and other means for "middle Americans" employed in the prison industry.

> Starting at the top, who is the greater criminal, the poor kid from a ghetto who snatches a purse, shoplifts and steals cars, or the president of a country which he betrays by treasons or greed and abuses of power?
>
> Why is it, for example, that Richard the Great, our former president, can walk on the beach at San Clemente instead of in a cell at San Quentin?
>
> Is it an accident that Spiro Agnew never spent a day in prison, altho his criminal acts in the vice-president's office almost rival those of Nixon in the oval room?
>
> —Judge Bruce McM. Wright, address to prisoners at Green Haven Prison, New York, August 17, 1975

What causes crime?

A prevalent sociological theory of crime causation is that of the "criminal subculture." Crime is seen as an outgrowth of society's unequal distribution of goods and resources. Government commissions, sociological texts, educators and students of criminal behavior all point to the relationship between

[16] Paul Takagi, "Course Outline and Bibliographies-The Correctional System," **Crime and Social Justice**, Fall/ Winter 1974, p. 85: "Black people today [are] rendered socially useless by cybernation and the export of jobs by multinational companies… The role of the state is to prevent minority and radical movements from collaborating and strengthening by criminalizing this population; the state, short of that, co-opts the movement thru

long time probably for as long as crime itself. This labeling of the criminal as "a sub-human species to be treated as a non-person,"[13] persists today in popular culture as well as in professional circles.

> Over 100 years ago, Charles Loring Brace published a book called *The Dangerous Classes of New York*... in which he warned society that juvenile delinquents—homeless, antisocial children of the streets—were "children of poverty and vice," and a terrible danger to society... Their riots were close to revolution. They threatened the very social order; they resented the rich and looked on "capital" as a "tyrant." "Let but Law lift its hand from them for a season, or let the civilizing influences of American life fail to reach them, and if the opportunity offered, we should see an explosion from this class which might leave this city in ashes and blood."[14]

The notion that the "criminal" is mentally deficient has given way to a belief in mental illness as the causal force. Testing of convicted felons, however, shows them to have the same incidence of psychiatric problems as the general public outside the walls.[15]

The labeling of a "criminal class" serves several functions. Most notably, it acts as a rationale for control and punishment of dissident and unassimilated groups. It legitimizes imprisonment of the unemployable, a surplus labor force burdening our

[13] Theodore R. Sarbin, "The Myth of the Criminal Type," **Monday Evening Papers,** No. 18, pp. 34.

[14] Charles Loring Brace, **The Dangerous Classes of New York,** as reported in Lawrence M. Friedman, "The Tolerance Level for Crime," Nation, April 6, 1974.

[15] Sarbin, p. 4.

teachers - all allies to those in cages. This handbook speaks for us as "abolitionists."

Dissatisfaction with the present prison system is widespread. Thruout the country innovative projects are being tried. While nearly all of these efforts are open to criticism, we view them hopefully, as steps toward abolition. We describe and evaluate as many of these projects as space allows, in the belief that they suggest many ways in which work can be started right now toward the abolition of prisons.

A successful movement to abolish prisons will grow thru the joining of those who have experienced the system from "inside" the walls with those on the "outside" who are willing to undertake the leap from palliative reform to abolition.

This handbook endeavors to provide a wide range of concepts, strategies, and practical education – action tools. It is of equal importance that we establish perspectives to guide us in defining caring community, while moving away from the era of mega-prisons into confrontation with many more subtle instruments of control and coercion.

You will find a list of resources and recommended readings for abolitionists, as well as a scattering of "Abolition Papers" which can be reproduced for wider distribution. PREAP will continue to issue these occasional papers as the abolition movement progresses.

This handbook was designed for training abolitionists. It is divided into sections according to concepts to be understood and strategies to be developed. There is some deliberate repetition for the purpose of reinforcement. A manual for organizing abolition workshops based on concepts in this handbook is included in the list of resources. We envision these workshops as a medium for bringing together persons who are seriously committed to the goal of diminishing and eliminating the role of prisons in our society.

The ensuing pages provide information and material to facilitate that process. It is a beginning. May our shared experience complete the succeeding chapters.

purposes. In at least one instance, the U.C.R. failed to publicize statistics showing a decrease in violent incidents.[11]

The National Moratorium on Prison Construction points out:

> If the F.B.I. wish to report annual increases in crime of ten percent, it could do so for the next 16 years before catching up to the number of actual crimes—assuming a stable population and a stable crime rate. The F.B.I. usually reports crime rises of about five percent a year… A recent victimization survey showed that victimization rates, when viewed according to sex, age, marital status, income, etc., showed little or no fluctuation… If these results should hold it would mean that crime is stable, a theory proposed by Durkheim in the last century.[12]

Most criminologists regard the U.C.R. as highly suspect and yet these misleading statistics are the basis for much public fear. What political purposes are served by increasing fear of "crime in the streets?" Public attention is focused on the myth of the criminal class, reinforcing a we/they view. Attention is diverted from serious crimes committed by persons other than "street criminals." Fear of a "crime wave" builds support for increased police repression of certain segments of society.

Myth of the criminal type

Based on the absurd assumption that a "criminal" can be identified according to behavior, appearance, and ethnic or racial origin, the myth of the criminal type has persisted a very

[11] Mitford, p. 63.

[12] National Moratorium on Prison Construction, "A Perspective on Crime and Imprisonment," November 1975, Washington, D.C., p. 6.

- Doctors getting rich off Medicare who process their patients like so many cattle.

- Manufacturers of napalm and other genocidal weapons.[8]

These crimes cannot be ignored any longer.

A third category involves crimes against humanity. Most of these behaviors are not now illegal; the criminal law focuses on individual acts. Crimes against humanity involve threats to human survival resulting from collective action. These include war, starvation, overpopulation, resource depletion and exploitation, poverty, the possibility of nuclear holocaust, environmental pollution, pestilence, to name a few.[9] If we hope to function under a system of law, whole systems, such as multinational corporations and governments,[10] must be held responsible.

Crime wave statistics & public fear

The "law and order" rhetoric of certain political leaders is gross hypocrisy. It ignores the root causes of crime and merely whips up public fear, calling for increased police power and heavier criminal sentences. These politicians rely heavily on F.B.I. crime statistics. Each year the Uniform Crime Reports (U.C.R.) indicate an increase in the number of street crimes. There are several reasons for this apparent increase, including improved technology in reporting procedures by police departments around the country. However, there is evidence that the figures are often manipulated for political

[8] Mitford, **Kind and Usual Punishment**, p. 71.

[9] Scott Christianson, "Doomsday Justice: The Use of Collective Responsibility for Dealing with Corporate Crimes against Humanity," unpublished ms., School of Criminal Justice, Albany, New York, p. 1.

[10] Altho we favor expanding the law in this respect, we do not advocate overall enlargement of the criminal law. On the contrary, we favor reducing criminal law substantially, thru decriminalization and other limitations.

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business by family background."[6] Rarely punished by imprisonment are the crimes committed by persons from the more powerful sectors of society. These include "white collar crimes" such as embezzlement, price fixing, tax evasion and consumer fraud, as well as other crimes:

> Members of university faculties have participated in illegal research on welfare clients, subjecting them to pain, providing them with placebos instead of birth control pills they had requested, and refusing them their legal allotments in order to establish scientific control groups. Other scientists have engaged in lethal experiments on prisoners, many of whom were incarcerated for far less immoral or illegal conduct… The government is not prosecuting these illegal acts. Lawless conduct in these cases is socially acceptable.[7]

We validate as serious *all* crimes of physical or psychic violence, whether labeled "white collar," "corporate" or "street."

Secondly, certain crimes committed by persons from the more powerful sectors of society are not now illegal. Persons committing these crimes include:

- Manufacturers of unsafe cars which annually cause thousands to perish in flaming highway wrecks.
- Absentee landlords who charge extortionist rents for rat-infested slum apartments.
- Madison Avenue copywriters whose job it is to manipulate the gullible into buying shoddy merchandise.

[6] **Struggle for Justice**, p. 75.

[7] Lois G. Forer, Judge, Court of Common Pleas, Philadelphia, **The Death of the Law** (New York, McKay, 1975) p. 6.

> ing forth only to the keen observer, in a number of actions which no law can punish and may even be made to support, and in which the brutal nature of the man comes out.[3]

Law in any society reflects the values, interests and demands of those who hold power. Historically, crimes in Western society have ranged from "murder and forgery to astronomy and atheism, from homosexuality and bribery to treason and bankruptcy."[4] The intent of criminal law has been to uphold a selective moral code and to maintain economic and social power.

Abolitionists recognize that altho criminal acts are committed by people of all races and socioeconomic classes, the overwhelming proportion of those arrested, tried, convicted and imprisoned are the poor, the Black, the unconventional and the young.[5] These segments of the population are imprisoned, not because they are "criminal" and because white, middle class people are "noncriminal," but because they have been labeled as targets of "law enforcement" and are systematically discriminated against by police, by courts and within prisons (just as they are by the larger economic and social structures). There is much empirical evidence to support this point, but the most convincing proof comes from the realm of daily observation, not the computer printout.

In this country today, decision makers are predominantly "white by race, upper middle by socioeconomic class, male by sex, suburban by residence … and professional, proprietary or

[3] George Ives, **A History of Penal Methods: Criminals, Witches, Lunatics** (London, Stanley Paul and Co., 1914) p. 307.

[4] Sidney Harris, "Crime Talk for Rochester Bail Fund," April 24, 1973, p.

[5] President's Commission on Law Enforcement and Administration of Justice, **The Challenge of Crime in a Free Society** (New York, Avon, 1966) pp. 148–49, 151: "The offender at the end of the road in prison is likely to be a member of the lowest social and economic groups in the country, poorly educated and perhaps unemployed.

Prolog

People in prison thrive on hope. The despair of a life sentence is made tolerable by the hope of change. Tolerable in the sense of there being some small chance of eventual freedom. But that hope of change far too often is used as a control device; people who support the changes are too easily made the system's tools for chiseling that control. As an example, the stress on improved living conditions in prisons loses sight of the reality of imprisonment. Even a *Better Homes and Gardens* bedroom, 24 hours a day, 365 days a year for 20 years, is an intolerable prison.

What is eliminated in prison is choice. What is encouraged is obedience. Bruno Bettelheim illustrated the result when he stated "a prisoner had reached the final stage of adjustment to the camp situation when he had changed his personality so as to accept as his own the values of the Gestapo … Can one imagine a greater triumph for any system than this adoption of its values and behavior by its powerless victims?" Until choice can be freely exercised and caring behavior encouraged, there can be no meaningful change and the "rehabilitation" of "criminals" will only be a system's triumph over the values and behavior of the powerless in our society.

It is not enough just to endorse a movement, support an issue or reach out among ourselves, inside and outside prisons. As abolitionists we must look to the future and examine the long term impact of their present reality. We must be creative and inquisitive. We must understand our direction and abolition must be that direction because the entire system of punishment

has failed. Abolition is not a toothache, but a people's right to erase useless waste of human life, time and money.

This handbook can serve as a beginning, but it must be perceived as just that, a beginning. None of the models can work if perceived as an answer to the problems. Diverting lives from imprisonment and punishment can only serve as links in a chain of change. We cannot afford to lose sight of the uniqueness of each individual and the needs that filter thru that uniqueness to create one human life; we must create options and equity.

—M. Sharon Smolick # AF01850

The Power of Words

In order to shape a new vision of a better future, every social change movement discovers the need to create its own language and definitions. Language is related to power. The world is differently experienced, visualized and described by the powerful and the powerless. Thus, the vocabulary coined by those who design and control the prisons is "dishonest." Dishonest because it is based on a series of false assumptions. In creating a new system, we need to consciously abandon the jargon that camouflages the reality of caging and develop honest language as we build our movement.

Prisoners perceive the use of "systems" language as denying them the reality of their experience:

> Just the very fact that they call us "inmates" that's like calling a Black a "nigger" or a Jew a "kike." It says that you are flawed; there's something wrong with you. You're an "inmate" and this is a hospital; this is going to make you well. Well, this isn't a hospital and I'm not flawed. I'm not an inmate.

Only a very small proportion of crime in the U.S. is committed by those who are convicted and imprisoned. The President's Commission on Causes and Prevention of Violence estimated that only 1.5 percent of the perpetrators of the approximately nine million crimes committed annually ends up in prison.

Who gets defined as "criminal?"

> No discussion of the Texas prison system can be meaningful without consideration of the issue of race and imprisonment … The figures show that altho Black Texans have always been overrepresented in the Texas prison system, the most dramatic increase has taken place … between 1960 and 1969 … a 32 percent increase … Black Texans are the target of higher incarceration rates because of the severe economic disadvantages that they suffer.
>
> —Richard Vogel, "Prison Reform in Social Perspective," The Texas Observer, January 31, 1975, pp. 3–5

Primary questions in developing an abolitionist perspective on crime include: What is crime? Who is the criminal?

> The true criminal, by whom I mean the man who will deliberately sacrifice others for his own advantage, is found in all ranks of society. He may never have occasion to transgress the law, and his true character may be disguised in rich apparel, show-

known to the Fort Worth Juvenile Court revealed that the delinquent acts of the college students had been as serious as those of the group prosecuted. On the average every 100 male students has committed 116 thefts before college, but few were ever in court except for traffic violations.

2. Demythologizing Our Views of Prison

Crime: Myths & realities

Many citizens take comfort in the belief that most crimes are committed by a handful of people from certain groups within society-poor people, Blacks, "hippies," "radicals," "drug users." This belief is based on the myth that there are two classes of people-the "criminals" and the rest of us. This *we* versus *they* mind-set contributes to the labeling of "criminals" as the "violent," the "lawless" the "abnormal," and even the "subhuman"—in short, a "criminal type."[1]

Altho our culture professes obedience to the law, crime is widespread thruout society. Crimes are committed by persons of every class, race and age group. Studies indicate that an "overwhelming majority of the general population has committed criminal acts, many of them extremely serious. Almost all of these crimes went unreported and the criminal escaped arrest and prosecution."[2] We are all "criminals" if the word means one who has committed an illegal act.

[1] William Ryan, **Blaming the Victim**, pp. 3–29.

[2] **Ibid.** , p. 195. Also James S. Wallerstein and Clement J. Wyle, "Our LawAbiding Law Breakers" in **Probation**, 1947, pp. 107–12: A survey of 1698 New Yorkers, slightly weighted toward the affluent classes, showed that 91 percent said they had committed one or more felonies or serious misdemeanors after the age of 16. The mean number of offenses was 18. None of the sample had been classified as criminal. Also Austin L. Porterfield, **Youth in Trouble** (Fort Worth, Leo Potishman Foundation, 1946) pp. 32–35: A comparison of 337 college students with a group of 2,047 "delinquents"

> I'm not sick. And there's nothing here being done to make me any better.
>
> —A prisoner, interviewed by Mike Wallace on "60 Minutes," CBS/TV, August 24, 1975

In this handbook, we begin to define and use honest language. But, as with many new ideas, our tongues and brains often remain captives of the old system long after our hearts are committed to the new. To disengage ourselves, we record some of the words we choose to use in this book

Abolitionist
: Person who believes that prisons have failed. Person who advocates the abolition of prisons as a long term goal. Person who seeks to build the "caring community."

Abolitionist reforms
: A reform which does not strengthen or legitimate the prevailing prison system.

Attrition model
: A social change model which gradually restrains /reduces the function of prisons in society.

Cage
: Refers to places of involuntary confinement in prisons or jails. Dishonest language calls them "rooms" or "residencies."

Caring community
: Where power and equality of all social primary goods-liberty, opportunity, income and wealth and the bases of self-respect-are institutionally structured and distributed to all members of the community and where the spirit of reconciliation prevails.

Collective criminality
: Reflects institutional assaults on whole social groups or on the public. Examples include racism, starvation, war and corporate pollution.

"Corrections"
: Use of quotes draws attention to the contradictions in this dishonest term, denoting programs, procedures or processes which punish rather than correct.

Criminal (in)justice systems
: Denotes lack of justice in a series of procedures beginning with arrest and ending with release from prison or parole, which are not part of a single coherent system.

Decarceration
: Modes of getting people out of prison. Also referred to as "depopulation."

Excarceration
: Programs or procedures that move away from the notion of imprisonment as a response to lawbreaking.

Guards
: Refers to people who are paid to keep other people caged in jails and prisons. Dishonest language calls them "correctional officers."

The moot
: An informal airing of a dispute which takes place before neighbors and kin of the disputants. It is noncoercive and allows the disputants to discuss their problems in an atmosphere free from the questions of past fact and guilt.

Political
: Refers to power and power relationships, especially power that is connected to the state. A "political choice" can refer to a course of action (or inaction) adopted when alternative courses of action are available.

Prisoner
: A person held in custody, captivity or a condition of forcible restraint. Dishonest language calls them "inmates" or "residents."

Prisons
: Places of confinement. Dishonest language calls them "correctional facilities" or "reformatories."

become collaborators with the evil system of caging. By uncovering those links, we can withdraw our complicity and begin to exercise moral and political power by refusing to cooperate with the caging process.

There are many ways to reduce our complicity with the prison system. For example, do we intervene when prison budgets are prepared, demanding that prisons be cut back and the monies placed in community alternatives? Do we present alternative budgets and organize education/action protests to help get them adopted? Do we escalate our noncooperation by withholding our taxes that pay for cages in the same spirit that antiwar activists withhold taxes that pay for war?

Abolitionists can identify other points where we are linked to the system of caging. Thru elected legislators, thru penal codes enacted into law in our names, thru our use of the systems' dishonest language and in dozens of other ways we give our daily consent to the prison system—consent which we have the power to withdraw.

It is crucial also that abolitionists learn how to research the prison power structure. To diminish the prison pyramid, we must know how the pyramid is built. Who are the rulers and their functionaries? Are they elected, appointed or volunteers? What are their qualifications? What interests do they represent? Who has the power to make decisions about which issues?

Another aspect of power is that it cannot merely be stored for emergencies. If we do not use power, it passes away. Once lost, it may not be found.

occupy lesser roles or stations. Power from this perspective is seen as relatively fixed—strong and unyielding, not changeable. People who are not in designated power roles are considered dependent upon the decisions of those who are.[38] This view promotes the concept of powerlessness and supports the assumption that people will always have very little control over their own lives. Their choices seem limited indeed: if they cannot get to the top of the pyramid themselves, and few have access, they must obey and fit into the dictates of the existing power structure.

Abolitionists reject this monolithic view of power. We do not consider ourselves dependent on the dictates of the criminal (in)justice systems. Rather, we see the system as ultimately dependent upon our support and cooperation for its existence.

This assumption about institutional power leads to the concept of individual empowerment, supporting the view that power is available to each of us for challenging and abolishing cages. We believe that citizens are the primary source of all power, including prison power. By giving or persistently withholding support of any prison policy or practice, prison power can be altered and diminished.

As Frederick Douglass came to see, the source of power did not rest in the slavemaster, but in the slaves—once they realized they could refuse to be slaves. Similarly, striking prisoners have demonstrated that the power of prisons does not lie in prison managers but in the prisoners who give their consent and cooperation in making prison life possible. When that consent and cooperation is withdrawn, prisons cannot function. Those of us outside the walls need to recognize that we give our consent and cooperation to prisons.

It is our responsibility to discover the ways and points at which our lives touch the prison structure—how and when we

[38] Gene Sharp, **The Politics of Nonviolent Action.** See Chapters I and II for further analysis and examples of these concepts.

Reconciliation
: Some instruments of reconciliation are mediation, restitution, persuasion, and other nonviolent behavior which are utilized to restore both the wrongdoer and the wronged to lives of dignity and integrity.

Segregation
: Units within a prison that punish by isolating prisoners from the rest of the imprisoned population. Also called "solitary confinement." Dishonest language calls them "adjustment" units.

Unviolent crimes
: Crimes in which there is no physical injury, often referred to as "nonviolent" crimes. To use the term "nonviolence" involves not merely an absence of overt violence but positive efforts toward reconciliation.

Victims
: All who suffer either by collective social and economic or individual acts of violence.

Nine Perspectives for Prison Abolitionists

Perspective 1: Imprisonment is morally reprehensible and indefensible and must be abolished. In an enlightened free society, prison cannot endure or it will prevail. Abolition is a long range goal; an ideal. The eradication of any oppressive system is not an easy task. But it is realizable, like the abolition of slavery or any liberation, so long as there is the will to engage in the struggle.

Perspective 2: The message of abolition requires "honest" language and new definitions. Language is related to power. We do not permit those in power to control our vocabulary. Using "system language" to call prisoners "inmates" or punishment "treatment," denies prisoners the reality of their experience and makes us captives of the old system. Our own

language and definitions empower us to define the prison realistically.

Perspective 3: Abolitionists believe reconciliation, not punishment, is a proper response to criminal acts. The present criminal (in)justice systems focus on someone to punish, caring little about the criminal's need or the victim's loss. The abolitionist response seeks to restore both the criminal and the victim to full humanity, to lives of integrity and dignity in the community. Abolitionists advocate the least amount of coercion and intervention in an individual's life and the maximum amount of care and services to all people in the society.

Perspective 4: Abolitionists work with prisoners but always remain "nonmembers" of the established prison system. Abolitionists learn how to walk the narrow line between relating to prisoners inside the system and remaining independent and "outside" that system. We resist the compelling psychological pressures to be "accepted" by people in the prison system. We are willing to risk pressing for changes that are beneficial to and desired by prisoners. In relating to those in power, we differentiate between the *personhood* of system managers (which we respect) and their *role* in perpetuating an oppressive system.

Perspective 5: Abolitionists are "allies" of prisoners rather than traditional "helpers." We have forged a new definition of what is *truly*helpful to the caged, keeping in mind both the prisoner's perspective and the requirements of abolition. New insights into old, culture-laden views of the "helping relationship" strengthen our roles as allies of prisoners.

Perspective 6: Abolitionists realize that the empowerment of prisoners and ex-prisoners is crucial to prison system change. Most people have the potential to determine their own needs in terms of survival, resources and programs. We support self-determination of prisoners and programs which place more power in the hands of those directly affected by the prison experience.

dress the system.[36] We strip it down to the reality: the cage and the key. We demystify. We ask the simple but central political question: "Who decides?" We raise the moral issue: "By what right?" We challenge the old configurations of power. We begin to change the old, begin to create the new.

> *Behind the words "failure" and "counterproductive" lies this plain fact, which ought to be confronted and accepted:* If our entire criminal justice apparatus were simply closed down, there would be no increase, and there would probably be a decrease in the amount of behavior that is now labeled "criminal."
>
> —Gilbert M. Cantor, "An End to Crime and Punishment," *The Shingle,* p. 105

Power & prison change

Power, which comes from the root word "posse" or "to be able," can be described as the ability to cause or prevent change—to be able to make decisions about the arrangements under which we live and about the events which make up the history of our period. Power should be of overriding concern to all human beings: what we are able to bring about by our own will and action regardless of societal barriers or limitations, determines the quality of our lives.[37]

We have been socialized to accept the most common view and mystique of power, reflected in the pyramid-like structures which dominate our lives: governmental, military, corporate, educational and other hierarchical institutions and bureaucracies. This learned view sees power vested in and emanating from those at the top of the pyramid, controlling those who

[37] May, pp. 99–100; Ryan, p. 242. See also, C. Wright Mills, **The Sociological Imagination** (New York, Oxford University Press, 1959) p. 40.

> feeling inside. It is anxiety that pushes and swells. It is uncertainty that smothers and stifles. The real prison is memory that comes in the night, its cry like the scream of a trumpet. It is frustration, futility, despair and indifference … It is the mute dream of men who have been paying a debt for 5, 10, or 20 years and more, and who don't know if their debt will ever be paid in full.
>
> —Frederick W. Michaelson, "The Real Prison," *Fortune News,* January, 1975

As with all social change, prison abolition produces many paradoxes. We work in the here and now: a quarter of a million prisoners suffer in cages; plans or construction are underway for the building of hundreds upon hundreds of jails and prisons while the economy declines for the poor and the powerless. To move from this shocking reality toward the vision of a just, prisonless society, requires a host of in between strategies and reforms.

These interim, or abolishing-type reforms, often may appear to contradict our long range goal of abolition, unless we see them as part of a process—a continuum process—moving toward the phasing out of the prison system. If interim strategies become ends in themselves, we will reinforce the present system, changed in detail only.

Modern reforms attempt to mask the cruelty of caging. Our goals are not diverted by handsome new facades, the language of "treatment" and prison managers who deftly gild the bars. Present reforms will not abolish the cage unless they continue to move toward the constant reduction of the function of prisons.

The abolitionist's task is clear—to prevent the system from masking its true nature. The system dresses itself up: we un-

[36] **Ibid.,** p. 208.

Perspective 7: Abolitionists view power as available to each of us for challenging and abolishing the prison system. We believe that citizens are the source of institutional power. By giving support to – or withholding support from - specific policies and practices, patterns of power can be altered.

Perspective 8: Abolitionists believe that crime is mainly a consequence of the structure of society. We devote ourselves to a community change approach. We would drastically limit the role of the criminal (in)justice systems. We advocate *public* solutions to *public* problems – greater resources and services for all people.

Perspective 9: Abolitionists believe that it is only in a caring community that corporate and individual redemption can take place. We view the dominant culture as more in need of "correction" than the prisoner. The caring communities have yet to be built.

1. Time to Begin

Voices of abolition

> It's time to stop talking about reforming prisons and to start working for their complete abolition. That means basically three things:
>
> First, admitting that prisons can't be reformed, since the very nature of prisons requires brutality and contempt for the people imprisoned.
>
> Second, recognizing that prisons are used mainly to punish poor and working class people, and forcing the courts to give equal justice to all citizens.
>
> Third, replacing prisons with a variety of alternative programs. We must protect the public from the few really dangerous people who now go to prison. But more important, we must enable all convicted persons to escape the poverty which is the root cause of the crimes the average person fears most: crimes such as robbery, burglary, mugging or rape.
>
> —Prison Research Project, The Price of Punishment, p. 57

Fervent pleas to abolish prisons collectively present powerful testimony to the necessity of bringing an end to caging:

> The spirit of the Lord is upon me because He has anointed me; He has sent me to announce good

the outer layers of the criminal (in)justice systems rather than the core. We will be relegated to acting upon surface reforms—those which legitimize or strengthen the prison system. *We define abolitionist reforms as those which do not legitimize the prevailing system, but gradually diminish its power and functions.*

This is the key to an abolitionist perspective on social change. Abolition is a long range struggle, an unending process: it is never "finished," the phasing out is *never* completed. Strategies and actions recommended in this handbook seek to gradually limit, diminish, or restrain certain forms of power wielded by the criminal (in)justice systems.

The pressure is excessive for abolitionists to immediately produce a "finished" blueprint, to solve every problem, to deal with every "criminal" before we can begin to deal with and change the systems. The first step toward abolition occurs when we break with the established prison system and at the same time face "unbuilt ground." Only by rejecting what is "old and finished" do we give the "new and unfinished" a chance to appear.[35] Pursuing an abolition *continuum strategy*, we can undertake a program of concrete, direct and immediate abolitions of portions of the system beginning with abolishing further prison/jail construction.

Sometimes our recommended strategies and actions utilize conventional judicial and legislative processes. Abolitionists are not apprehensive about working within the system, so long as it permits us to change and limit the system. When systemic options prove inadequate, abolitionists strive for newer and more creative approaches—building alternatives to existing structures and processes.

> The real prison is loneliness that sinks its teeth into the souls of men and emptiness that leaves a sick

[35] Thomas Mathieson, **The Politics of Abolition**, pp. 24–25.

—K. Kasirika and M. Muntu, "Prison or Slavery?" *The Outlaw*. December 1971

> Prison is central to the Black experience because it is the culmination of many other repressive and discriminatory forces in society. The process begins with the white cop on the beat shaking down and cursing out the Black kid, and it continues thru segregated and spirit-blighting schools, thru the juvenile court, thru meaningless and dead-end jobs, demeaning welfare policies, the adult court, the probation officer … and in all of these, except for a few big cities, the administrators are white and the subjects Black or Latin.

—Herman Schwartz, "Prisoners Rights: Some Hopes and Realities," A Program for Prison Reform, p. 49

What determines the survival and expansion of prisons is their success in controlling *particular segments* of the population. Prisons, the end repositories of the criminal (in)justice systems, maintain the concept of a "criminal class" selected with discretion. Such discretionary power can be wielded indiscriminately by functionaries such as police, district attorneys, judges and the parole apparatus.[34]

Functionaries of the criminal (in)justice systems *represent the powerful and influential.* Their use of vast discretionary power distorts the principles of justice. Recognizing and identifying the locus and misuse of such power is central to an abolitionist approach to prison change.

If we are unclear about power and how it operates, we will be impeded in our ability to properly analyze specific prison situations. As a result we will find ourselves grappling with only

[34] **Struggle for Justice,** p. 124.

> news to the poor, to proclaim release for prisoners and recovery of sight for the blind; to let the broken victims go free, to proclaim the year of the Lord's favor.

—Jesus, quoted in Luke 4, 16–30

That Jesus called for the abolition of prison, comes as no surprise. However, during the past century, there have been constant and unexpected calls for prison abolition. Here we present a few from the wide spectrum of abolitionist voices.

> Judge Carter, of Ohio, avowed himself a radical on prison discipline. He favored the abolishment of prisons, and the use of greater efforts for the prevention of crime.
>
> He believed they would come to that point yet … Any system of imprisonment or punishment was degradation, and could not reform a man. He would abolish all prison walls, and release all confined within them…

—Minutes of the 1870 Congress of the American Prison Association/American Correctional Association

> There ought to be no jails; and if it were not for the fact that the people on the outside are so grasping and heartless in their dealings with the people on the inside, there would be no such institutions as jails … The only way in the world to abolish crime and criminals is to abolish the big ones and the little ones together. Make fair conditions of life. Give men a chance to live … Nobody would steal if he could get something of his own some easier way. Nobody will commit burglary when

he has a house full. The only way to cure these conditions is by equality. There should be no jails. They do not accomplish what they pretend to accomplish. If you would wipe them out there would be no more criminals than now. They terrorize nobody. They are a blot upon any civilization, and a jail is an evidence of the lack of charity of the people on the outside who make the jails and fill them with the victims of their greed.

—Clarence Darrow, An Address to the Prisoners in the Cook County Jail, Chicago, Illinois-1902

The proposal toward which the book points… is…nothing less than that penal imprisonment for crime be abolished… The author can hardly escape the apprehension that the mass of the public will dismiss this as preposterous and impossible. And yet nothing is more certain in my opinion than that penal imprisonment for crime must cease, and if it be not abolished by statute, it will be by force.

—Julian Hawthorne, *The Subterranean Brotherhood* (New York, McBride, Nast, 1914) pp. xii-xiv

We must destroy the prison, root and branch. That will not solve our problem, but it will be a good beginning… Let us substitute something. Almost anything will be an improvement. It cannot be worse. It cannot be more brutal and more useless.

—Frank Tannenbaum, *Crime and the Community* (New York, Ginn, 1938)

The American prison system makes no sense. Prisons have failed as deterrents to crime. They

before. And, as it always has, once freed, it will offer us a world of inconceivable wonder.

—The Action Committee, Walpole Prison, NEPA News, April/May 1975

Abolition strategies

We must keep in mind that with the exception of capital punishment, prison is the ultimate power the democratic state exercises over a citizen. That prisons fail miserably at their professed objectives-rehabilitation, deterrence and protection—is immaterial to their survival. These failings, along with cruel, dehumanizing prison practices, have constantly been exposed by rebelling prisoners, by shocked reformers, by governmental commissions and academicians. But exposes alone do not determine the fate of prisons.

> It would be interesting to see what percentage of Black men and women would be sent to prison if they were not subjected to racism and discrimination, were granted a relevant education and an equal opportunity to prosper as other American citizens, and were spared the psychological sabotage that has been directed upon their minds.
>
> However, Black and poor people are also exploited as a class, and forced to work for slave wages. They are subjected to a luxurious society that advocates the acquiring of wealth as the means to happiness and prosperity; a society that incessantly displays a multitude of riches, yet denies them the means to acquire same; a society that makes every action a crime and yet only Black and poor people subjected to prosecution.

with offender and family in such a way as to draw the whole disrupted community together. Often it is far from being easy. It would be even harder here in our complex society, but only as we work for that goal can we hope to heal the wounds that are both causes and effects of crime.

—L. Harold DeWolf, theologian in "Crime, Justice and the Christian," *ESA Forum—7*

...and this is what works, and what has always worked, among people who care for each other, and who give each other offense. The offense is viewed as a joint responsibility. The offense is taken as a symptom that something is drastically wrong—and that something decisive is needed to correct it ... restitution and mutual service as instruments of reconciliation—these are the ways in which offenses are dealt with among the kind of conscience which demands that they treat others as they themselves would wish to be treated ... the change called for is the transformation of a criminal justice system based on retaliation and disablement to a system based on reconciliation thru mutual restitution.

—Richard Korn, criminologist in "Of Crime, Criminal Justice and Corrections," University of San Francisco Law Review, October 1971, pp. 44–74

We are not condemned to live in crime-fear, oppression, constriction, depression, joblessness, sickness. We have the power to create, and we must free that power as it has never been freed

48 (1958).

have failed as rehabilitative institutions. What then shall we do? Let us face it! Prisons should be abolished.

The prison cannot be reformed. It rests upon false premises. Nothing can improve it. It will never be anything but a graveyard of good intentions. Prison is not just the enemy of the prisoner. It is the enemy of society.

This behemoth, this monster error, has nullified every good work. It must be done away with.

—John Bartlow Martin, *Break Down the Walls* (New York, Ballantine, 1954) p. 266

The prison, as now tolerated, is a constant threat to everyone's security. An anachronistic relic of medieval concepts of crime and punishment, it not only does not cure the crime problem; it perpetuates and multiplies it. We profess to rely upon the prison for our safety; yet it is directly responsible for much of the damage that society suffers at the hands of offenders. On the basis of my own experience, I am convinced that prisons must be abolished.

—Ralph Banay, formerly in charge of the psychiatric clinic at Sing Sing Prison, "Should Prisons be Abolished?" *New York Times Magazine*, January 30, 1955

Elsewhere it has been shown that prisons provide no real safety for society and no real reform of criminals. Most people realize this, at least insofar as they agree that crime is generally caused by social factors and in the long run can be dealt with only by changes in the social and economic

spheres. Why the logical next step of abolishing the prison system is not made seems to be because, as with other aspects of our society, it is easier to fall back on a distant and impersonal system that already exists than to try to create new alternatives.

—Gunnar Knutson, ex-prisoner, Behind Bars
(Chicago, Cadre, December 1970)

One of the most difficult and one of the most ignored of our social problems is the problem of prisons—a problem which might be ameliorated thru drastic prison reform, but which can be solved only thru the abolition of prisons.

The elimination of imprisonment may at first seem like a radical step, but alternatives to imprisonment are already widespread – fines and probation are often used, and traffic law violators are sometimes sentenced to attend classes in driver education. The advocacy of prison abolition implies simply that other courses of action, including, sometimes, doing nothing at all, are preferable to imprisonment.

—David S. Greenberg, The Problem of Prisons

Today's prison system should be abolished because it is a system predesigned and constructed to warehouse the people of undeveloped and lower economical communities. Under the existing social order men and women are sent to prison for labor and further economical gain by the state. Where else can you get a full day's work for two to sixteen cents an hour, and these hours become an indeterminate period of years. This is slave labor in 20th century America …

Restitution offers the broadest range of possibilities on which to base a new system of justice. Restitution as we define it requires the wrongdoer to restore the victim to his/her situation before the criminal act occurred. But what is referred to as "creative restitution" can go far beyond that temporary response. It is described as a life-long voluntary task that requires "a situation be left better than before the offense was committed … beyond what any law or court requires, beyond what friends and family expect, beyond what a victim asks, beyond what conscience or super-ego demands … only a 'second mile' is restitution in its broadest meaning of a complete restoration of good will and harmony."[33]

Do the conditions for a new reconciliatory system exist in our fragmented, technological and competitive society? The potential is there, the yearning for true community is consistent with ideals common to our culture. The Christian principle of loving kindness toward every neighbor, including the wrongdoer; the Jewish principle of *chesed* or steadfast love binding the total community; the Golden Rule of universal benevolence—all are cherished ethics. But they are more than abstract ideals to which abolitionists aspire. They are ideals to be made operational in our programs and strategies to abolish prisons.

Theologian, criminologist and prisoner alike see the healing and restoration of community as the way to reconciliation between the wrongdoer and the wronged:

> The wheels of criminal justice should turn in the effort to restore the wholeness of the community. In many so-called primitive societies, especially in Africa, that is the goal in practice. A case is not completed, in many an African village or tribal council, until victim and family are reconciled

[33] Albert Eglash, "Creative Restitution," **Journal of Criminal Law,** Vol.

The availability of remedies for victims of crime is central to reducing the victims' need for vengeance and retribution, which grows hand in hand with frustration in failing to find relief.[30]

Reconciliation rather than punishment

The present criminal (in)justice systems care little about the wrongdoer's need or the victim's loss. The abolitionist response seeks to restore both the lawbreaker and the victim to full humanity, to lives of dignity and integrity in a caring community.

The community we hope to build is one that assures us our basic needs and inwardly binds us in responsibility for each other. The commission of crimes by individuals from all strata of society, and the almost total disregard for the victims of crime is a reflection of the breakdown of community—the lack of rootedness in the *idea* of community.[31]

Abolishing the punishment of prison is a fundamental step in abolishing the present punitive criminal (in)justice systems.[32] Helping both wrongdoer and wronged to resolve their differences thru mediation, restitution and other reconciliatory practices, are alternatives we can build into the new system of justice.

[30] Martinson in Ezorsky, ed., p. 323. "I suggest it should be the aim of public policy to protect the public and to inhibit vengefulness by compensating the victim for the failure of the state to provide protection. Revenge wells up when the victim feels the state abandoned him; he has no place to turn for help. Then 'fear of crime' is magnified out of all proportion to risk. Folk-justice is vengeful and subject to intolerable injustice, because the only gain is the momentary alleviation of feelings."

[31] See David Janzen, "Jesus and the Offender," **Liberty to the Captives,** October 1, 1973.

[32] See Gilbert M. Cantor, "An End to Crime and Punishment," **The Shingle,** May 1976.

Our only hope lies in the people's endeavor to hear our protest and support our cause. Building more and better prisons is not the solution – build a thousand prisons, arrest and lock up tens of thousands of people; all will be to no avail. This will not arrest poverty, oppression, and the other ills of this unjust social order ... We need people who will stand up and speak out when it is a matter of right or wrong, of justice or injustice, of struggling or not struggling to help correct and remove conditions affecting the people, all I ask is that the people support us, I will break my back in helping bring peace and justice upon the face of the earth.

I've seen too much injustice to remain mute or still. The struggle against injustice cannot be muffled by prison walls.

—A letter from prison by John Cluchette, printed in Angela Davis, *If They Come in the Morning* (New York, Signet, 1971)

After a single night at the Nevada State Prison, for example, 23 judges from all over the U.S. emerged "appalled at the homosexuality," shaken by the inmates' "soul-shattering bitterness" and upset by "men raving, screaming and pounding on the walls." Kansas Judge E. Newton Vickers summed up, "I felt like an animal in a cage. Ten years in there must be like 100 or maybe 200." Vickers urged Nevada to "send two bulldozers out there and tear the damn thing to the ground."

—"The Shame of Prisons," *Time*, January 18, 1971

It is time to begin to dismantle the prison system—lock, stock and bar. It is beyond renovation. The only way to save it is to destroy it—or, most of it.

No objective examination of the best prison system can avoid the conclusion that it is primitive, coercive, and dehumanizing. No rational, let alone scientific, appraisal of treatment or rehabilitation programs within the prison setting can assess them as anything but a total sham. The best efforts of correctional personnel are doomed to frustration and failure, whether measured by recidivism rates or any other reasonable standards of "progress."

—Emanuel Margolis, senior editor, *Connecticut Bar Journal*, Vol. 46,3(1972)

I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards, and probably less rational.

—Federal Judge James Doyle, Western District of Wisconsin, *Morales v. Schmidt* 340 Federal Supplement (W.D. Wis. 1972) pp. 544,548–49

Forget about reform; it's time to talk about abolishing jails and prisons in American society.

The killing of George Jackson and the massacre at Attica have turned a real but hesitant concern about prisons into a sizable movement…

Still—abolition? Where do you put the prisoners? The "criminals?" What's the alternative?

First, having *no alternative at all*would create less crime than the present criminal training centers do.

to victims' (or lawbreakers') needs. The victim's physical or material loss or damage, personal degradation, suffering and grief are hardly acknowledged as the systems concentrate on revenge against the lawbreaker. Punishment of the lawbreaker becomes the main business of the state.

In almost all cases, damage done to the victim is regarded as a private matter, to be dealt with by the victim alone. Draining the lawbreakers' financial resources thru legal expenses and fines or removing them from the community thru incarceration, prevents them from making direct restitution to the victims. Thus one important remedial option for victims and wrongdoers is eliminated. In lieu of restitution to victims, the development of state victim compensation plans is crucial to the victims' well-being, especially that majority who are poor.[29]

An entire range of victim services can be made available to the victims of crime, preferably by peers. They include listening and responding to victims' emergency needs; arranging for restitution by the victimizer; securing compensation from the state; providing personal, psychological and legal support and re-education and training to avoid further victimization.

[29] Schafer, **The Victim and His Criminal,** p. 112. Restitution in criminal/ victim relationships concerns restoration by the wrongdoer of the victim's position and rights that were damaged or destroyed during the criminal attack. It is an indication of the responsibility of the lawbreaker. **Compensation**, on the other hand, is an indication of the responsibility of society which compensates the victim for the damage or injury caused by the criminal attack.

Historically, restitution was a living practice. The change from vengeful retaliation to restitution and compensation was part of a natural historical process, to end tribal and personal vendettas for injuries committed. Restitution offered an alternative which was in many ways equally satisfying to the victim or the victim's family and served as a requital of the injury. The influence of state power over restitution was gradually increased. As the state grew more powerful, it claimed a larger and larger share from the compensation given to the victim.

man or woman in the prison cell responds with, 'I am a victim. What about me?' "[27]

Collective victims of institutional racism and sexism, of familial violence, of corporate indifference, of the lawlessness of prisons and other total institutions all cry out, "What about me?" What aid and relief is there for these victims of violent acts not presently considered illegal?

The long range solutions are clear. Relief for victims of social structures and practices will occur as we move toward a just society, casting out inequities, racism, sexism, violence and lawlessness and inhumane institutional practices. In the interim, we must hear victims' grievances and respond to their emergency needs. And like all members of the community, victims must be empowered to act upon their repressive situations—to change them by nonviolently countering the forces that victimize them.

Victims of individual criminal behavior are forgotten people, seldom collectively identified as a group with immediate and crucial needs. Rarely are they at the center of public policy,[28] even tho protection of the society is a responsibility of the state. Ironically, most victims of violent crimes are from economically deprived or minority groups; thus, they are twice victimized.

Public attention fostered by the media is riveted on punishment of selected lawbreakers, ignoring the plight of victims. The criminal (in)justice systems shift the focus away from the victim's needs to punishment of the lawbreaker. Millions of taxpayers' dollars are wasted in punishing and incarcerating the poor and minorities, while little is spent in responding

[27] "What About the Victims?" **Fortune News**, March 1975, p. 2.

[28] Robert Martinson, **"The Paradox of Prison Reform"** in Gertrude Ezorsky, ed., **Philosophical Perspectives on Punishment,** p. 323. Martinson advocates shifting attention from the offender (and the state) to the public and especially to the victim, placing the victim at the center of public policy.

Second, the only full alternative is building the kind of society that does not need prisons: A decent redistribution of power and income so as to put out the hidden fire of burning envy that now flames up in crimes of property—both burglary by the poor and embezzlement by the affluent. And a decent sense of community that can support, reintegrate and truly rehabilitate those who suddenly become filled with fury or despair, and that can face them not as objects—"criminals"—but as people who have committed illegal acts, as have almost all of us.

—Arthur Waskow, resident fellow, Institute for Policy Studies, *Saturday Review*, January 8, 1972

No longer am I interested in or concerned with prison reform. Neither am I interested in or concerned with making life more bearable inside prisons or protecting the legal rights of those behind the walls. I am interested only in the eradication of prisons.

Should this seem to be the attitude of a "hardcore," "bitter," "incorrigible" radical, the credit must go to those who lock my barred door each night.

—James W. Clothey, Jr., Vermont Prisoner Solidarity Committee, *NEPA News*, January 1974

We need to create an atmosphere in which abolition can take place. It will require a firm alliance between those groups, individuals and organizations which understand that this will not happen overnight. Just as the slavery abolitionist movement extended over decades, we must be prepared to struggle at length. But we must start, we must

fuel the fires, we must make the alliance that will gain us victory.

—John Boone, former Commissioner of Corrections, Massachusetts, *Fortune News*, May 1976

We are working for a society in which the worth and the preservation of dignity of all people is of the first priority. Prisons are a major obstacle to the realization of such a society. NEPA stands for the abolition of prisons by all means possible.

We believe that the primary task of the prisoner movement at this time is to organize and educate in the communities, work places and prisons to develop the mass support needed to abolish the prison system.

—Resolution passed by the Ex-Con Caucus, 2nd Annual Northeast Prisoners' Association Meeting, Franconia, New Hampshire, NEPA News, April/May 1975

Scores of groups focus on changing portions of the criminal (in)justice systems but few links exist between our efforts. We have no common ideology, language or identification of goals, no mechanism for a coalition. Yet the basis for an alliance is present.

Prison abolitionists arise from a living tradition of movements for social justice. Most especially is their connection with the 19th-century struggle against slavery. Imprisonment is a form of slavery—continually used by those who hold power for their own ends. And just as superficial reforms could not alter the cruelty of the slave system, so with its modern equivalent—the prison system. The oppressive situation of prisoners can only be relieved by abolishing the cage and, with it, the notion of punishment.

Concern for all victims

Abolitionists define victims as all those who have suffered either by collective or individual acts of violence. Victims usually feel powerless to alter their situations since few avenues for relief are available.[25]

Without relief or opportunities for constructive action, feelings of powerlessness can easily turn to rage and violence.[26] Thus, out of frustration, victims often become victimizers themselves, setting off new cycles of punishment and violence. The need to "get even" is satisfied by engaging in vengeful behavior toward the oppressor or a symbol of the oppressor. If no other remedies are apparent, victims of collective social and economic oppression strike back at society and its members. Victims of individual criminal acts strike back by demanding long prison terms or sometimes death for the lawbreaker. In order to break this cycle of violence and vengeance, as well as bring needed relief, all victims must have access to services, resources and redress of grievances.

The voices of victims of violent and repressive societal structures and practices can be heard thru prisoners' perceptions of themselves as "victims of a society which never gave them a chance; victims of a criminal justice system which selects a few to be incarcerated; and victims of a prison system which breeds a bitterness and self-contempt. It is understandable, then," they say, "when a public cries out 'What about the victim?' that the

July 21, 1976. See also "Attica prison five years later: Reforms spotty, despite funds hike," Albany Knickerbocker News, September 14, 1976.

[25] For history of victims, see Stephen Schafer, **Compensation and Restitution to Victims of Crime.** Also Schafer's **The Victim and His Criminal.**

[26] Hans Toch, **Violent Men: An Inquiry Into the Psychology of Violence** (Chicago, Aldine, 1969) p. 220. "Violence feeds on low self-esteem and selfdoubt, and prison unmans and dehumanizes; violence rests on exploitation and exploitative ness, and prison is a power-centered jungle."

those who are targets for imprisonment as well as society in general.

Thus the questions "Who decides?" and "Who benefits?" are most relevant. They must be raised repeatedly. If the just equalization of power, resources, income and self-respect could rehabilitate the community, who decides otherwise? As abolitionists seek answers by engaging in power structure research, strategies for change will emerge.

True community requires the exercise of power as a condition for self-esteem and full humanity. The need for potency, which is another way of phrasing the struggle for self-esteem, is common to all of us. "We see its positive form in the rebellion at Attica, where the leader of the revolting prison inmates proclaimed: 'We don't want to be treated any longer as statistics, as numbers ... We want to be treated as human beings, we *will* be treated as human beings.'"[22]

At Attica the response by those in power to requests for humane treatment was raw force—resulting in a massacre.[23] At the time of the 1971 rebellion, Black and Spanish-speaking prisoners made up 70 percent of the prison population; 50 percent of the prison population received 25 cents a day for their labors; all were fed on a daily budget of 65 cents each in an atmosphere of daily degradation and humiliation charged with racism. And little has changed since 1971.[24]

Prison is a microcosm of society. The abuse of selected and particular segments of the population labeled "criminal" is rampant on both sides of the walls. The struggle for justice should be the primary agenda for all concerned Americans.

[22] Rollo May, **Power and Innocence** (New York, Norton, 1972) p. 32.

[23] See **Attica: The Official Report of the New York Commission on Attica** (New York, Bantam, 1972).

[24] "Attica is Termed as Bad as Before 1971 Rebellion," **New York Times**,

Advocates of swift & massive change

The most common cry for abolition is one using such slogans as "Tear Down the Walls" and "Free All Prisoners." These anguished demands have been issued by a wide range of persons including judges, physicians, prisoners, ex-prisoners and anarchists, to name a few.

Very often this graphic message is accompanied by calls for community alternatives, or if none can be satisfactorily developed—no alternatives at all. Doing nothing is seen as a better response than imprisonment.

The demand for immediate abolition of prisons speaks to the urgency of freeing prisoners from oppressive situations. It admonishes us to act swiftly to end imprisonment. Such demands also serve to raise public consciousness to the need for fundamental change.

Mere repetition of slogans, on the other hand, does not suggest a process for crumbling those walls, and it may even play into public fear. The myth that prison protects is widespread. To a public immersed in the myths of prison protection, the image of prison walls suddenly being torn down can create unnecessary fear and a backlash that ultimately may inhibit change.

> For years, I have condemned the prisons of America. I have always said that the prison system as it exists in America today, should be abolished. As I have grown older, I have seen no reason to change that view.
>
> —Judge Bruce McM. Wright, address to prisoners at Green Haven Prison, New York, August 17, 1975

> If the choice were between prisons as they now are and no prisons at all, we would promptly choose

> the latter. We are convinced that it would be far better to tear down all jails now than to perpetuate the inhumanity and horror being carried on in society's name behind prison walls. Prisons as they exist are more of a burden and disgrace to our society than they are a protection or a solution to the problem of crime.
>
> —Struggle for Justice, p. 23

Nevertheless, it is important to observe that the closest anyone has come to abolishing an existing prison system, involved a relatively abrupt strategy. The almost total abolition of juvenile prisons in Massachusetts occurred because of a rare combination of personal creativity and the power invested in that person by the legislature. Dr. Jerry Miller, Director of the Department of Youth Services, in three years emptied all but one juvenile prison in Massachusetts by "transferring" the young prisoners into a variety of community alternative living situations. Miller believes "swift and massive change" is the only sure way to phase out juvenile institutions: "Slow-phased winding down can mean no winding down," and often insures they'll "wind up" again.[1]

Individual prison closings have been cited by some prison changers as examples of "Tearing Down the Walls." This is usually not the case. For instance, Vermont's Windsor Prison was shut in August 1975, leaving Vermont the only state other than Alaska without a maximum security institution. However, dispersement of 22 prisoners into "secure" federal institutions in other states and the balance of the population into smaller community prisons merely re-distributed prisoners—it didn't abolish caging. The walls still stand.

[1] See Videotape of Jerry Miller at JSAC (Joint Strategy and Action Committee) meeting, "Stop Prison Construction," Northern California, February 16, 1974, American Friends Service Committee Videotape Section, Philadel-

long range goals of those who would see penal sanctions drastically reduced and eliminated. But the new community will not miraculously appear. Its creation rests upon the participation and empowerment of all its members.

The focus on power *is* the major issue. The only meaningful way to change the prevailing American system of liberty for the free, justice for some, and inequality for all, is thru shifts in the distribution of power.[18] Any ghetto dweller can link powerlessness to poverty—it is caused by lack of money. They are poor because they have first, insufficient income—and second, no access to methods of increasing that income – that is, no power.[19]

Who decides? Who benefits?

If being poor is having no money, "poverty in the U.S. is almost a picayune problem. A redistribution of about $15 billion a year (less than two percent of the Gross National Product) would bring every poor person above the present poverty line."[20] The amount involved is less than half the U.S. annual expenditure on the Vietnam War.

Yet decisions are now being made by the powerful to spend at least $20 billion on the construction of new prisons to house the powerless. Cages which cost from $24,000 to $50,000 each to construct[21] will provide space behind the walls for many who have never had decent housing in the community. In New York, it will cost an average of $13,000 a year to keep each prisoner on the cage side of the wall. A willingness to commit these resources to the community would improve the lives of

tage of the least favored."

[18] William Ryan, **Blaming the Victim,** p. 240.

[19] **Ibid,** p. 134.

[20] **Ibid.,** pp. 117–18.

[21] **See footnote 8.**

Justice is difficult to define. Traditionally we think of it in terms of fair dealing and the rescue of the exploited, associating it with freedom, social progress and democracy. But when we speak of justice as being "meted out" as a retributive response, the term is used not as something good, helpful or valuable, but as something to hurt and punish.[15]

For the abolitionist, justice is not simply a collection of principles or criteria, but the active process of preventing or repairing *in*justice.[16]

If there were but one word to describe the necessary ingredient for acquiring a more just economic and social order, that word would be "empowerment."

> ...People must be treated as complete human beings; they must be afforded the freedom of the whole range of society, in all its phases and aspects. People must be asked to think free and reach for everything they want to be and be given their social share of the means to achieve it. This requires community participation, a new socialization which is mutually supporting.
>
> —The Action Committee of Walpole Prison,
> NEPA News, April/May 1975

The creation of new, caring communities where power and equality of all social primary goods[17] will be institutionally structured and distributed to every member is implicit in the

[15] Karl Menninger, **The Crime of Punishment,** p. 11.

[16] Lenore Cahn, ed., **Confronting Injustice: The Edmond Calm Reader** (Boston, Little Brown, 1966) pp. 385–97. See also for concept of citizens as "consumers of justice."

[17] John Rawls, **A Theory of Justice** (Massachusetts, Belknap, 1971) pp. 302–303. Social primary goods are defined as "liberty and opportunity, income and wealth, and the basis of self respect... are to be distributed equally unless an unequal distribution of any or all of these goods is to the advan-

Constitutionalists

The most hopeful constitutionalists support the theory that prison walls will eventually collapse under the weight of mounting legal pressure. They recommend a dual strategy: pressures by prisoners "via constitutional case law" from within, and social and legal pressure from reformists, legal advocates and abolitionists, from without.[2]

Many prison litigation advocates describe prisons as "lawless agencies," almost totally non-responsive to due process of law – or law itself.[3] Because the constitution *should* follow a person into prison, the prisoners' legal struggle is one for rights – not privileges which can be manipulated or withdrawn as a control device. Prisons lack substantive and procedural safeguards to redress grievances. Since rights cannot be guaranteed, prisons *per se* are profoundly unconstitutional and illegal.[4]

These legal advocates are optimistic about the courts' ability to demand that prison administrators enforce rights for prisoners. They see the system gradually rendered impotent by a combination of forces.

Others, tho constantly loyal and active in the movement for prisoners' constitutional rights, are less optimistic. They caution against exaggerating the possibilities of litigation, both in

phia.

[2] Eugene V. Natale and Cecelia F. Rosenberg, "And the Walls Come Tumbling Down: An Analysis of Social and Legal Pressures Bearing on the American Prison System," **New York Law Forum**, Vol. 19 (1974), p. 611.

[3] David Greenberg and Fay Stender, "The Prison as a Lawless Agency," **Buffalo Law Review**, Vol. 21 (1972), pp. 799–838.

[4] Max Stern, "Cruel and Usual Punishment: A Constitutional Lawyer Argues Prisons are Illegal," **Boston Alter Dark**, Special Supplement, **Massachusetts-Doin' Time.** "Prison life is profoundly unconstitutional. What goes on inside Massachusetts' state and county institutions not only transgresses the Bill of Rights, but, indeed, is the very antithesis of the rule of law."

impact and implementation.[5] They remind reformers and abolitionists of the enormous problems which lie in translating a court decision into reality.

Whether or not we are skeptical of constitutional approaches, we can appreciate them as one of the most promising components of a movement to abolish prisons. Four substantial forces for change are at work in a dynamic pattern:

- **Prisoners.** The movement for constitutional rights has been and is prisoner led. Beginning in the 1960's, sparked by the Black Muslims' struggle for religious rights, thru 1970 when an entire state penitentiary system was successfully challenged on a constitutional level,[6] prisoners moved the struggle from the specific to the general. Encouraged by their occasional successes, prisoners have plunged wholeheartedly into the study and practice of law. "Jailhouse lawyers" have won significant victories, and, as a result, are frequently subjected to additional punishments by prison managers. In San Quentin alone, the number of prisoner – prepared writs increased from about 50 in 1960 to more than 5,000 in 1970.[7]

Politically aware prisoners see the use of legal tools as part of an effective strategy to acquire power over their own lives. Other prisoners view the courts as the single hope for relief from prison oppression. Whatever the motivation, a legally empowered prisoner population is crucial to any effective prison strategy.

[5] Fred Cohen, "The Discovery of Prison Reform," **Buffalo Law Review,** Vol. 21 (1972), p. 887.

[6] **Holt v. Sarver,** 309 Federal Supplement 362, 365 (E.D. Ark. 1970)-involved the first judicial attack on an entire system and demonstrated the value of a class action as opposed to an individual lawsuit.

[7] Jessica Mitford, **Kind and Usual Punishment,** p. 255.

rooted in the most humane, useful and realistic points of view. Most changes needed to reduce crime and eliminate prisons lie outside the criminal (in)justice systems—in the cultural values and institutions of society.[13] These causal factors necessitate broader systemic analysis. For the purposes of this handbook, however, we limit our focus to the connections between social, economic and cultural causes of crime and the use of prisons as a social control mechanism.

On the basis of our analysis, we have formulated a series of practical abolitionist actions. These strategies rest on an ideology—a set of beliefs and values which serve as reference points for our actions.

We advocate a three-pronged abolitionist ideology: (1) Economic and social justice for all, (2) concern for all victims and (3) rather than punishment, reconciliation in a caring community.

Economic & social justice

Persons in daily touch with society's victims, have more clarity about injustice in our society than they do a vision of what a just system might entail. Most of our energies and responses have been directed toward bringing occasional relief to the victimized—issue by issue, cruelty by cruelty—on both sides of the wall. We cannot profess an innocence of the root causes that give rise to *collective* injustices of racism, poverty, sexism, ageism and repression which flourish in our society while, at the same time, we continue to relieve individual sufferings. Unequal distribution of power and wealth does not occur in a vacuum. It results from a series of economic, social and cultural arrangements which benefit only a few.[14]

[14] See Richard K. Taylor, **Economics and the Gospel** (Philadelphia, United Church Press, 1973). Also Susanne Gowan, George Lakey, et al., Moving Toward a New Society (Philadelphia, New Society Press, 1976).

- **Advocacy lawyers.** In the late 1960's, individual lawyers, usually acting on their own, took up the cause of prison reform. Many were civil rights lawyers who followed their clients into jail. Others represented draft resisters and Black radicals. They have been crucial to the constitutional gains of prisoners. Their impact broadened the questions to be litigated and developed a substantial field of prisoner advocacy law. A wealth of supportive documents, literature, reportage and programs are valuable legacies of their commitment to prison change.

- **Progressive judges.** A few judges have played important roles. They learned of inhumane physical punishments and other civil rights violations from spectacular briefs filed by prisoners and legal advocates. Growing more sophisticated about incarceration and citing such sociologists as Erving Goffman and Gresham Sykes, they began to rule on the constitutional issue of cruel and unusual punishment.

- **The Prison Change Movement.** Prisoner support groups, including the ex-prisoner movement, have helped open prisons to the outside, permitting important liaisons with media and civil libertarians. Issues of due process and other legal rights, appeal to both reformists and abolitionists. Some reformists support prisoners' struggles to gain the same rights as other citizens merely to make prisons more lawful and rehabilitative settings. In contrast, abolitionist proponents of litigation are convinced that implementing prisoners' rights will in the long range, upset the balance of power within the institutions, making prisons, as we know them, inoperative.

Tho the above strategies cover a wide range of concepts and tactics, most prison changers are bound together by at least two commonly held beliefs:

- Few people believe all prisons should be abolished simultaneously or that all persons should always be free of social control. The majority of prison changers believe that prisons can be eliminated for all but a very few who require restraint or limited movement for periods of time. Clarity is needed on the process and criteria for restraint and on the nature of the responses and settings most appropriate for that very small group.

- There is also wide agreement on declaring a moratorium on prison/jail construction and the necessity for building community resources and services as alternatives to prison. Criteria for community alternatives are important to determine, since they could be masks for prison in all but name. Without close scrutiny we could find ourselves supporting a new round of damaging controls, inflicted upon an even greater number of citizens.

Developing an ideology

In reversing the prison response to crime and social inequities, we need to be confident that our abolitionist advocacy is

[13] **Struggle for Justice, A Report on Crime and Punishment in America,** prepared by a working party of the American Friends Service Committee. We frequently cite this book. Hereafter, it will be referred to as **Struggle for Justice**. This quote is from pp. 12–13. " … the impossibility of achieving more than a superficial reformation of our criminal justice system without a radical change in our values and a drastic restructuring of our social and economic institutions." Also **Toward a New Corrections Policy: Two Declarations of Principles**, Statement of Ex-Prisoners Advisory Group, p. 18. "If we are advocating the advancement of corrections, we must also become advocates for social change in the larger society."

Advocates of moratorium

In response to an unprecedented wave of prison/jail construction across the country,[8] the prestigious National Council on Crime and Delinquency (NCCD) issued a policy statement in April 1972, calling for a halt to construction of all prisons, jails, juvenile training schools and detention homes, pending maximum utilization of non-institutional alternatives to incarceration.[9]

In January 1973, the National Advisory Commission on Criminal Justice Standards and Goals[10] recommended a ten-year moratorium on prison construction "unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible." They also recommend the phasing out of mega-institutions at the earliest possible time.

William Nagel, Director of the American Foundation and a former prison administrator, has repeatedly called for a moratorium on building new prisons, jails and training schools.[11]

Organizations representing ex-prisoner groups, religious denominations, prison reformers, abolitionists and others have added their voices to the swell for moratorium. The National Moratorium on Prison Construction, established in Washington in February 1975, provides staff, data and funding for a national impetus to halt federal and state construction.

[8] See materials developed by the National Moratorium on Prison Construction, Washington, D.C. for statistics on projected jail and prison construction nationwide. In "A Perspective on Crime and Imprisonment," November 1975, the cost of prison construction during next period of planning is an estimated $20 billion.

[9] **A Halt to Institutional Construction in Favor of Community Treatment** (pamphlet), National Council on Crime and Delinquency, New Jersey, June 1974.

[10] **Corrections,** Report of the National Advisory Commission on Criminal Justice Standards and Goals, p. 597.

[11] William Nagel, **The New Red Barn: A Critical Look at the Modern American Prison, p. 148.**

Peace advocates

The peace movements' strategies and tactics are often the same as abolitionists; so are the individuals and institutions opposing them. But compared to antiwar activists, abolitionists are fledglings in challenging the criminal (in)justice systems' war model, its militarized terminology and weaponry, its command and control systems and its threat of massive retaliation.

Allowing public views of crime and criminals to be shaped by those who strategize the "war on crime" is equal to permitting perceptions of war and politics to be shaped by Pentagon generals. The peace movement provides us with an analysis of events and alternative solutions to foreign policy problems. A similar nonmilitary interpretation of crime and justice issues is needed. Solutions free from the violence of caging or death are required. It is essential that abolitionists join together to begin to build that kind of movement capability.

In the eyes of some, we are already bound together. They have dismissed us as "dreamers, crackpots and sentimentalists."[12] But we have learned that the real "dreamers" are criminal (in)justice planners who place poor and powerless people inside exorbitantly expensive cages for arbitrary periods of time, expecting this cruel process to "rehabilitate" individuals and reduce crime.

It is appalling to discover that altho "experts" and "professionals" have few solutions to the problems of crime, they remain welded to the gargantuan, bureaucratic and bankrupt prison system. It is a system that continues to expand as it fails, grinding up billions of taxpayers' dollars along with the lives of prisoners and their families, spewing out damaged human beings, further alienated from their communities.

[12] Benedict S. Alper, **Prisons Inside Out**, p. 199.

needs of those in prison. Thus, they conclude, until alternatives are developed, they will support the building of new prisons.

Finally, others argue that building more prisons has the approval of "affected" people-the victims of crime and those who need the jobs prisons provide in both staff and construction. Moratorium proponents, according to these reformers, should have little to say about matters which so directly affect other peoples' lives.

Moratorium responses

Most moratorium advocates come out of the experience of reform, having devoted boundless energies toward "improving" prison conditions. We will continue to make every attempt to reduce the sufferings of those who are caged, as they request it, and as long as incarceration exists. However, we are convinced that there can never be a "humane" cage. *The concept of caging* as a response to lawbreaking is inappropriate and brutal. Other solutions can and must be developed. Moratorium is a first step toward new solutions.

Further, there is no evidence to support the results of a small, new prison over a large, old prison. Denial of freedom is the same whether it occurs in a larger space or a smaller space. There are more than enough units in existing facilities to house the population if alternatives are employed. Limiting space forces legislatures to decide who must be restrained, removing the pretense that it's acceptable to imprison anyone the court wishes as long as it is done within modernized and humane facilities.

Questions of employment for prison personnel or construction workers in a society that diminishes its dependence on prisons, are problems which can be remedied thru social and economic planning. New employment opportunities and retraining of guards and other prison personnel are better solutions than increasing dependence on incarceration.

> drug, sterile needles, pure drugs, and distilled water.
>
> —John Monahan and Gilbert Geis, "Controlling Dangerous People," Annals of the American Academy of Political and Social Science, January, 1976, pp. 143–49.

Experts in the field of drug abuse agree that "most of the crime, fear and other side effects of narcotics addiction probably would not exist without the laws that make the addict a criminal."[38] Substantial portions of property crime and prostitution are attributable to the need of drug addicts to support their habit.[39] Nevertheless, drug legislation continues to reflect and reinforce myths about drug use.

The criminalization of specific substances and the labeling of their users as "dangerous drug addicts" and "criminals" serves several political purposes. It legitimizes the isolation, punishment, involuntary "treatment" and imprisonment of the "addict" and the eradication of the "pusher."[40] Institutionalized racism and social prejudices against the poor, minorities and "hippie" culture insure that the laws themselves and their enforcement are aimed at control of these groups.[41]

While substances associated with politically powerless groups are labeled "dangerous narcotics," those used and sanctioned by the dominant culture—nicotine, caffeine, alcohol,

[38] Edwin Kiester, Jr., **Crimes With No Victims: How Legislating Morality Defeats the Cause of Justice** (New York Alliance for a Safer New York, 1972) p. 61.

[39] Edwin M. Schur and Hugo Adam Bedau, **Victimless Crimes** (Englewood Cliffs, New Jersey, Prentice-Hall, 1974) p. 26.

[40] See Thomas Szasz, Ceremonial Chemistry (Garden City, New York Anchor, 1974) pp. 20–22, 100–102, 178–79.

[41] See Carol Trilling, "Playing Politics with Addiction," Nation, November 9, 1974; Robert Byck, "The Drug Muddle," **New York Times**, June 27, 1975: "One must search hard for evidence that these [narcotic] laws have ever been influenced by pharmacological reality. There is more evidence …

tranquilizers, barbiturates, amphetamines—are portrayed as part of the American way of life.[42] With the drug industry as supplier and profiteer and physician as pusher, "soft" drug consumption has skyrocketed in the last three decades, despite physically damaging effects of these drugs.[43] Drug promotion by media advertisers, the drug industry and the medical profession have "contributed to the convincing of large sections of the public that there is a pill for every ill, and that there is-in fact, there *must* be-a chemical answer to every physical, emotional and sociological discomfort ... "[44]

It is not our purpose here to examine the relative dangerousness of chemical substances. We question why substances associated with the middle and upper classes are considered "safe" and "soft" and those associated with the ghetto, barrio and youth culture are labeled "dangerous narcotics."

Drug use, abuse and addiction can no longer be viewed as an apolitical moral issue. Drugs have always been used as a political tool to pacify and narcotize segments of the population seen as threats to those with power:

that laws have been directed at suppression of the undesirable behavior of undesirable groups in our society."

[42] Milton Silverman and Philip R. Lee, Pills, Profits and Politics (Berkeley, University of California Press, 1974) pp. 19–22.

[43] Ibid., pp. 16–19, 258–81. Also Lester Grinspoon, "Speed and Pot: A Mirror Image," **New York Times**, October 25, 1975: "Marijuana is not an addicting drug, and there are no serious consequences upon cessation of chronic use; speed (amphetamine) is addicting, and there is a withdrawal syndrome that often includes severe depression. While there is no convincing evidence that cannabis (marijuana) damages tissue, amphetamines appear to have that capacity; while there are no well-documented cases of death from marijuana, it is becoming increasingly clear that speed can indeed kill... Yet, the astonishing fact is that there has been an enormous concern and near hysterical outcry over the use of marijuana, while public, governmental and medical attitudes toward the use of amphetamines have generally ranged from actual enthusiasm to complacency and only recently some degree of concern.."

[44] Silverman and Lee, p. 22.

it denies the poor equal protection under the law and the practice of incarcerating unconvicted pretrial detainees is at odds with the presumption of innocence. Prisoners are denied their 1st Amendment rights protected under the Bill of Rights and the lawlessness of prison violates the 14th Amendment in that due process cannot be guaranteed. Imprisonment violates the 8th Amendment because it fosters cruel and unusual punishment including brutal treatment, segregation, inadequate medical care, bad food and the effects of overcrowding.

- Alternatives. A wide range of alternatives to imprisonment exists but most have yet to be fully explored. Perhaps the strongest argument for a moratorium on prison construction is to allow resources and energy to go into the creation of alternative solutions to the problems of crime.

Arguments in favor of prison construction

Some "corrections" professionals who urge smaller, more "humane" prisons, feel that moratorium efforts block "progressive" leadership within the prison establishment, perpetuating overcrowding, unsanitary conditions and a violent environment. Particularly if the large fortress prisons are closed, these reformers propose a building program which gives the best assurance of creating safe and self-respecting conditions for men and women in custody.

Many reformers also feel that prisons will always he overcrowded because it is difficult and perhaps impossible to convince judges and legislatures that sentencing policy should be modified to meet the resources of the "correctional" system. They feel too that efforts to decriminalize or facilitate community alternatives are too long range to effect the immediate

mation, resources and assistance to local campaigns to help facilitate actions. The National Moratorium on Prison Construction (NMPC), based in Washington, D.C., has researched all aspects of the issues related to prison/jail construction. They produce a variety of literature (the source of much information in this section), including "Prison Program Action Packet," which provides basic material on moratorium efforts. Thru the excellent newsletter *Jericho*, local efforts can be linked to dozens of similar campaigns around the country, strengthening the movement as a whole.

Public education

Arguments in favor of a moratorium on prison construction may be gleaned from almost every page of this handbook. We will state briefly here some of the strongest arguments.

- Economic costs. The moratorium provides a unique opportunity for the taxpayer to make connections between prison construction, prison costs and what "correctional" tax dollars are buying for the community. Most people have no idea of the extravagant costs of caging and usually fail to connect their out-of-pocket taxes with the fact of prisons.

- Ineffectiveness. In addition to having the highest crime rate among industrialized nations, the U.S. has the highest per capita detention rates and imposes the longest sentences. Altho prisons temporarily incapacitate, virtually every prisoner is returned to the community sooner or later, usually worse for the experience. It is clear that prisons do not offer a solution to the problems of crime and lawlessness.

- Unconstitutionality. Imprisonment violates the Constitution in several ways: bail is unconstitutional because

> The drug traffic is a billion dollar business concern… whites are not going to give up such a commodity. Or throw away the means of keeping you a slave, a dependent people and at the very bottom of the social level of this entire world.
>
> —Arthur J. Davies, "Anguish of a Dead Man," *Black Scholar*, April/May 1971, pp. 34–41

> Junk is so readily available in Harlem that any kid with some curiosity and some small change is bound to try it… Most devastating of all is the effect heroin has had on our young-the hope of the Black nation.
>
> —Congressperson Charles B. Rangel, *New York Times*, January 4, 1972

> The American government tries to narcotize its dissidents with alcohol, tobacco, work, money, and methadone; when these fail, it declares them incurably insane or permanently addicted; and it deals with them accordingly, by incarcerating some in prison, others in mental hospitals, and putting the rest on "methadone maintenance."
>
> —Thomas Szasz, Ceremonial Chemistry, p. 102

A truly drug dependent culture is promoted by pharmaceutical companies which test and market their products in schools, prisons, mental hospitals and the military, and by agencies of the government which support drug experimentation and use on Third World people, the poor, women, prisoners and those labeled "mentally infirm."

- In 1975 between 500,000 and 1,000,000 U.S. children were receiving behavior control drugs by prescription. The

majority of these children were "being drugged, often at the insistence of schools or individual teachers, to make them more manageable."[45]

- A variety of drugs, many with harmful side effects, are supplied to prisoners by institutions thruout the country.[46] "By freely giving out ... drugs, wardens and guards keep many prisoners sitting quietly in their cells instead of protesting prison conditions. The result is the creation of junkies who will be prosecuted and imprisoned again for taking the very same drugs when they get back on the street."[47]

- An estimated 85 percent of all phase-one testing of new drugs is done on prisoners.[48] About 80 percent of all human experimentation is done on members of minority groups, poor people and prisoners.[49]

- A variety of drugs and pharmaceutical products are fraudulently promoted and introduced without proper testing. A glaring example is oral contraceptives: during its first three years on the market "The Pill" was responsible for producing a serious or fatal blood clot in some 2,000 women.[50]

- During the Vietnam War while the government gave lip service to the need to eradicate the evils of narcotics at home, between 15 and 20 percent of young Americans

[45] Peter Schrag and Dian Divoky, **The Myth of the Hyperactive Child** (New York, Pantheon, 1975) pp. xii-xiii, 105–106.

[46] See Mitford, pp. 138–68.

[47] The Prison Research Project, **The Price of Punishment**, pp. 50–53.

[48] See Harold M. Schmeck, "Inmates' Role in Drug Tests is Reported," New York Times, January 10, 1976.

[49] See Nancy Hicks, "Two Black Neurosurgeons Defend Behavior-Altering Operations," New York Times, January 8, 1976.

[50] Silverman and Lee, pp.63,98–103.

If the Federal Government wants to set up a model, it ought to be doing better things than building prisons, particularly when the trend in many states is toward closing them ... Mr. Carlson undoubtedly is correct that there will always be some offenders who have to be imprisoned for public safety; but these are the few rather than the many, and they scarcely justify the federal government embarking now on a vast program of prison construction. That seems exactly the wrong model to provide, at a time when federal leadership and assistance might go far toward eliminating an American penal system that encourages rather than prevents crime.

—Tom Wicker, New York Times, July 27, 1972

We firmly believe that the moratorium period which we ask you to impose upon the Federal Bureau of Prisons, could be utilized to seek out more viable approaches to the resolution of the problem of crime within our society, resolutions which are directed toward more just and safe communities.

—Testimony of Reverend Virginia Mackey, New York State Council of Churches, Subcommittee on State, Justice, Commerce and Judiciary, House of Representatives Appropriations Committee, March 25, 1976

Moratorium is the first and most important step towards systemic prison change. Tho local organizing on a state or county level will determine the success of moratorium campaigns, the movement to stop prison/jail construction is fortunate in having a strong national organization to provide infor-

cells in American jails and prisons that were built more than 50 years ago, the price tag would exceed one billion, five hundred million dollars. The result would be that two or three more generations of Americans would be saddled with an expensive and counterproductive method of controlling crime.

—William Nagel, The New Red Barn: A Critical Look at the Modern American Prison

To The Governor and Citizens of the State of Connecticut: At a vote taken by the directors of the Connecticut Prison Association on March 8, 1973, it was unanimously voted by all present, to request a moratorium on the building of any new correctional institutions in the state of Connecticut. This moratorium should last from three to five years, during which time a Blue Ribbon Committee be appointed by the Governor to study alternatives to incarceration of sentenced inmates.

—Connecticut Prison Association, March 1973

To fail to give support for an immediate moratorium on institution construction in favor of tested community alternatives is to allocate six to eight billion dollars for new jails and prisons by 1980. The timing is critical. About three billion dollars are already committed by state and federal governments for rebuilding the old prison system. Soon any viable discussion of the prison of the future will be delayed not for a decade, but for a century.

—Milton Rector, President of the National Council on Crime and Delinquency, Fortune News, November 1974

were returning home addicted to heroin.[51] Evidence from recent investigations suggests that the Central Intelligence Agency actively engaged in the transport of opium and heroin.[52]

Organized syndicates are the principal importers and wholesalers of narcotics. Our drug laws effectively create a highly profitable Black Market which depends for its existence on law enforcement agencies to hold the available supply down to the level of effective demand.[53] Black Market drug traffic could not exist without being condoned by those in powerful positions. "The laws give a kind of franchise to those who are willing to break ... [it]."[54] The result is massive exploitation by professional, organized syndicates which, thru extortion, bribes and payoffs, are insulated from the effects of law enforcement.[55]

> In Harlem, the average take from addicts and pushers by one crime-prevention squad was $1,500 a month; "heavy scorers" made as much as $3,000 a month... In the course of their daily rounds, the police themselves become pushers, doling out daily fixes to their addict informants from their immense stores of confiscated heroin.

[51] See Catherine Lamour and Michael R. Lamberti, **The International Connection: From Opium Growers to Pushers** (New York Pantheon, 1974) p. 145.

[52] See Alfred W. McCoy, Cathleen B. Read and Leonard P. Adams II, **The Politics of Heroin in Southeast Asia** (New York, Harper & Row, 1972) p. 14.

[53] See Edward M. Brecher, et al., Licit and Illicit Drugs (Boston, Little, Brown, 1972) p. 94.

[54] Ibid. Also Schur, pp. 19–22.

[55] See **The Knapp Commission Report on Police Corruption** (New York, Braziller, 1972): "Many ghetto people who have grown up watching police performance in relation to gambling and narcotics are absolutely convinced that all policemen are getting rich on their share of the profits of these two illegal activities ..."

—Jessica Mitford, Kind and Usual Punishment, pp. 68–69

The forced drugging of prisoners, mental patients, children and the elderly, the use of unwitting subjects as guinea pigs in drug experimentation and the fraudulent promotion of harmful chemical substances are all serious crimes, which often result in permanent disablement or death.

Thus, political, economic, racist and sexist forces converge to create a "drug problem" which is largely a problem of exploitation for financial profit or social control of the powerless.

Criminal law & social change

Traditionally, the stated purpose of criminal law has been to discourage violence and theft or destruction of property. As it has been legislated and enforced, the effect of criminal law has been to maintain control by the dominant class and to enforce their code of morality.

The definition of criminal acts changes according to the political, economic and moral interests of those who control any system.

> The essence of high status is privilege, and the essence of privilege is legitimate exception from the rules which apply to others … conformers to the law … are divided between those who enjoy the law as a system of facilitations, a network of pathways, and those who suffer the law as a system of deprivations, of barriers. Similarly, those outside the law must be divided between persons who can evade it only by violating it (risking punishment) and those who are legitimately exempted from it and risk nothing. Why not obey the law, if it serves your interest? What need

of new jails and prisons should be instituted by local, state, provincial and federal authorities.

—Resolution, General Assembly of the Unitarian Universalist Association, 1974

No new detention or penal institution should be built before alternatives to incarceration are fully provided for. Specifically, the National Council on Crime and Delinquency calls for a halt on the construction of all prisons, jails, juvenile training schools, and detention homes until the maximum funding, staffing, and utilization of noninstitutional correction have been attained.

—Policy Statement, Board of Directors, National Council on Crime and Delinquency, 1972

If this country is resolved to do something constructive about the crime problem, the immediate thing it must do is call a halt to the building of new prisons, jails, and training schools, at least for a time, while we plan and develop alternatives. We say this for two principal reasons. First, so long as we build, we will have neither the pressures nor the will to develop more productive answers. The correctional institution is the "out of sight, out of mind" response to the problem of crime … No study that I have ever seen, and there are many, provides any assurance that the prison reduces crime, while there is ample evidence that the fact of imprisonment is a heavy contributor to post-release criminal activity. The prison provides only the illusion, not the reality, of protection against the criminal.

And secondly, jails and prisons are so very permanent … If we were to begin to replace only those

Significantly, the occupants of these disgraceful dungeons have in no instance joined the chorus of demands for newer and better-built prisons. Search the manifestoes of convict leaders from the Tombs to San Quentin and you will find no such proposal. On the contrary, prisoner and ex-convict groups thruout the country are urging opposition to new prison building, which they see as leading to a vast expansion of the existing prison empire.

—Jessica Mitford, Kind and Usual Punishment, pp. 182–83

In view of the bankruptcy of penal institutions … the Commission recommends a ten-year moratorium on construction of institutions except under circumstances set forth under Standard 11.1. The moratorium period should be used for planning to utilize non-institutional means … Each correctional agency administering state institutions for juvenile or adult offenders should adopt immediately a policy of not building new major institutions for juveniles under any circumstances, and not building new institutions for adults unless an analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible.

—Corrections, Report of the National Advisory Commission on Criminal Justice Standards and Goals, 1973, pp. 597, 357.

Reducing jail and prison populations thru provisions for community-based correctional programs and other alternatives to incarceration. Until such steps are taken, a moratorium on the construction

> to violate it, except if it does not? And why be concerned at all, if you are beyond its authority? Justice is no longer even a lofty ideal: it is a vicious pretext by which the beneficiaries of power preserve their self-esteem while oppressing the twice punished. Stripped of that pretext, it is little more than a naked defense of class interest.[56]

Tho some advocate abolishing the criminal law,[57] for the present most abolitionists advocate limiting criminal law to reduce its discriminatory and arbitrary powers and its extended use as a tool of socialization.

We view crime as a problem with roots deep in the social structure, not just as a series of problems of individuals. Rather than punishing individual actors, collective response to the root causes is needed.

A belief that our culture is criminogenic does not deny the role of individual responsibility and decision making. This belief includes a realization that many individuals will continue to choose illegal options in solving economic and social problems as long as our social structure continues to fail in providing a range of legal options and maintains a value system encouraging competitive individualism, violence, consumption, and monetary success.

Any rewriting of our criminal laws and restructuring of our criminal (in)justice systems requires the wisdom and experience of all who are affected by it.

- Criminal laws should be fully understood and serve the interest of all people.

[56] Richard Korn, "Crime, Justice and Corrections," University of San Francisco Law Review, Vol. 6 (1971) p. 41.

[57] Gilbert M. Cantor, "An End to Crime and Punishment," **The Shingle,** Philadelphia Bar Association, May 1976, p. 107: ".. The time has come to abolish the game of crime and punishment and to substitute a paradigm of

- The aim of criminal law should be the promotion of community.
- The scope of criminal law should be pared down and simplified, beginning with decriminalization of crimes without victims.
- Crimes of violence, including corporate and government crimes against humanity, exploitation of the young and powerless, murder, rape, assault and kidnapping, should be regarded as most serious by criminal law.
- Crimes against property should be approached with less certainty of what constitutes wrongdoing as long as our society provides unequal access to ownership of property and wealth. A just system of laws protecting property depends upon the development of a just system of acquisition and distribution within the social structure. In the interim, every individual has the right to be legally protected from "rip-offs," whether the thief is a neighbor stealing a T.V. set, an organized syndicate fixing food prices, or a slum landlord charging exorbitant rents.

As the present social system, based on privileges of class, race and sex, is gradually altered, principles must be developed to guide us away from the traditional adversarial system with its sanctions of prison, coercion and violence, into a conflict resolution and reconciliatory process.

Presently, we recommend that sanctions involve the least restrictive and coercive action:

- To fix responsibility for criminal acts deemed unacceptable.
- To demonstrate to the wrongdoer an understanding of why the act committed is unacceptable.

4. Moratorium on Prison/Jail Construction

The umbrella of moratorium on prison/jail construction is a rare action/ organizing opportunity to clearly say *"NO"* to cages.

Already, courageous and progressive professionals, ex-prisoners, reformers, abolitionists and other concerned citizens are joining in a vigorous campaign to educate and act together to stop the unprecedented wave of prison/jail construction projects across the country. The wide support for moratorium has produced a wealth of useful statements:

> Central to the strategies of prison administrations in the era of convict rebellion is construction of new prisons … old bastilles should be replaced, say the prison men; some of them are more than a hundred years old, they are too big, unwieldy, unsanitary, overcrowded. The humanitarian reformer will agree, for he has seen the evidence on his television screen and in magazine picture spreads: the tiny, dark cells, rusty iron bars, overflowing toilets, dank concrete, over all an aura of decay. Incomparably worse than any zoo, he will declare! No wonder riots and disturbances are endemic in these places. As long as we must have prisons, let them at least be decent and fit for human habitation.

Here are some ways to build the caring community:

- Develop a network of community support services.
- Support ex-prisoner and peer-assistant groups and centers.
- Develop victim-assistance, restitution and compensation programs.
- Learn how to, become an ally of prisoners, working to insure constitutional rights in prison and upon release.
- Support prisoners' unions, voting rights and constitutional guarantees.

- To apply uniformly to all wrongdoers, regardless of race, class, power, wealth or influence and to deal only with the criminal act or acts of the individual or group.
- To involve the wrongdoer in the sentencing alternative selected; viewing penal sanctions as mechanisms of last resort to be imposed only when other alternatives have been exhausted or proved inadequate.

From the abolitionist perspective, these are some of the interim criteria for gradually transforming the criminal law into a mechanism for justice-an instrument for reconciling the lawbreaker with the community and with the victim.

The myth of protection

> There is in fact no way to eliminate the acknowledged evils of punishment without also eliminating criminalization as an accepted object of legal process ... the time has come to abolish the game of crime and punishment and to substitute a paradigm of restitution and responsibility ... I urge that we assign (reassign actually) to the civil law our societal response to the acts or behaviors we now label and treat as criminal. The goal is the civilization of our treatment of offenders. I use the word "civilization" here in its specific meaning: to bring offenders under the civil, rather than the criminal law; and in its larger meaning: to move in this area of endeavor from barbarism toward greater enlightenment and humanity.
>
> —Gilbert M. Cantor, "A Proposal for Ending Crime and Punishment," *The Shingle*, p. 107

restitution and responsibility."

Myth: Prisons protect society from "criminals."

Reality: Prisons fail to protect society from "criminals," except for a very small percentage and only temporarily. Prisons "protect" the public only from those few who get caught and convicted, thereby serving the primary function of control over certain segments of society.

According to Norman Carlson, director of the Federal Bureau of Prisons, "The goal of our criminal justice system is to protect law-abiding citizens from crime, particularly crimes of violence, and to make them secure in their lives and property."[58] Despite shifts in "correctional" emphases, restraint or keeping the "criminal" out of circulation continues to be a key purpose of prisons. However, it is questionable how much real protection prisons afford, because only a small percent of all law-breakers end up in prison and most of these few remain in prison for a relatively short period of time.

Prisons have pacified the public with the image of "safety," symbolized by walls and cages located in remote areas. But prisons are a massive deception: seeming to "protect," they engender hostility and rage among all who are locked into the system, both prisoner and keeper. Society is victimized by the exploitation of its fear of crime.

Indeed, rather than protecting society from the harmful, prisons are in themselves harmful. It is likely that persons who are caged will become locked into a cycle of crime and fear, returning to prison again and again. Prisons are selectively damaging to specific groups in society; namely, Blacks and other minorities.

The few who get caught

The failure of prisons to protect is bound up with the reality of who actually gets caught. According to the system managers,

[58] Norman Carison, "The Federal Prison System: 45 Years of Change," Federal Probation, June 1975.

Excarcerate

Stop putting people in prison. Examine all alternatives to caging. Here are some strategies for excarceration:

- Abolish categories of crime. Start by decriminalizing crimes without victims.
- Abolish bail and pretrial detention.
- Create community dispute and mediation centers.
- Utilize suspended sentences, fines and restitution.
- Establish community probation.
- Create legislative standards and procedures for alternative sentencing.

Restraint of "the few"

For the *very* small percentage of lawbreakers who need to be limited in movement for some periods of time in their lives, a monitoring and review procedure should be established with the goal of working out the least restrictive and most humane option for the shortest period of time.

Building the caring community

For prison abolition to become a reality, alternatives must exist. Prisoners must be empowered to take responsibility for their own lives. Prisoners need support and allies. Above all they need services in their communities-health, educational, vocational, residential, counselling and legal services-which should be available not only for prisoners but for all people.

Decarcerate

Get as many prisoners out of their cages as possible. Examine all methods of depopulating the prisons and jails. Create a prisoner release timeline: at least 80 percent immediately; 15 percent gradually; the remaining 5 percent within ten years. Here are some of the ways to decarcerate:

- Abolish indeterminate sentences and eventually abolish parole.
- Create a sentence review and release process with the goal of releasing a majority of the current prison population into the community. Those who need no supervision or support should be released at once. Those who need no supervision but do need support and services should be released to community peer groups thru contractual arrangements. Those needing some supervision should be paroled with arrangements for transfer as soon as possible to community services by contract. Those needing very close supervision should be paroled to community support groups on a one-to-one contractual basis.
- Provide options for prisoners to make restitution to victims in lieu of serving further time.
- Use parole contracts for negotiating conditions for release.
- Educate prisoners and lawyers in legal procedures, such as petitions, for reduction of sentences, executive clemency, pardon, reprieve and challenging prison unconstitutionality.
- Make decriminalization retroactive and release those currently imprisoned for victimless crimes.

true protection would require a high degree of effectiveness.[59] The system, however, is highly ineffective. Few lawbreakers are apprehended and most studies show that only one to three percent of all reported crime results in imprisonment. In one study, out of 100 major crimes (felonies): 50 were reported to the police; suspects were arrested in 12 of the cases; six persons were convicted; one or two went to prison.[60]

Those who find themselves entrapped in the criminal (in)justice systems most often are a select group, usually stereotype "criminals"-a threat in some way to those in power: the poor, minorities, the young. Very few of the total lawbreaking population are ever caught,[61] and an estimated one-half to three-fourths[62] of all crime is never reported. How can prison-as-protection be anything but an illusion?

The objection is often raised: "Better to be protected at least from that small minority of lawbreakers who *are* convicted." What, then, is the nature of this protection?

> Society may have intended prisons to be "protective" mechanisms, but like infected tonsils they have become overloaded carriers of precisely the germs or problems against which they were directed. A removal operation is necessary for the protection and health of the body politic.

[59] **Ibid.** : "To protect our society against crime, we need a highly efficient criminal justice system that apprehends the offender, brings him speedily to trial, metes out a just sentence to the guilty, and gives him encouragement to change his life style.

[60] Mitford, p. 276.

[61] The President's Crime Commission in 1967 cited asurvey showing "that in a sample of 1,700 persons of all social levels, 91 percent admitted committing acts for which they might have been imprisoned but were never caught."

[62] "A Perspective on Crime and Imprisonment," pp. 6, 8. "While the F.B.I. U.C.R.s reported 8.6 million index crimes for 1973, the Census Bureau found that 37 million index crimes had been committed. Put another way, of 37 million crimes committed, 28.4 million were not reported to (or by) police."

—Ron Bell, chaplain at Somerset, New Jersey County Jail, *Fortune News*, June 1974

> The prison, the reformatory, and the jail have achieved only a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it. Their very nature insures failure.

—*Corrections*, National Advisory Commission on Criminal Justice Standards and Goals, p. 597

> People who feel reassured by the high walls of the prison, its sentries, control towers and its remoteness from population centers are naive. Most prisoners leave their institutions at some point. In the United States, 95 percent are released after an average imprisonment of 24 to 32 months… So the protection offered by the prison during the incarceration of the offender is surely a short term insurance policy and a dubious one at that.[63]

We can see then, that if prison protects at all, warehousing is only temporary, for most all prisoners are ultimately released back into society,[64] usually within two to three years. Moreover, the deterrent effect of prisons, on individuals and on the larger society, is highly questionable. There is no insurance of further "protection" from criminal activity beyond release.

One commonly cited occurrence which illustrates the dubious nature of the protection theory followed a U.S. Supreme

[63] Milton Rector, President, NCCD, in his foreward to Benedict S. Alper's Prisons Inside-Out, p. xii.

[64] Alper, p. 19: "… Very few persons committed to prison do in fact spend their whole lives there; almost all of them are ultimately released back into the community… ultimately we release all but a few of the people in prison back into free society, after having treated them during their stay as if

- Do we move toward empowering the persons most adversely affected by the present system, the prisoners themselves?
- Does our advocacy reflect and support the values of economic and social justice thruout society, concern for all victims and reconciliation?
- Do the actions we advocate avoid improving or legitimizing the prevailing system?
- Do our suggested campaigns move us closer to our long range goal of abolition?

The following will provide information, tools and resources to enable us to engage in the suggested campaigns proposed here.

> The maintenance of an abolition implies that there is constantly more to abolish, that one looks ahead towards a new and still more long-term objective of abolition, that one constantly moves in a wider circle to new fields for abolition.

—Thomas Mathiesen, The Politics of Abolition, pp. 211–12

The attrition model

Moratorium

Declare a moratorium on all new jail and prison construction. Say stop to all construction of cages. Create space and the time to develop alternate planning processes, programs, policies and philosophies.

us if we were unable to design our work into a series of manageable parts. Visualizing our long range goal of prison abolition as a chain of shorter campaigns around specific issues provides us with the "handles" we need on the overall problem.

We are not proposing a single model for prison change. We encourage developing many models, based on the reality of our life situations. For instance, abolition models structured by prisoners might differ from models structured by prisoner allies outside the walls. But the need for communication, agreement on goals, and support for each others' campaigns is crucial to developing a serious abolition movement.

While a vision for dismantling prisons will help to clarify our collective strategies, we cannot expect that a proposed model will always be carried out in an orderly sequence. Various forces and dynamics undoubtedly will require some flexibility in our strategies. A good model can be remodeled and adapted to meet unforeseen opportunities for change.

We have structured an attrition model as one example of a long range process for abolition. "Attrition," which means the rubbing away or wearing down by friction, reflects the *persistent and continuing* strategy necessary to diminish the function and power of prisons in our society.

To clarify our terms, the reforms we recommend are "abolishing-type" reforms: those that do not add improvement to or legitimize the prevailing system. We also call for partial abolitions of the system: abolishing certain criminal laws, abolishing bail and pretrial detention and abolishing indeterminate sentences and parole.

In this chapter we will briefly lay out the attrition model and identify its components. We can test the model's consistency with abolitionist goals by asking the following questions:

- Do the actions we advocate make possible the development of the caring community?

Court ruling in 1963 known as *Gideon v. Wainwright*, which affirmed the right of indigent felony defendants to counsel. Those convicted without counsel and sent to prison were ordered released. As a result, the State of Florida released 1,252 indigent felons before their sentences were completed. There was fear that such a mass exodus from prison might result in an increase in crime. However, after 28 months, the Florida Department of Corrections found that the recidivism rate for these ex-prisoners was only 13.6 percent, compared to 25 percent for those released after completing their full sentences. An American Bar Association committee commenting on the case observed:

> Baldly stated, ... if we, today, turned loose all of the inmates of our prisons without regard to the length of their sentences, and with some exceptions, without regard to their previous offenses, we might reduce the recidivism rate over what it would be if we kept each prisoner incarcerated until his sentence expired.[65]

For more than a century, statisticians have demonstrated that regardless of imprisonment, the crime rate remains constant. Removing some few people from society simply means an unapprehended majority continue in criminal activity. If that one to three percent who end up in prison were released, they would not significantly increase the lawbreaking population.

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they were without any capacity to live in that society... close to 100 percent of offenders are going to be returned."

[65] American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedures, 59, quoted in Ronald L. Goldfarb and Linda R. Singer, After Conviction (New York, Simon & Schuster, 1973) p. 183.

The few society fears

The myth of protection relies on society's perception of the "criminal" from whom it wishes to be safeguarded. Fear necessitates fortresses. The myth of the criminal type has led to penitentiaries that "are placed out in the country as if they were for lepers or for people with contagious diseases."[66]

There is a critical distinction between who is "caught" and who poses a danger to society. Police act upon a stereotype which accounts for a "very marked relationship between class and conviction."[67] The purpose of police activity is seen "in a manner somewhat analogous to the forceful quarantining of persons with infectious diseases … to control and suppress the activity of this lower class criminal subgroup."[68] Thus, those who are caught because feared (by the police) are feared (by the public) because caught. The notion that "crime is the vice of a handful of people"[69] is grossly inaccurate.

> Crime is extraordinarily prevalent in this country. It is endemic. We are surrounded and immersed in crime. In a very real sense, most of our friends and neighbors are law violators. Large numbers of them are repeated offenders. A very large group have committed serious major felonies, such as theft, assault, tax evasion, and fraud.[70]

[66] Alper, p. 10.

[67] Ryan, p. 204: A set of studies… show there is no substantial relationship between social class and the commission of crimes, but that there is a very marked relationship between class and conviction for crime." Also, on p. 200: "Policemen believe very firmly that criminals are lower class, marginal, unreliable, dangerous people, of whom a greatly disproportionate number are Black."

[68] **Ibid.,** p. 190.

[69] H. Jack Griswold, Mike Misenheimer, Art Powers, Ed Tromanhauser, **An Eye for an Eye**, p. 3.

[70] Ryan, pp. 196–97.

3. Diminishing/dismantling the Prison System

Value of creating a model

As prison abolitionists, it is important that we examine whether our actions move us toward our goals. A vision or continuing plan of action helps us to assess our day-to-day work, enabling us to see how our small piece of work fits into the whole. Without a long range plan, it is possible to waste a great deal of energy because expectations are unrealistic or because we lack the focus necessary to move us nearer our goals. The result can be disillusionment, frustration, and a sense of defeat.

For instance, many good court watching programs produce interesting data, but eventually dribble out because there seems to be no way to counteract society's racism and classism in the criminal selection process. However, if court watching programs are placed in an abolition context, the elimination of bail and preventive detention are not seen as ends in themselves. Intermediate strategies might include the creation of release on recognizance (ROR) programs, voluntary restitution programs, and local support groups to move releasees into assistance programs in the community. These programs can be envisioned as part of a wider campaign to continually move toward the abolition of bail, and ultimately, of imprisonment itself.

The prospect of changing a system as massive, complex and powerful as the prison system could overwhelm and paralyze

to establish the unconstitutionality of imprisonment *per se*, but they seek to make it less feasible for the state to resort to incarceration. Altho the right-to treatment approach is potentially counterproductive to the abolitionist cause, the elimination of penal slavery and the passage of minimum wage requirements for prisoners should be considered important goals for abolitionists and reformers alike.

Opinion is divided as to whether the courts will eventually abolish imprisonment. However, it should be recognized that prison law is modern slave law, and that the law and the courts have traditionally served to uphold the legitimacy of the institution, just as in earlier times they upheld the constitutionality of slavery. Given the present public attitudes toward crime and criminals, the prospect of either of the three branches of government leading the way in a constitutional attack on prison appears extremely remote to many prison reformers and abolitionists. However, it is the task of those of us striving to abolish cages, to continually reveal the unconstitutionality of prison life, and to empower prisoners to utilize the levers provided by legal redress of their grievances.

Once we accept the idea that most "criminals" are relatively indistinguishable from the rest of the population, it becomes evident that prisons "are full of people needlessly and inappropriately detained and incarcerated."[71] The additional fact that most prisoners have been convicted of property related crimes,[72] not crimes of violence, further calls into question the concept that society needs protection from the vast majority of those who are currently imprisoned.

Prisons are also viewed as a means of protecting society from that small percentage of lawbreakers who commit violent crimes. Tho we consider this problem in more depth elsewhere in this handbook, we will briefly state our analysis here. The concept of labeling persons as "dangerous" assumes an ability to predict future behavior. Which "criminals" are likely to commit future crimes of violence when released? Given a "most remarkable void of reliable analysis,"[73] predictions of "dangerousness" cannot be trusted. For instance, a murderer-the typical image of a dangerous criminal-is highly unlikely to murder again.[74] Most murderers "could be let out tomorrow without endangering the public safety."[75]

A dramatic illustration of the unreliability of labelling "dangerousness" is the results of the *Baxstrom v. Herold* ruling. This U.S. Supreme Court decision involved 967 prisoners at Dan-

[71] Edith Elisabeth Flynn, "Jails and Criminal Justice," in Lloyd E. Ohlin, ed., Prisoners in America, pp. 52–53.

[72] In 1973, of close to nine million reported Index crimes, 90 percent were crimes against property. **F.B.I. U.C.R.s,** p. 1.

[73] Norval Morris, **The Future of Imprisonment**, pp. 10–11: "The idea of imprisoning only the dangerous has similar empirical inefficiencies and theoretical flaws. It presupposes a capacity to predict future serious criminal behavior quite beyond our present technical ability… At present, the concept of dangerousness is both plastic and vague.

[74] Ben H. Bagdikian and Leon Dash, **The Shame of Prisons**, p. 14.

[75] Mitford, pp. 276–77. Murderers "have generally acted out some desperate personal frustration against a member of their family, are most likely to repent, least likely to repeat-unless, of course, they are psychotic, in which case they don't belong in prison at all."

nemora and Mattewan prisons in New York in 1966. These prisoners were persons normally considered among the most dangerous of all offenders, as they were classified as criminally insane. The effect of the ruling was to compel the state to release immediately or transfer to civil mental hospitals (using established civil commitment procedures) each of these allegedly dangerous insane criminals. An intensive study of the aftermath of this mass release found that less than two percent of the released prisoners were returned to institutions for the criminally insane between 1966 and 1970. There was a remarkably low rate of violent behavior among those discharged.[76]

> In regard to control of the dangerous there are no techniques for distinguishing which small number of a much larger class of individuals will continue to perform dangerous acts; holding the entire class in detention amounts to holding a majority of harmless people needlessly. Moreover… this highly unjust practice is of minimal benefit to society because the number of unapprehended or unidentified lawbreakers in any given crime category is always much larger than those identified or in custody. Also, society has responded almost exclusively toward certain types of offenders, such as thieves, rapists and murderers, but ignored almost completely larger numbers of persons who are much more dangerous, such as those who make and profit from war, unsafe automobiles, and contaminating pesticides.[77]

[76] For an excellent account, see Henry J. Steadman and Gary Keveles, "The Community Adjustment and Criminal Activity of the Baxstrom Patients: 1966–1970," **American Journal of Psychiatry** 129 (1972), pp. 30410.

[77] **Struggle for Justice**, pp. 12526.

ory and achieving similar results.[159] However, the ultimate victory only extends to the temporary closing of the guilty institution or system. Prisoners can still be returned to the facility as soon as it complies with the court's order, and in the meantime they can be transferred to different facilities in other counties or states. Neither solitary confinement *per se*, nor imprisonment *per se* have yet been found unconstitutional.[160]

The Supreme Court has ruled that censorship of prisoners' mail is constitutional, as long as it conforms to specific established criteria.[161] Courts have also concluded that prisoners do not enjoy a constitutional right to have visits.[162] The larger constitutional question-of whether imprisonment unconstitutionally denies inmates their 1st Amendment rights-remains in limbo, for the Supreme Court has refused to decide whether prisoners are covered by the 1st Amendment.

Two final sources of litigation should be noted. Some lawsuits have focused on the state's obligation to provide rehabilitation programs and services, contending that prisoners should be released whenever the state fails to make good on its stated purpose of "correction." However, the courts have held that prisoners do not enjoy a constitutional right to treatment.[163] Challenges of the state's right to force prisoners to work, and attempts to require state or federal minimum wage laws for prisoners, have also been unsuccessful, because of the 13th Amendment. As a result, some prison changers have suggested that the amendment be changed to remove the authorization of slavery as punishment for anyone convicted of a crime.[164] These approaches are not equipped or designed

[159] See cases cited in note 155.

[160] See **Novak v. Beto,** 453 F. 2d 661 (5th Cit. 1971).

[161] **Procunier v. Martinez**, 416 U.S. 396 (1974).

[162] See **Raymond v. Rundle**, 276 F. Supp. 637 (E.D. Pa. 1967); **Walker v. Pate**, 356 F. 2d 502 (7th Cir. 1966).

[163] **Wilson v. Kelley**, 294 F. Supp.. 1005, 1012 (N.D. Ga. 1968).

[164] See Steve Bagwell (ed.), **Depopulating the Prison**, p. 62.

outlaw corporal punishment,[153] or to find that a "totality" of distasteful prison conditions constitutes a violation of the 8th Amendment.[154]

But 8th Amendment litigation has evolved very slowly, on a case-by-case basis, and the Court has never offered a comprehensive definition of the clause. Even the effort in 1972 to decide if the death penalty was constitutional resulted in separate decisions from each of the nine justices, thus leaving the question open to debate.[155] Abolitionists should carefully study future death penalty decisions, for the precedents could have some important implications for the constitutionality of imprisonment. Most federal judges have concluded that the amendment draws its meaning from "evolving standards of decency,"[156] so that punishments that were not "shocking to the conscience" a generation ago may later be deemed an outrage.

A landmark decision occurred in 1970, when a federal court judge declared an entire state penal system unconstitutional on the basis of a combination of intolerable prison conditions.[157] The judge concluded that "cruel and unusual punishment" is not limited to the specific punishment of an individual inmate, but rather: "In the Court's estimation confinement itself within a given institution may amount to cruel and unusual punishment ... where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people."[158] Since the *Holt v. Sarver* decision, numerous other lawsuits have been brought using similar the-

[153] **Jackson v. Bishop**, 404 F. 2d 571, 579–81 (8th Cir. 1968).

[154] See **Holt v. Sarver**, 309 F. Supp. 363 (E. D. Ark. 1970), aff'd 442 F. 2d 304 (8th Cir. 1971); **Rhem v. Malcolm**, 371 F. Supp. 594 (S.D.N.Y. 1974) aff'd 507 F. 2d 333 (2d Cir. 1974); **Gates v. Collier**, 349 F. Supp. 881 (N.D. Miss. 1972); **Inmates of Suffolk County Jail v. Eisenstudt**, 360 F. Supp. 676 (D. Mass. 1973).

[155] **Furman v. Georgia**, 408 U.S. 238, 409 U.S. 902 (1972).

[156] See **Trop v. Dulles**, 356 U.S. 86 (1957).

[157] **Holt v. Sarver**, 309 F. Supp. 362 (E.D. Ark. 1970).

[158] **Ibid**., pp. 372–73.

A permanent prison banishment of the many convicted and restrained for the sake of safety from a possible few, is not only morally outrageous but economically unfeasible.

Prisons & a safer society

While we cannot predict those who will be dangerous to society, we can predict some of the responses by those who are subjected to the brutalizing environment of prisons. Resentment, rage and hostility on the part of both keeper and kept, are the punitive dividends society reaps as a result of caging. A stunning realization evolves: the punishment of prison damages persons, and consequently, creates *more* danger to society. Furthermore, the coercive institutional environment encourages violence among prisoners themselves. Who "protects" this segment of the citizenry?

Consider these statements as testimony to the negative consequences of imprisonment, which will eventually affect society beyond the walls:

> We must have the foresight to understand that 95 percent of those incarcerated, whether it be for the maximum period or not, will one day return to society with, in all probability, increased hostile and antisocial feelings against the system.
>
> —Judge D.D. Jamieson, *Philadelphia Bulletin*, May 6, 1972, p. 6

> ... the present system has failed utterly as a means of rehabilitating offenders and may even be generating crime by creating a spirit of vindictiveness in prisoners.
>
> —Report of a House Judiciary Subcommittee headed by Rep. Robert W. Kastenmeier, *New York Times*, March 7, 1974

... I became a little smarter. I learned how to be "slick," how to "con" real good, how to really hate, how to gang-fight and how to kill. I learned how to be real "tough" and not get weak by showing my emotions.

—Larry Maier, prisoner at Lompac, California, in "Peer Counseling Program in Federal Joint," *Fortune News*, June 1974, p. 6

We can't break up a man's life cycle at a critical point with the shock of incarceration and expect him to recover... All you can do is destroy him if you put him in the pressure cooker of prison ... prison is a damaging institution, this damage is a long term process, and the cost to society of its continuation is enormous ... if we divert and release men from this cage we've constructed, we can reduce crime and the cost of criminal justice at the same time.

While the public cries out over crime, the figures show a great proportion of that crime is uselessly created by the very institutions that were designed to stop it.

—Robert Martinson in Depopulating the Prison, pp. 13–14

The negative effects of caging reach beyond prison walls, allowing citizens a false sense of safety. Prisons, by their very existence, exonerate communities from the responsibilities of providing the necessary human services which might effectively reduce "crime."

Society's greatest protection can be found in the development of reconciling communities-not in walls and cages. There is very little connection between putting a person in prison and

For all practical purposes, imprisonment means the caging of human beings either singly or in pairs or groups ... If there were the slightest scientific proof that the placement of human beings into boxes or cages for any length of time, even over night, had the slightest beneficial effect, perhaps such a system might be justifiable. There is no such proof; consequently, I should think that a massive attack on the constitutionality of the caging of human beings is in order.

—Gerhard O.W. Mueller, "Imprisonment and its Alternatives," *A Program for Prison Reform*, p. 40

Most of these decisions have related to excesses and aberrations of modern prison administration, and to gross violations of fundamental human decency.[149] Nevertheless, the accumulating body of law has both opened the door and laid the groundwork for constitutional attacks on the institution itself.

One of the most attractive arguments for unconstitutionality stems from the 8th Amendment prohibition of "cruel and unusual punishment,"[150] which applies to the states by the 14th Amendment. The United States Supreme Court has held that any punishment which is disproportionate to the crime constitutes an 8th Amendment violation.[151] The Court has also stated that a prison term could amount to cruel and unusual punishment if it was unduly long and not proportionate to the offense.[152] In addition, some courts have interpreted this to

[149] See Sostre v. McGinnis, 442 F. 2d 178 (2d Cit. 1971), concerning an inmate who had been kept in solitary confinement for over a year as punishment for his political and legal activities in New York State prisons.

[150] "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[151] **Weems v. United States**, 217 U.S. 349, 368–70 (1910).

[152] **Ibid**.

—U.S. District Court Judge James E. Doyle, in
Morales v. Schmidt (1972)[145]

It is possible that imprisonment will eventually be declared unconstitutional. Thus, the formal legal approach to ending incarceration is another important potential abolitionist strategy. The constitutionality of imprisonment has received very little serious attention, but it has attracted growing interest in recent years, and sooner or later the issue will have to be decided by the courts.[146]

The constitutionality-and hence, the unconstitutionality—of imprisonment has been very slow to develop. The original Constitution made no mention whatsoever of imprisonment as a punishment for crime; the first reference did not occur until 1865, in the form of the 13th Amendment.[147] This 43-word passage set two standards, both of which underscore the interrelationship of slavery and imprisonment: (1) it outlawed slavery and involuntary servitude in the United States, and (2) it authorized slavery and involuntary servitude if used as a punishment for crime. As a result, the law concerning imprisonment began at the most primitive level-with the consideration of prisoners as slaves, and thus, as subhumans.[148] American judges then managed to virtually ignore prison issues for nearly a century, for it was not until the 1960's that a determined prisoners' rights movement succeeded in forcing some courts to abandon their traditional "hands-off" policy.

[146] See Philip J. Hirschkop and Michael A. Millemann, "The Unconstitutionality of Prison Life," 55 **Virginia Law Review** 5, June 1969, pp. 795–839; Note, "And the Walls Come Tumbling Down: An Analysis of Social and Legal Pressures Bearing on the American Prison System," 19 **New York Law Forum**, Winter 1974, pp. 609–637.

[147] "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

[148] See Ruffin v. Commonwealth, 62 Va. 1024, 21 Gratt 790, 796 (1871).

protection of society from the harm of crime. The harm of prisons overwhelms any benefit of protection.

The myth of deterrence

Myth: Prisons deter crime in two ways:

- They deter would-be criminals who decide not to take the risk.
- They discourage prisoners from criminal activity after their release.

Reality: The assumption that prisons deter crime at all is highly suspect.

- Prisons might deter a very small percentage of those who have done time but they encourage post-release crime in a far greater number of ex-prisoners.

  The failure of major institutions to reduce crime is incontestable … Institutions do succeed in punishing, but they do not deter … They change the committed offender, but the change is more likely to be negative than positive. It is no surprise that institutions have not been more successful in reducing crime. The mystery is that they have not contributed even more to increasing crime.

  —National Advisory Commission on Criminal Justice Standards & Goals, *Corrections*, p. 1

  We really do not have sufficiently good crime statistics to answer correctly all the purposes we use the statistics for. The statistics are not comparable as between places or over time. Nevertheless as the data are analyzed, it does not

> seem to appear that persons who have spent time in prison are not less likely to commit crime again. Perhaps, indeed, they are more likely to do so.
>
> —Attorney General Edward H. Levi, quoted in U.S. Department of Justice, Monday Morning Highlights, October 20, 1975

Deterrence and punishment are replacing rehabilitation as the stated rationale for incarceration. Since deterrence was always an implicit goal of rehabilitation, this policy shift is a slight one. A policy of deterrence merely cloaks the continuation of punishment motivated to some degree by the desire for retribution.[78]

Despite its paramount importance in penal policy, the success of deterrence is never really examined for fear that it may prove to be a fantasy. In the same way, retribution is never really examined for fear it may be a fact.[79]

Little statistical data supports the deterrent assumption and little has been sought, in spite of an expanding literature from psychologists who generally believe that rewarding desired behavior is more effective than punishing undesired behavior. Why, then, does the public maintain "a childish faith" in punishment as a crime deterrent?[80] The longest prison sentences are reserved for those least likely to repeat their crimes, revealing intentions other than deterrence. That "childish faith" should be scrutinized for other motives.

Those who have examined the prison/deterrence relationship seem to agree on one point: ".. certainty and swiftness, not

[78] **Ibid**., p. 50.

[79] Willard Gaylin, **Partial Justice, A Study of Bias in Sentencing**, p. 174.

[80] Tromanhauser, An Eye for an Eye, p. 243. "Prison, as it exists today, is an exercise in 'dead end' penology. It reveals a childish faith in punishment as a crime deterrent… The pound of flesh that a vengeance-prone pub-

her to serve, the people must pay thru their tax dollars. Parole boards must realize that every time they stamp PAROLE DENIED on a prisoner's life, they squander thousands of dollars and worsen the damage done to the community. Above all, the public has to be shown that the price of prison punishment is simply too much—society cannot afford it.

Abolitionists know that cost-benefit analysis can be used to their advantage. But cost arguments must be kept in perspective. Even if prisons were profitable, they should be eliminated. The debate over imprisonment, like that over slavery or war, ultimately turns on moral grounds. Regardless of the dollars and cents of it, prisons would be-and are-and always will be too expensive.

Prison life is unconstitutional

> I am persuaded that the institution of prison probably must end. In many respects it is as intolerable within the United States as was the institution of slavery, equally brutalizing to all involved, equally toxic to the social system, equally subversive of the brotherhood of man, even more costly by some standards, and probably less rational. The immediate question for the courts while prisons continue to exist, is how to respond to them in terms of constitutional litigation: whether to support the institution but to shape it, or to end it, or to be neutral with respect to its continued existence. This question is urgent because, whether or not so intended, a certain pattern of judicial response to these lawsuits may set in motion a dynamic process of disintegration of the institution.

[145] **Morales v. Schmidt**, 340 F. Supp. 544, 548–49 (1972).

Twenty costs $260,000. And so on. Add to this court expenses, parole costs, family assistance, lawyers' fees and the rest, and imprisonment shows itself to be a terribly exorbitant mode of punishment. Even assuming that the burglar may have committed several other thefts before being caught, the cost of incarceration far exceeds that of his/her crimes. It is also important to remember that the victim never is compensated under the present arrangement. Only the keepers profit from prisons. Prisons are welfare at its worst and most grotesque.

Legislators have to be taught that whenever they authorize a sentence of imprisonment for a particular offense, whenever they vote to enact tougher sentences, they are spending huge sums of the people's money.[144] Judges must learn that every person they send to a cage, and for every day they require him/

[144] Richard F. Sullivan, p. 22. Firm monetary costs are not easy to come by, since there are several methods of computing daily costs of imprisonment. If, for instance, we used the figure of the average yearly cost of institutional incarceration as $10,000, the increased average sentence served in California between 1963–1968 was six months increase (increase from 30 to 36 months): for the average 30,000 population in California prisons at that time, we would have the figure of $150 million as the cost of keeping that many persons in prison for that additional period of time. If we use the prison's usual **marginal** cost of $620 for locking one person up per year (the **extra** cost of putting one person in prison assuming that the prison had empty space and that none of the costs of the buildings or of the regular staff would be included) we would have a lesser figure of $9 million. Sullivan points out that such computation is an incorrect use of the idea of marginal cost, since one would have to count much more than food and a few extras in order to estimate the true cost of keeping the entire prison population confined for six additional months.

In 1969 the Chairman of the Lorton Lifers at the Lorton, Virginia facility, wrote that the costs of keeping 86 Lifers in prison at the (then) figures of $7,000 per man per year for imprisonment, and about $3,000 for welfare for his wife and two children, for the minimum of 15 years would be $11,610,000. He says "It can be concluded that the taxpayers have expended the sum of (prison and welfare) $11,610,000 just to release to the community a better "crook" who was never rehabilitated during those 15 years. Of course, there was the cost of court and prosecution that should be added on to the above figures." (From a letter to the Institute for Policy Studies).

severity of punishment, have the greatest deterrent effect."[81] Not only is this thesis unproven, but it remains unworkable since both certainty and swiftness are not possible in the criminal (in)justice systems.

Difficulty in grading deterrence

In addition to the dearth of data on deterrence, other difficulties in evaluating deterrence include:

- Measuring deterrence by comparing the number of lawbreakers to the number of people who obey the law due to fear of penal sanctions. It is impossible to measure the latter and unreliable to count the former since the majority of law breakers within the population are unapprehended.
- Failing to account for other forces of socialization besides penal sanctions which encourage or discourage conformity with noncriminal behavior.
- Basing "evidence" on deterrence mostly on parole recidivism rates, a method which is now under serious challenge.
- Sorting out the factors relevant to crime deterrence is overwhelmingly complex. These include the economic, social, and psychological factors and individual responses to actual or threatened punishments, as well as:

lic seems to demand can be (and is) extracted behind prison walls, but the pound of flesh negates reformation. The public cannot have it both ways."

[81] "Statement of the Ex-Prisoners Advisory Group", in **Toward a New Corrections Policy: Two Declarations of Principles**, p. 18. Also John Irwin, and "Rehabilitation Versus Justice" in Stanley L. Brodsky, ed., **Changing Correctional Systems** (University of Alabama, Center for Correctional Psychology, 1973) p. 63.

> ... the type of crime, the extent of the knowledge that the conduct is a crime, the incentive to commit the crime, the severity of the threatened punishment and the extent to which the penalty is known, and the likelihood that the offender will be caught and punished. The variety and complexity of these variables, the difficulty of isolating for study a class of potential future violators, and the problem of how to vary the severity and probability of punishment in order to determine the relative effectiveness for different policies, pose such formidable research problems that it is unlikely we will gain definitive data, at least for a very long time.
>
> —Struggle for Justice, pp. 56–57

Theories of deterrence

> Punishment is not a deterrent. The system taught me to function inside of the walls. The deterrent against my going back to prison is not the punishment but the fact that for the first time in my life I have met people who have indicated that there is goodness in me ... the deterrent is that I would he so totally ashamed of committing a crime because people love me and 1 would have let them down. Most important, tho, I would have let myself down.
>
> —Chuck Bergansky, Fortune News, April 1975

There are two theories of deterrence: special and general. The theory of *special (or specific) deterrence* contends that some form of punishment will teach the individual a lesson. In terms of penal sanctions it holds that an individual is unable to commit crimes against the public while incapacitated in prison; and

flowed.[143] Overcrowding historically has resulted in increased riots and bloodshed, such as occurred in the 1920's, the 1950's, and at Attica in 1971. This leaves many states with a crucial policy decision: either increase available space, or reduce the number of prisoners. Building more prisons is clearly not a solution and would be a costly, irrevocable mistake. Construction costs are a major factor behind the slowdown in prison expansion during the 1960's. But the future is uncertain. It already costs from $30,000 to $50,000 in some states to build a single cell of a maximum security prison. Such costs could make further expansion economically unfeasible. On the other hand, prisons are one of the few public building projects which the public might be frightened into approving. Considering the depressed state of the building trades, such scare tactics are not beyond the realm of possibility.

The National Moratorium on Prison Construction lists more than 500 penal facilities presently under consideration or underway, at an average construction cost of $6,700,000 per facility, a per bed cost of $24,000.

Costly decisions

Sometimes it helps to focus on an individual case. Consider the example of a burglar who is convicted of stealing $200 worth of goods (about the average for that offense). In a state where the average per capita cost of incarceration is $13,000, a two-year prison sentence costs $26,000. Three years costs $39,000.

[143] "A Perspective on Crime and Punishment." The United States, among 15 industrialized nations, uses imprisonment more than any other, having an imprisonment rate of 200.0 per 100,000 population, nearly ten times as high, for instance, as the Netherlands which ranks lowest with a rate of 22.4. (Statistics reprinted from **Criminal Law Quarterly**, December 1974.) More recent accounts as described in media sources, indicate spiraling prison counts in Virginia, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Missouri, Illinois and Michigan.

Prison prospects

The costliness of incarceration already represents a substantial drain on government fiscal resources. In the future, this cost may put prisons beyond the reach of localities and states, and possibly even the federal government. In addition to fantastic cost increases, a number of additional factors may influence the fate of imprisonment in the years to come.

As recently as 1973, none of the states paid its prisoners a minimum wage and seven states (Maine, Georgia, Florida, Texas, Mississippi, Arkansas and North Carolina) paid them nothing for their labor. Of those that did pay, most paid only token rates of 15 to 30 cents a day[141] in some cases for the most strenuous and tedious kinds of tasks.

Wardens have enjoyed the luxury of this form of slave labor for as long as the modern prison has existed. Few could run their institutions-or their households-without it. If Massachusetts prisoners had been paid $3 per hour in 1973, instead of 50 cents a day, their earnings would have cost the state $8 million instead of $171,000.[142] Without uncompensated workers to perform necessary kitchen and maintenance chores, prisons could not operate. Without trusties to serve as chauffeurs, chefs, gardeners and personal valets, many prison superintendents would lose their royalty status. Add to this the possibility of workman's compensation for prisoners and the economics of imprisonment appear grim indeed.

Prison populations are once again increasing. Following a period of decarceration during the 1960's, the number of those in captivity has shot up as economic conditions have worsened. As a result, prisons in many states have become filled to the brim, and in some regions, especially the South, they have over-

[141] See Ritchie M. Turner, "Federal Minimum Wage Law," **Proceedings of the 103rd Annual Congress of the American Correctional Association, 1973** (College Park, Maryland, ACA, 1974) pp. 142–52.

[142] Prison Research Project, pp. 36–37.

that upon release from prison, the individual is deterred from committing new crimes, because of his/her unpleasant prison experience.

General deterrence theory applies to society at large: it assumes that crime is prevented by the threat of unpleasant consequences and repeatedly reinforces that threat by subjecting certain criminals to imprisonment. General deterrence is assumed to exert the stronger deterrent effect over mass behavior.[82]

Theoretically, the effect of a prison sentence given to one burglar, for example, could be both special (to discourage him/her from post release burglary) and general, (to discourage potential burglars from taking the risk).

Problems with special deterrence

It seems obvious that prisoners are prevented from committing street crimes *while warehoused*, but it is far from obvious that prisoners are deterred from committing future crimes upon release. For the few that get caught and imprisoned, the prison experience probably encourages crime rather than deterring it:

> ... the recidivist rate is so large, with the repeat crime often progressively more serious than the original one, that for some imprisonment seems an encouraging rather than a deterring factor.
>
> —Willard Gaylin, Partial Justice, p. 20

> No study that I have ever seen, and there are many, provides any assurance that the prison reduces crime, while there is ample evidence that the fact of imprisonment is a heavy contributor to post-release criminal activity.

[82] **Struggle for Justice**, p. 52.

—William Nagel, The New Red Barn, p. 149

These statements are confirmed by many studies including a comprehensive study on probation completed in 1970, which concluded:

> … almost two-thirds of those offenders placed on probation had, one year later, no known subsequent arrest, while less than one-half of those sent to prison had been equally successful. These differences in "success" persisted even when one took into account the sex, age, race, offense, and prior record of the offender.[83]

Problems with general deterrence

It is extremely risky to draw conclusions about general deterrence. Most people remember at least one time when they decided not to commit a crime only because they feared getting caught. The decision to commit the crime of highway speeding often depends on the perceived likelihood of being apprehended. But speeding is uniquely simple. The driver can usually determine whether a law enforcement officer is near, s/he knows both the penalties and benefits of the act and has the opportunity to weigh the risks.

Most decisions to commit crimes are far more complex. Among the many factors are the need or greed for money and the spontaneous or compulsive acting out of violent feelings. Murder, for example, is considered among the least deterrable of crimes, regardless of the penalty, because most murders occur without premeditation between spouses, friends and acquaintances.

[83] Ronald H. Beattie and Charles K. Bridges, "Superior Court Probation and/or Jail Sample," published by the California Bureau of Criminal Statistics (1970), quoted in James Q. Wilson, **Thinking about Crime** (New York, Basic

"Any harm done to the [prisoner] is a *net social* loss just as any harm done to any other citizen is a net social loss," according to a former senior probation officer.[140] Over the course of a year, prisons and jails in the United States are responsible for removing hundreds of thousands of fathers and mothers from their households. Only wars and slavery have had such a devastating impact on American family structure.

The cost of merely confining a prisoner now exceeds $10,000 a year in many states. This cost has always gone up, but in recent years it has risen at a phenomenal rate. New York provides a graphic, but by no means exceptional, illustration. From 1962 to 1972 the state "correctional" budget increased by almost 150 percent, and the average per capita cost of incarceration rose by nearly $9,000. This trend is astounding when one considers that the number of prisoners actually *declined* by almost 40 percent during those years. The average per capita cost in New York, meanwhile, exceeded the average annual income of state residents. By 1976, New York's "correctional" budget surpassed the $200 million mark. Moreover, jail costs have experienced an even greater increase: from 1965 to 1973 they jumped from $10.2 million to $28.7 million, an increase of 187 percent.

These increases occurred during a time of minimal prison construction, when the state prison population was actually decreasing, and before the jails were forced to upgrade their abysmal conditions.

Such cost increases show little signs of abating, and indeed, they probably will continue to grow at an accelerating rate. For example, unionization and "professionalization" of "corrections" employees already has resulted in enormous salary hikes, but in many states-and especially, in local counties these organizations have only begun to exert themselves as a political force. As jail and prison guards seek parity with policemen and other public employees, "correction" costs will jump again.

[140] Richard F. Sullivan, p. 24.

	1962–63	1971–72	1972–73	% Increase
Administration	$1.8	$ 6.1	10.2	466.7%
Rehabilitation[61]	49.7	96.3	118.1	137.6%
Industry	4.8	7.6	11.7	143.6%
Inspection	—	0.2	0.4	—-
TOTAL	$56.3	110.2	140.4	149.4%
PER CAPITA COST	$2,528	$9,429	$11,283	

OPERATING BUDGET, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, 1962–1973 (in millions)

	1965	1973
Sheriffs' salaries	$525,626	$880,997
Maintenance	43,634	27,202
Meals	1,098,352	2,677,921
Utilities	297,297	480,301
Improvements	679,732	511,337
Other	735,919	3,310,749
Salaries (ex. sheriffs)	6,819,063	$20,841,575
TOTAL	$10,199,623	$28,730,082
TOTAL MINUS SHERIFFS' SALARIES	$ 9,673,997	$27,849,085

EXPENDITURES FOR COUNTY JAILS & PENITENTIARIES IN NEW YORK STATE, 1965, 1973

Most decisions to commit crimes lie between the extremes of speeding and murder. Deterrence theory "assumes a marginal class of people for whom the punishment will be a factor, consciously or unconsciously, in influencing their conduct, directing them toward or away from a crime."[84]

Surveys of punishment in Europe concluded that "… the policy of punishment and its variations have no effective influence on the rate of crime."[85] Thorsten Sellin, emeritus professor of sociology at the University of Pennsylvania, found in his study of capital punishment that crude homicide rates appear the same regardless of a statutory death penalty; that the rates did not change significantly in states which abolished or restored it; and that homicide rates remained stable in cities where "executions occurred and were presumed to have been publicized."[86] One student traced a rise in the murder rate in California preceding executions, just as one political assassination attempt seems to spur others.

In 1961, California greatly increased penalties for attacking police. Yet according to a follow-up study by the California Assembly Committee on Criminal Procedure, by 1966 police were almost twice as likely to be attacked.[87] More recently, severe drug laws adopted in New York have failed to reduce drug related crime, tho they succeeded thru increased judicial burdens in undermining "the efficiency and functioning of the criminal justice system."[88]

Books, 1975) p. 167.

[84] **Struggle for Justice**, pp. 5556.

[85] George Rusche and Otto Kirchheimer, **Punishment and Social Structure** (New York, Russell & Russell, 1939) p. 204.

[86] Thorsten Sellin, **Capital Punishment** (New York Harper & Row, 1967).

[87] Mitford, pp. 306–307. For further studies on the ineffectiveness of the death penalty as a deterrent on the murder of law enforcement officers and prison guards, see pp. 190–91.

[88] Nicholas F. Hahn and Scott Christianson, "Headin' for Stir," **New York Times**, June 30, 1975.

In addition to strong doubts about the practical efficiency of general deterrence, there is a serious moral question involved. Does society have the right to punish one person in order to deter another? We believe that the answer is no.

It is clear that imprisonment fails to reduce the rates of crimes most feared by the public. Severe penal policies reflect public fears but they do not reduce crime. Penalties cannot counterbalance the deeper causes of so-called criminal behavior.

As long as prison punishment and control are equated with crime deterrence, it will be the task of abolitionists to disprove this myth. Society's energies are better focused on deterring crime at its cultural and structural sources.

The myth of rehabilitation

Myth: Prisons rehabilitate prisoners.

Reality: The primary functions of prisons are control and punishment.

Robert Martinson, a sociologist at the City College of New York, asserts from his exhaustive study[89] that "rehabilitative" efforts have no appreciable effect on recidivism rates. Norman Carlson, director of the Federal Bureau of Prisons, admits that "We actually don't know ... if anything works."[90] From every corner, rehabilitation is under attack.

But the message of abolitionists is more than a declaration that "rehabilitation" has failed. Our task is to dissect the underlying myth, but more importantly, to describe how rehabilitation succeeds, not in correcting, but in controlling. For the "rehabilitation" model effectively reinforces the primary pur-

[89] Robert Martinson, Douglas Lipton and Judith Wilks, **The Effectiveness of Correctional Treatment** (New York, Praeger Publishers, 1975). First published in summary version in **The Public Interest**, Spring 1974.

[90] Norman Carlson, as interviewed on 60 Minutes, CBS News, August 24, 1975.

must publicize the massive waste of financial and human resources that prisons represent.[138]

Tracking the dollar

Imprisonment is the most expensive punishment ever devised. In addition to what it costs to cage prisoners in a cell, the society pays other hidden costs. Prisoners' families often are forced to rely on public welfare assistance to survive. Prisoners are kept from consuming goods and services in the community; denied an opportunity to earn a decent living, they pay little if any taxes. Ex-prisoners confront dismal employment opportunities and reduced earnings. Large numbers of prisoners' children are placed in foster homes causing family disruption and costing the state much money.

The greatest harm is done to the prisoner and his or her family. For instance, over 80 percent of imprisoned women are mothers. Worrying about their sons and daughters is a constant ordeal. Behind the pain of separation lies the ominous prospect that it may be permanent, since according to one recent estimate, 38 percent of prison mothers permanently lose custody of their children.[139]

In a society which professes to champion the family, it is sad that a form of punishment is used which severs family ties and crushes family life.

SOURCE: New York State Commission of Correction

[138] Richard F. Sullivan, p. 21. "When we turn to the cost of prison as the means of fighting crime, we find it extremely high, especially when the social costs are weighed into the bargain. The public suffers under the delusion that the harm and hurt imposed on men and women in prisons (our noncitizens or nonpersons) does not affect the rest of society. When we consider that 98 percent of all prisoners will eventually be released, and that 80 percent of all crime is committed by men with prior criminal records, it is clear that the harm done a [person] inside may well bring harm to the world outside one day."

[139] "Problems of Women in Prison," **Women Behind Bars**, p. 6.

the exception of the federal prison system, convict labor today is no longer as profitable as it was in the 1820's and 1830's. In some states, prison industry actually loses money. But still, the institutions serve some important functions for those in power. They incapacitate the "criminal" unemployed and unemployable, the militants, and other threats and embarrassments to the prevailing system. They furnish a substantial number of jobs to middle class whites, especially in rural areas which ordinarily might be economically depressed. They "protect" the middle class and the ruling class from the lower class. They represent, in stark and impregnable form, the legitimacy of the dominant order.

Abolitionists recognize that the economies of some localities are totally dependent on prisons and jails[137] in much the same way that certain districts rely upon defense contracts. Breaking this cycle of dependence is not an easy task, but we are convinced that the fantastic economic and social costs of prisons-when fully conveyed to the people-can act as a tool for change. We seek to educate ourselves and our neighbors about our neighborhood prison industry. As a beginning we

[137] Most prisons are located in isolated rural areas, where local populations depend on the prison as "industry" providing employment, income and other revenue to hard-pressed communities. For instance, as reported in Mitford, p. 9: "In December 1972, when the California Department of Corrections announced it would shortly close down the nine-year-old Susanville Prison, the newspapers ran touching stories about what this would mean to the guards, their families, real estate values, school subsidies and small businesses in this little community of 6,000. Under the headline 'A Mountain Town Battles to Keep Its Grip on Life,' the **San Francisco Examiner** reported that residents were up in arms over the threatened loss of the prison; the local radio station manager had urged all listeners to send Christmas cards to Governor Reagan with the message, 'Remember Susanville!' Apparently the governor heeded this outpouring of Yuletide sentiment, for the following February, the **Sacramento Press Journal** reported that the prison would not be closed after all, but would instead be remodeled at an estimated cost of $4,635,000."

poses of prisons: to control and to punish certain segments of society.

A lesson for abolitionists

Reformers may not have intended rehabilitation as a process of selective control by the wealthy, property-holding, ruling class; nor did they necessarily seek to create a deceitful mechanism for punishment and conformity. Indeed, rehabilitative theory may have evolved from reformist attempts to improve the lot of the criminal. Many reformers have been, and continue to be, co-opted.[91]

Prison, after all, was originally suggested "as a kinder substitute for the whip, the stocks, and the branding iron."[92] The hope was that once a deviant was secluded from society, and confronted with stark solitude, introspection would produce repentance. As such, penitentiaries were considered moral and humane settings in which punishment would permit "salvation."

This history provided the groundwork for individualized treatment. Briefly stated, the individualized treatment model advocates that since the cause of crime resides in the individual, the punishment must fit the criminal not the crime. Once extracted and isolated from society, the prisoner is kept locked up until "reformation" is achieved. Within this context, the criminal is viewed as someone with a "disease," who may be curable, given the "proper treatment." Criminals are classified

[91] **Struggle for Justice**, pp. 17–18. " ... a paradigm of the drama that critics and administrators of the penal system have played over and over again: the critic attacks, devising something that seems better; the administrator co-opts the critic and implements the idea in ways and for ends quite at odds with the original intention. The result may be more humane-or then again it might not be. In any event, it serves to entrench the legitimacy of the society's mode of handling criminals."

[92] Michael T. Malloy, "Reform is a Flop," National Observer, January 4, 1975.

in arbitrary categories and labeled as particular types, on the basis of this medical model. The time of rehabilitation is a time of redemption; now the criminal can be "saved" through "treatment." And the "repentence" philosophy continues in its various disguises from generation to generation until the *total* process of control is legitimized by a treatment framework.

"Rehabilitation" = punishment + control

The equation of rehabilitation and punishment is not mere rhetoric. The humane connotation in the word "rehabilitation" masks a wide range of severe control mechanisms:

> In truth, rehabilitation in prison has the same function and effect as it does in other totalitarian societies: tho it may have some benevolent or paternalistic features, it is primarily a control system ... Prison is punishment, almost exclusively if not entirely, and we have no right to pretend otherwise.[93]

The crime of punishment lies in this hypocrisy. But the outrage is deeper. Control is institutionally administered. Conformity is demanded. "Correction" is enforced. "Rehabilitation" is required as a condition for release. One must conform. One must be cured. In short, coercion forms the root of the deceit.

The prison is built on coercive control. A vocabulary (strangely similar to ones used in a hospital setting) is utilized to convey the impression of healthy, curative treatment. This "treatment" is designed to retain indeterminate custody over the "deviant" and requires change in his/her behavior. The key to successful rehabilitation is conformity-nothing more,

[93] Herman Schwartz, "Protection of Prisoners' Rights," **Christianity and Crisis**, February 17, 1975, p. 21.

slavery-by which persons could be confined at hard labor for having committed a legal sin (a "crime"). The characteristics of the two institutions, slavery and imprisonment, are remarkably similar.

The first prisons in the United States were called "penitentiaries," built by reformers as places where repentence would be accomplished primarily thru solitary confinement. They were a disastrous failure, producing more insanity than reformation. With the dawn of the Industrial Revolution in the early 19th century, these small penitentiaries were transformed into larger penal factories, modeled on the so-called Auburn plan.

Heralded as a humane and rational alternative to capital punishment and other barbaric methods, prisons possessed several distinct advantages over former legal sanctions. They provided a source of cheap labor, at a time when workers were highly prized and when immigration had not yet flooded the market. The new institutions also offered the banks an excellent means of acquiring large amounts of capital from the state, which could be used for investment purposes.[136] Auburn prison, for example, was one of the largest construction projects New York State had authorized up to that time. For many years, some states spent more for prisons than they did for public education or transportation.

Prisons also protected vested interests by furnishing a mechanism to regulate relationships between social classes. They isolated persons who were labelled as threats to the status quo. They stood as a strong coercive symbol to reinforce the authority of the state.

Over the years, the economics of prison have changed in concert with the larger economic system. Different costs and benefits have appeared, only to be replaced by others. With

[136] From unpublished draft of **Slavery and Imprisonment: Some Introductory Notes**, Scott Christianson, School of Criminal Justice, State University of New York at Albany, Albany, New York.

the prison's continued expansion, or threatens its well-being, is treated as a serious threat. Meanwhile, as imprisonment has come under increasing attack, more and more public funds have been funneled into the prisons' public relations and lobbying efforts.[135]

These activities are also conducted by vocal professional associations and employee unions.

Experience has taught abolitionists that the prison establishment is highly organized, well funded and politically powerful. Above all, we understand the importance of prisons to the total economic system. Like such predecessors as the slavery abolitionists and antiwar activists, prison abolitionists are committed to exposing the immense economic and human costs of this particular form of destruction, waste and exploitation.

Economic origins

War, slavery and imprisonment are blood brothers in the same sinister family. Slavery originated from the capture of peoples vanquished in war. For thousands of years, slaves were considered part of the victor's "rightful spoils." The legitimacy of slavery, it should be remembered, was not seriously challenged until the late 18th century. Imprisonment *evolved* from slavery, and was not utilized as a punishment for crime until this period when slavery came under attack. Instead of slavery's perpetual servitude, there was created another kind of slavery-penal

Institutions are amoral. They are socially irresponsible. They are inherently power-hungry. As every legislator knows, they are always hungry for more public money. In short, institutions are lawless-they themselves must be constantly controlled and rehabilitated. The prison system is no exception.

[135] David Greenberg and Fay Stender, "The Prison as a Lawless Agency," **Buffalo Law Review**, 21 (1972), p. 812. In 1971, for example, the California Department of Corrections campaigned-at public expense against each and every one of the 175 prison reform bills which had been introduced in the state legislature.

nothing less. When the "deviant" no longer deviates from the values of the dominant class, s/he is "rehabilitated."

There is an inherent contradiction in treatment! custody. The devastating result of this combination is all-embracing control. Rehabilitation is cleverly used to extend that control. The control is daily and trivial, daily and all-pervasive.

> For the prison administrator, whether s/he be warden, sociologist, or psychiatrist, "individualized treatment" is primarily a device for breaking the convict's will to resist and hounding him into compliance with institution demands, and is thus a means of exerting maximum control over the convict population. The cure will be deemed effective to the degree that the poor/young/ brown/ black captive appears to have capitulated to his middle class/white/middle-aged captor, and to have adopted the virtues of subservience to authority, industry, cleanliness, docility.[94]

The cage

Some "rehabilitation" programs may effectively encourage growth in *some* individuals and they may even be conscientiously administered by well-meaning people. But they are exceptions to the rule.

Can a person be "corrected" in a cage? Can humanization occur in a dehumanizing atmosphere? Can a patient be involuntarily "cured?" Prison is a totalitarian institution; it controls every aspect of daily life, and thus it creates either utter dependency or radical revolt.[95]

[94] Mitford, pp. 116–17.

[95] Gresham Sykes, "Prison is a Perfect Culture for Growing Conspiracies," **New York Times**, April 21, 1974.

Many prisoners become institutionalized. They look to the prison for permanent security.[96] Efforts at re-integration appear counter-productive; instead, prisoners learn to depend on the abnormal, violent prison society, based on authoritarian values.

Indeterminacy & the treatment model

In this setting rehabilitation forcibly requires acceptable behavior. If a prisoner does not consent to this process, the ultimate reward of release is postponed time and time again by denying parole. If one form of treatment is not effective, another is not only justified, but required. A scale of treatment from isolation to behavior modification becomes acceptable to accomplish "correction."

One to ten years is a typical indeterminate sentence. Some run five years to life. The indeterminate sentence supposedly is adjusted to the individual and his/her readiness for reintegration in society; actually it is an official means for punishing and for exacting conformity. Any positive values in programs of rehabilitation are cancelled by the coerciveness of the indeterminate sentence.

Behavior modification

Behavior modification techniques indicate the extremes to which the state will go to extract conformity in the name of "rehabilitation." The growing use of behavior modification in prison[97] illustrates the potential for escalation inherent in *any punitive* approach. Under the guise of treatment, procedures

[96] See Andrew H. Malcolm, "For this Convict, 'Freedom' is Another Word for 'Fear'," **New York Times**, November 20, 1974, p. 41.

[97] Behavioral psychologist B.F. Skinner in a letter to **The New York Times**, February 17, 1974: "... it was a tragic mistake to include behavior modification thru management of the prison environment... It is possible for prisoners to discover positive reasons for behaving well rather than the

> the prison business billions of dollars to prove the effectiveness of prisons. Where is the proof of the effectiveness of those billions that we have given them'? It is long past the time when the prison sales (people) should be summoned forth to give an accounting of their programs.
>
> —Richard F. Sullivan, *Depopulating the Prison*, June 12, 1972

Imprisonment in the United States is a billon dollar industry, employing thousands of people. In 1972 state governments alone spent $1.3 billion on "corrections,"[131] and 150,000 Americans worked full-time for state or local "correction" systems.[132] There are 3,000 penal institutions-federal, state, local,[133] making the prison industry larger than many of the nation's giant corporations.[134]

Like the big corporations, the prison industry frantically promotes its own growth. Its executives constantly seek more money, larger staffs, increased power. Anything that impedes

[131] Michael J. Hindelang et al., **Sourcebook of Criminal Justice Statistics—1974** (Washington, D.C., U.S. Department of Justice, 1975) p. 120.

[132] **Ibid.** , p. 121.

[133] **Ibid.** , p. 129.

[134] Richard F. Sullivan, "Prisons with Prices: The Cost of Confinement" in Steve Bagwell, ed., **Depopulating the Prisons**, p. 26. "Our society has created immense bureaucratic industries that fatten on the misery of others. Regard the size of the criminal justice industry. What would become of all those people if everyone went straight?... Just think of how remunerative the 'war on poverty' was for the middle classes. Now it's the 'war on crime.'"

Also Dr. James A. Bax, commissioner of the Community Services Administration of HEW, U.S. Congress, House, Select Committee on Crime, **American Prisons in Turmoil**, hearings, 92nd Congress, 1st Session, November 29-December3, 1971 (Washington, D.C., U.S. Government Printing Office, 1972) Part 1. pp. 277–99: Prisons "are often incestuous bureaucracies existing unto themselves. Their budgets are stoked by legislators, not on the basis of the numbers of citizens they rehabilitate, but on the numbers of prisoners they keep quietly tucked away out of circulation.

> The penal department—the department set aside for punishment—must be eliminated from our state organization.[129]

Some individual modes of punishment have successfully been abandoned and abolished. Previous victories by abolitionists resulted in an end to the use of the rack, the wheel, the chopping block, branding, whipping and other torturous sanctions.[130]

As we develop new social, economic and power arrangements that facilitate reconciliatory practices, it is up to those of us who oppose prison and other punishments to integrate non-punitive alternatives into our own lives. In many cases, the abolition of prison begins at home.

The myth that prisons are worth the cost

> Taxpayers ought to cringe at the economics of this $1 billion-a-year waste. A business doing this poorly would not have survived the first shareholders' meeting. Nevertheless, we respond to the failure of the prison system with more of the same: more expensive prisons, longer sentences, less probation and parole.
>
> —Ronald Goldfarb, "Why Don't We Tear Down Our Prisons?" *Look Magazine*, July 27, 1971

> We have had prisons around for many generations. We have given the advocates and sales(people) of

Francisco, Freeman, 1973).

[129] Frank Tannenbaum, **Wall Shadows-A Study in American Prisons (New York**, Putnam's, 1922) pp. 14748.

[130] For lists of abolished punishments see: Alice Morse Earle, **Curious Punishments of Bygone Days** (Chicago, Herbert Stone, 1896 and reissued thru Detroit, Singing Tree Press, 1968).

involving long term isolation, negative reinforcement and heavy doses of incapacitating drugs are used to "correct" the "violent "uncooperative" and "aggressive," so labeled because they do not conform to prison rules and regulations. Behavior modification becomes a convenient way of making the prison population "better and more manageable."[98] Rehabilitation in the form of behavior modification, then, is most likely to be an "experiment in control."[99]

The "game"

All the elements for a dangerous "game" take shape. There are no rules, except the whims of the administrators. Uncertainty, lack of accountability, and discretionary power dominate.

Conformity becomes the criterion for successful rehabilitation. Successful rehabilitation becomes the criterion for release.

negative reasons now in force... It is a gross misrepresentation of behavior modification thru the design of contingencies of reinforcement to call it 'systematic manipulation of behavior' or to say, that 'a reward is given at each stage at which a subject produces a specified behavior.' Prisoners are being rewarded now, and their behavior is being systematically manipulated, and the result is Attica. It will continue to be Attica until the nature and role of the prison environment are understood and changed."

[98] Arpiar G. Saunders, Jr., "Behavior Therapy in Prisons: Walden II or Clockwork Orange?" (A paper prepared for the Eighth Annual Convention of the Association for Advancement of Behavior Therapy, Chicago, November 1–3, 1974, as part of a panel entitled "Legal and Ethical Issues in Behavior Therapy.") He cites a court decision rendered on July 31, 1974 in the START (Special Treatment and Rehabilitative Training Program) litigation: Clonce v. Richardson. "The decision noted that the purpose of the program was not to develop behavior of an individual so that he would be able to conform his behavior to standards of society at large, but rather to make him a better and more manageable prisoner."

[99] Norman Carison, quoted in the **New York Times**, October 25, 1975, speaking of the START program, phased out at Springfield in 1974: "If we had called START what it was-an experiment in control-many people think there would be no problem," he said. "Unfortunately, START was called a behavior modification program."

The recidivism rate becomes the criterion for the overall success of rehabilitation.

We cannot resort to the language of this "game," or to its statistics or evaluations. We must look again to the root causes of crime and remember once again that the "game" is played in a cage. The myth of rehabilitation cannot be dispelled until we recognize the naivete of reformers who ignore the way the "game" is played.

Hard days for rehabilitation

Behavior modification

> The Control Unit, formerly called the C.A.R.E. Program (Control and Rehabilitative Effort) is now called the Control Unit Treatment Program. It is an experimental Behavior Modification Program based on a system of rewards and punishment. That is, a prisoner who will change his behavior and attitude or give up his values and beliefs and conform to what the prison administration considers acceptable behavior, may be rewarded by being returned to the general prison population, either here at Marion or at another penitentiary.
>
> For those who do not go along with the program, prison officials use Sensory Deprivation, or complete isolation in an attempt to "break" the will of the prisoner. By being kept in a Control Unit, the prisoner is being deprived of culture and environmental contacts, which tend to bring about organic changes, that is, degenerative changes in the nerve cells, which can result in death, primarily because culture and environmental contacts are essential to survival. Physical and social contact are minimized, in everything including contact with

ophy of reconciliatory behavior plus concrete, tested nonpunitive methods for actively overcoming injustice, powerlessness and violent behavior. Abolitionist strategies are rooted in nonviolent principles and practices and harmonize with concern for reconciliation.

This handbook's cursory critique of punishment cannot begin to conceptualize a total system of reconciliatory practice, nor can we blueprint its implementation. *It is crucial, however, that we who advocate the abolition of prison punishment as a long range goal, understand the parallel need to abolish the legal and social practice of punishment.* Both goals require a society whose value systems and economic and social relationships produce an environment where cooperative, voluntary and reconciliatory procedures are available to all.

Abolitionists advocate an intermediate and continuing strategy which guarantees the least amount of coercion or punitive intervention in an individual's life. At the same time, we need to develop the range of options and nonpunitive alternatives available to the total community. These include lifesustaining services, the use of persuasion and related behavior, dispute settlement, conflict resolution, rewards and positive reinforcement, voluntary restitution options and peer support groups.

Frank Tannenbaum, former prisoner and an expert on the American prison system, stated the need to abandon the notion of punishment as long ago as 1922:

> Punishment is immoral. It is weak. It is useless. It is productive of evil. It engenders bitterness in those punished, hardness and self-complacency in those who impose it. To justify punishment, we develop false standards of good and bad. We caricature and distort both our victims and ourselves …

---

by Mahatma Gandhi; George Lakey, Strategy for a Living Revolution (San

ticularly since there is no burden of proof on the punisher that punishment "works."

It is increasingly apparent that prison punishment does not "work." It cannot correct the original act of the wrongdoer or restore him/her to a functional role in the community. Except in those rare cases where the lawbreaker needs to be bodily restrained for a period of time, most legal punishments as presently determined by the sentencing process, inhibit the opportunities to address the human needs of both the victimizers and the victims in the community. The recognition by child advocates that human needs must be met outside the criminal justice systems in the community, presents an important and accepted nonpunitive model for new responses to violent actions. There are many more.

It is not sentimental, according to Dr. Karl Menninger, to be against punishment. "It is a logical conclusion drawn from scientific experience. It is also a professional principle: we doctors try to relieve pain, not cause it."[127]

Nonpunitive alternatives: Reconciliation

There is appallingly little research to justify the scope and severity of punishment as it is automatically utilized and even less scientific evidence to justify *not* using punishment in our society. The fact that no coherent body of literature or system of thought advocating more reconciliatory social practices has been developed, attests to society's ready acceptance of violent, punitive methods to alter behavior.

Undergirding for a new reconciliatory system of behavior is scattered thru a range of philosophies, disciplines and experiential writings. By far the most comprehensive and developed body of literature useful to abolitionists relates to the theory and practice of nonviolent action.[128] Here we discover a philos-

[127] Karl Menninger, **The Crime of Punishment**, p. 204.

[128] See Gene Sharp, **The Politics of Nonviolent Action**. Also writings

families: Prisoners confined to the Control Unit are compelled to visit their families in a special visiting room via monitored telephones- a glass partition serves to separate the prisoner from his visitor.

In the words of one of the three psychiatrists who visited the Federal Marion Prison primarily to inspect the Control Unit Treatment Program for the purpose of giving professional testimony on behalf of the prisoners subjected to the program, Dr. Bernard Rubin states that "It is not a program- either in policy or implementation. There is insufficient staff, without training. There are no resources for the programs: counselling, almost none or none occurs; educational, does not exist; vocational, almost non-existent; recreational, none. No group activities, with or without staff ... The setting and its organization demeans, dehumanizes and shapes behavior so that violent behavior is the result ... the organization and operation of the setting produces or accentuates frustration, rage and helplessness."

These programs are not voluntary, the prisoner has no right to choose the treatment of his choice, and since they are secret and not open to public scrutiny, there are no safeguards to protect the prisoner from unethical or illegal abuses. As Dr. Rubin says, "Coercive programs which attempt to change attitude or behavior always fail unless you kill the prisoner, permanently disable him, or keep him incarcerated for life." Some prisoners here at Marion in the Control Unit Treatment Program have been told that they will be compelled to endure the remainder of their sentence

in the program. Some of these men are serving life sentences.

Presently there are approximately 50 men in the Control Unit Treatment Program. Some of them were transferred here from other federal institutions, and others from as far away as the Hawaiian State Prison. These prisoners have *no* history of mental illness-they are the ones who, because of racial or cultural backgrounds, political or religious beliefs, feel compelled to speak out against the inhumanities of the prison system. Because of this, we are subjected to these psychogenocide programs.

—Alberto Mares, released from the Control Unit Treatment Program as a result of a federal court order on December 6, 1973. Marion Federal Prison officials were ordered to release the remainder of those prisoners who were put into the Control Unit in July of 1972 for participating in a peaceful work stoppage to protest the brutal beating of a Chicano by prison officials.

In recent years, prisoner revolts have triggered an onslaught of criticism of prisons. Outspoken criticisms of prisons have appeared, including Struggle for Justice and even the reports of the National Advisory Commission on Criminal Justice Standards and Goals, which not only declare incarceration a miserable failure but further state an intrinsic incompatibility between incarceration and rehabilitative objectives. Even leading spokespersons for the "correctional" system have begun to admit the failure of rehabilitation.

Social scientists have been in the forefront of those questioning the efficacy of rehabilitation. Robert Martinson's work concludes: "With few and isolated exceptions, the rehabilitative

life."[123] Simply stated: a person must *feel* loved, wanted, accepted before s/he can give love. "Feeling loved, wanted and accepted" translated into concrete social terms means a caring, nonviolent community which can provide resources, services, one-to-one relationships, peer group counseling opportunities and other restorative practices rather than penal punishment.[124]

Dr. Henry C. Kempe, of Parents Anonymous, thinks if nonpunitive and restorative innovations are used in communities, in ten years the battered child syndrome will begin to disappear, with about 90 percent of the parents helped into becoming adequate mothers and fathers. Successful parental re-education uses a "nonjudgmental, noncritical and considerate" approach to parents. This is a marked contrast to guilty parents' expectation of punishment. "We have had very good results ... by protecting them from this *old system* of 'crime and punishment'... "[125]

If the essence of legal punishment is "the state's use of compulsion against the offender for the purported benefit of society in general,"[126] it becomes clear that legally punishing battering parents and, in our opinion, other lawbreakers, cannot benefit society. On the contrary, it further harms society by contributing to the violent cycle already fueled by cultural, familial and societal patterns. Unfortunately, the availability and wide acceptance of legal punishments reduces the immediate possibility of developing systematic alternative responses, par-

[123] **Ibid**.

[124] James P. Corner, **New York Times**, December 29, 1975. "Our soaring crime rate is not due to spared rods and spoiled children. It is attributable to a breakdown in 'community' ... if our leaders cannot organize communities so that parents have sufficient income and security to respond to their children in a way that they become respected teachers and friends... we will eventually experience a level of delinquency, alienation and crime that will turn this society into an armed camp."

[125] Steele, "Violence in our Society."

[126] **Struggle for Justice**, p. 26.

There is a lack of reliable data indicating how rage is expressed and to what extent violence is committed by child abused adults *not* as likely to be labeled "criminal" as are the poor. But it is apparent that the middle and upper classes have greater access to services which may alter or conceal both child abuse and adult violence.

This mounting evidence puts to rest the popular theory that liberal parental attitudes are a major contributing factor to crime. On the contrary, it appears that child abuse and child neglect are factors which perpetuate violence in our culture. For prisoners (and guards, too) the brutality of the prison environment increases rather than decreases this potential for violence and aggression.

New directions

As with other criminal acts, once responsibility has been established, the tendency of society is to legally punish parents who batter their children. However, child advocates who deal with battering parents prefer alternative responses. Legal punishment, says a lawyer who is director of the Children's Division of the American Humane Association, doesn't achieve anything except surface compliance with criminal statutes. Prosecution frequently places the child in even greater danger when the battering parent comes home-"a parent whose motivational forces have remained untreated and whose emotional damage has become greater due to the punitive experience."[122]

How then, should society respond to abusive parents and other violent criminals? Most researchers and professionals in the field point to studies showing that battering parents suffer from deprivation of basic parenting—"a lack of the deep sense of being cared for and cared about from the beginning of one's

[122] Steele and Pollack.

efforts that have been reported so far have had no appreciable effect on recidivism."[100] It also indicts incarceration itself as actually damaging to the prisoner.

Norval Morris, in his work *The Future of Imprisonment*, rejects neither "rehabilitation" nor the future existence of prisons, but asks for honesty about the "real" purposes of prison: punishment and deterrence.[101]

Former Attorney General William Saxbe publicly refers to rehabilitation as a myth.[102] Norman Carlson announces a shift in the Federal Bureau of Prisons' correctional emphases-away from rehabilitation to deterrence and punishment.[103]

This "conversion" of prison personnel smacks loudly of the kind of co-option so prevalent in reformist history. If rehabilitation is so easily discarded and proclaimed a failure by those who designed the system, isn't it likely that they envision alternative ways to maintain control?

Three directions & our response

> When a person goes to prison, that person becomes the property of the state, with no human rights that any state employee is bound to respect (a condition suggesting the slave-like status of

[100] Robert Martinson, p. 25. Included in the research were 231 studies dealing with attempts at "rehabilitation." They were selected from 1,200 studies in the English language between 1945 and 1967 (on the basis of meeting standards of research and being acceptable for interpretation). Initiated in 1967 to help improve "rehabilitation" efforts, it was at first denied publication upon completion, given the unexpected conclusions. Its results became public information only with a subpoena in 1973 and its findings first published in **The Public Interest**.

[101] Norval Morris, p. 15.

[102] Ronald J. Ostro, "Saxbe Hits Penal 'Myth," **New York Post**, October 1, 1974.

[103] "Big Change in Prisons: Punish-Not Reform," **U.S. News and World Report,** August 25, 1975, p. 21. Also Norman Carlson, "The Federal Prison System: Forty-five Years of Change," **Federal Probation,** June 1975.

prisoners). That person is subjected to demeaning, degrading, humiliating conditions and treatment under totalitarian control in a completely lawless situation. It's a situation where it's "every person for himself, or herself," to survive, where acts of compassion, kindness, and cooperation are held suspect if not subversive. If prisoners need rehabilitation, it is from the treatment they are subjected to in prison.

—Bob Canney, Florida prisoner, Come Unity, March 1976

We see three major directions, all equally dangerous, emerging from this debate:

1. The "try harder" approach advocates attempting to make the treatment model work by more serious efforts. It argues that judgment against rehabilitation is premature, since rehabilitation programs have been inadequately staffed and funded, poorly designed, selectively administered, and have lacked research components and sound evaluative measures.

2. The "lock 'em up" approach urges tougher policies of confinement, without the burden of providing rehabilitation programs. This appears to be the major direction influencing prison policy. Its implications include:

    - Discontinuance of most rehabilitation programs.
    - Making prisons strictly an environment for punishment and deterrence (a return to warehousing).
    - Harsher penalties, especially for violent crimes.
    - A greater readiness to put offenders in prisons.
    - An increase in prison populations.

adults in the home"[115] identify their histories as a major impetus to their own violence.

Robert Brown of the Fortune Society, an exprisoner, maintains that 40 to 50 percent of all in the United States who go to prison have been "either battered or abused or neglected emotionally as to have experienced trauma."[116]

This opinion is supported by a variety of sources. As examples:

- "A New York study of nine juvenile murderers ... showed that all nine had been routinely beaten by their parents."[117]]
- Of 44 prisoners in Texas with a history of multiple violent acts, 37 were physically battered children.[118]
- In research of juveniles in five counties in New York, 38 percent of all children who were identified as battered or abused went on to juvenile institutions.[119]]
- Of six convicted first-degree murderers in Minnesota, four had been seriously abused and beaten by their parents in very early infancy and childhood.[120]]
- Four men who had murdered without apparent motive were examined by doctors at the Menninger Clinic; all four had experienced extreme parental violence during childhood.[121]

[115] Nanette Dembitz, Judge, New York State Family Court, **New York Times**, August 9, 1975.

[116] Tape interview with PREAP, December 1975.

[117] "Psychology: Danger at Home," **Time**, June 30, 1975, p. 17.

[118] Robert Brown interview.

[119] **Ibid**. Brown explained that men generally go to prisons, women to mental institutions.

[120] Steele, "Violence in our Society."

[121] **Ibid**.

child. The result is usually the child's feeling of rage and hostility that may take expression temporarily in withdrawal or flight. These feelings surface later in life, given the continual reinforcement of such patterns by society's institutions. Brutal behavior begets brutal behavior.

Parenting and child rearing are learned. Psychiatrists have noted that the pattern of severe discipline and abuse of children relates directly to the abusive parent's own very early childhood experience.[113]

Training schools, child shelters, reformatories and prisons perpetuate and reinforce the child's training in violence. Child abuse is a significant experience in many prisoners' lives and they remind us that it must be seriously considered in any discussion of prison punishment.

Prisoners & childhood abuse

Many battered children have become adult felons. The institutions to which they are sent are exaggerated extensions of such abuse and indifference. "Paradoxically, the punishment concept which dictates prison policy stimulates and perpetuates the antisocial attitudes and low self-esteem of many convicted felons."[114]

The hurt of childhood abuse intensifies in a violent and oppressive setting, necessitating expression, often in violent form. Many prisoners speak of that moment of strength and relief when some kind of retaliation is vented.

Many prisoners who have committed violent acts and have "searing memories of violence inflicted by parents or other

[113] Brandt F. Steele, "Violence in our Society," **The Pharos of Alpha Omega Alpha,** April 1970, pp. 4248.

[114] David Rothenberg, Fortune News, December 1974. "Our prisons are filled with men who were badly battered and frequently tortured children either at home or in orphanages, training schools, child shelters, or reformatories."

This approach necessitates building more institutions for such confinement and, consequently, leads to the third direction.

3. The "make prisons more humane" approach urges vast federal and state building programs of smaller but still punitively oriented facilities. Construction of some of these mini-prisons has begun.

In our view none of these approaches can reduce crime in our society. However, it is good to see the stripping of the mask of rehabilitation and to hear proclaimed the falseness of the medical terminology and treatment philosophy that have been applied to prisons. All this underscores the primary purpose of prisons-to control and to punish. This purpose will remain until prisons are abolished.

We need to separate rehabilitation from the need for services. As long as prisons exist, prisoners need services and should determine what resources are required. 'These resources and services should be supplied on a contractual basis by community groups who are not accountable to prison administrations. While there is a danger of legitimizing the prison as a setting for the acquisition of these services, the empowerment of the prisoner in determining his/her own needs probably outweighs the hazard of offering services during the transitional period before abolition.

The myth that punishment works

Crime exists in all segments of society, but prison has been used to punish society's bottom layer. From the beginning, the poor, the immigrant, the Black and other disadvantaged persons have populated the prisons.

Crimes committed by the relatively affluent, such as embezzlement or consumer fraud, are seldom punished by

imprisonment. The white collar criminal rarely ends up behind bars. Prisons are used primarily to punish crimes associated with poor people—burglary, robbery and assault. Consequently, this country's prisons are disproportionately filled with the poor and uneducated, even tho in terms of economic loss, more crime by far is committed by the affluent.[104]

The discriminatory use of prison punishment, reflecting the socioeconomic interests of the more powerful forces in the society, then, can be viewed as one of a series of highly political acts. The selection process, beginning with the police, involves the use of discretionary power which exists at every level of the criminal (in)justice systems. It represents the use of physical force by the state to control people the state has defined as criminal. While all prisoners may not be considered "political prisoners," the criminal (in)justice systems' selection process is a significant political act.

In addition, political policy helps to determine the severity and form of punishments for certain offenses. "The fact that one kind of crime is dealt with so much more severely than another, reflects a political choice which is bound up with the underlying social and economic structures of society."[105]

Prisons and many other forms of criminal punishment, then, are a repressive means of protecting a *particular* arrangement of social and economic patterns. Those patterns are sustained as much by what is *not* punished as by what is. The availability of coercive controls effectively maintain the values and ideologies of the dominant group in society. As with nuclear weapons in the international arena, prisons and capital punishment are utilized as "the teeth," in the hierarchy of escalating domestic punishments available to the state, thus hacking up milder forms of punishment.

[104] Erik Olin Wright, **The Politics of Punishment**, pp. 25–26.

[105] Ibid., p. 31.

The cultural pattern of child abuse, often beginning as "discipline" or "teaching the child who's boss," is epidemic in our society. Studies suggest that the battered child syndrome is only an extreme of a violent child rearing pattern firmly established in Western culture.[110]

> To be aware of this [violent parental action toward children] one has only to look at the families of one's friends and neighbors, to look and listen to the parent/child interactions at the playground and the supermarket, or even to recall how one raised one's own children or how one was raised oneself. The amount of yelling, scolding, slapping, punching, hitting and yanking acted out by parents on very small children is almost shocking. Hence we have felt that in dealing with the abused child, we are not observing an isolated, unique phenomenon, but only the extreme form of what we could call a pattern or style of child rearing quite prevalent in our culture.[111]

Such abuses transcend all socioeconomic, ethnic and racial lines.[112] The traumas range from physical cruelty to the stunning realization that one can never recall being hugged as a

[110] BrandtF. Steele and Carl B. Pollack, psychiatrists quoted in "The ChildBeaters-Sick but Curable," National Observer, March 24, 1973.

[111] Ibid. Also Karl Menninger, **What Ever Became of Sin?** , pp. 27–28: "The American Indians were shocked by the harshness of our forefathers in teaching morality to their offspring, and some tribes referred to settlers as 'the people who whip children."

[112] Steele and Pollock. They studied for 51/2 years. 60 families in which significant abuse of infants or small children had occurred. "Battering parents, they found, are just like the rest of us in most respects. They come from farms, small towns, and cities. They are of Catholic, Jewish, and Protestant faiths-or of none, or are antichurch. They are intelligent and well-educated and at the tops of their professions. They are unintelligent, poorly educated, and have poor job records. They are poor, middle class or wealthy."

ished is that brutal, vindictive, violent behavior is a legitimate way to respond to conflict situations.

Retributive punishment temporarily relieves the hostile feelings of the punisher, satisfying social pressures from the community and psychological needs of the individual.[108] But vindictive punishment elicits a like response from the punished, setting off a vicious cycle of punishment which sucks in all the actors: prisoners and nonprisoners, children and adults, the state and the criminal, begetting more violence and more criminal behavior.

"Just deserts" argues that lawbreakers should he punished because they deserve it. Abolitionists reject this "eye for an eye" philosophy in both principal and practice for at least two reasons: (1) In order to remain effective, punishment must *continually become more severe.*[109] (2) In view of the criminal (in)justice systems' focus on the poor and deprived, those who are selected to be legally punished most likely have received their "just deserts" thru punishment by poverty and oppression. The possibility of equating punishment in the "correct " amount to the wrongdoing would necessitate a social order that had removed glaring social and economic inequities.

No matter how punishment is justified, defined or rationalized, its brutal effects are the same-pain and violence are inflicted and the opportunity for more reconciliatory practice is lost.

Learning punishment: There's no place like home

Ironically, the most cherished of our institutions-the family-emerges as a primary laboratory where punishment is learned, practiced and legitimized.

[108] Schur, p. 229.

[109] Korn, p.58.

Because of the importance of prisons in protecting the dominant social order, the social ends of imprisonment cannot be eliminated without transforming society at large.[106] Therefore, if long range strategies and goals of a prison abolition program are to succeed, new economic and social arrangements are required.

Prison punishment: Cruel & illegal

> They put you thru a status degradation ceremony, stripping you-deliberately and with relish in some cases-of all self-esteem, self-respect, human sensibility, and sense of responsibility. This is designed to punish you, humble you, humiliate you, and shame you. I've seen guys in here that have been literally destroyed, broken, turned into a mass of jelly, into vegetables.
>
> —H. Jack Griswold, et al., An Eye for an Eye, p. 225

Prisons provide an ideal environment for punishment. Their potential for force, violence, coercion and escalation is limitless. To the prisoner, imprisonment means:

- Total restraint and complete loss of freedom.
- Interruption of one's occupational and personal life cycle.
- The inability to maintain social, sexual and family ties.
- Racial and ethnic discrimination and denial of cultural affirmation.

[106] Ibid., p. 320.

- Never knowing when an insignificant act might become grounds for disciplinary action which can prolong incarceration.
- Uncertainty of release dates because of arbitrary parole policies.
- The lack of civil rights, including due process and voting rights, rights to legal counsel, privacy and freedom in correspondence and easy access to the media.
- An atmosphere of distrust and violence promoted by prison staff to facilitate control.
- The inability to organize.
- Deprivation of necessities for good physical health, such as medical care, exercise, an adequate diet.
- Excruciating idleness, loneliness, boredom.

In addition to general confinement, a second range of punishment awaits the prisoner: physical beatings, solitary confinement and coerced participation in medical experiments and "rehabilitation programs." The effects of such punishment are reflected in the large number of suicides[107] in prison and in the rage and hostility of those who survive the prison experience.

[107] On suicide, see Scott Christianson, "In Prison: Contagion of Suicide," Nation, September 21, 1974, p. 243: New York City jails have registered approximately 80 suicides, 22 of them in one recent 11-month stretch; Albany's rate was about one death for every 1,000 inmates admitted during 1973, which was six times more than that for the general population, and twice that of the nation's jail population. Figures compiled by the New York State Correction Medical Review Board show that last year there were 102 inmate deaths in the state's penal institutions, 39 of them apparent suicides."

Escalatory nature of punishment

If a mild punishment does not achieve the desired results, the temptation is powerful to go on to a harsher punishment. In prison it is difficult if not impossible to keep punishment from escalating-hence "Attica." Other contemporary examples of the insane excesses the urge to punish can produce include Auschwitz, Hiroshima and My Lai.

Limiting and controlling punishment may be possible in some situations, but the ability to inflict unlimited punishment is more likely when:

- The punisher holds more power than the individual being punished.
- A range of increasingly severe sanctions is easily accessible.
- The punishing takes place in a closed setting such as a total institution.

For example, in the sanctity of the home, a parent may give a "reminder pat" on the child's bottom to enforce obedience. If this does not produce the desired behavior, there is a potential for rapid escalation from pat to spanking, to severe bruising, to the breaking of bones—even in some instances to the death of the child.

Justifications of punishment

Justifications for punishment are attributed to theories of reform, deterrence, retribution and just deserts. Even if punishment "worked" as proposed in any of these theories, its social cost would he very heavy. Moral and constitutional problems are raised by the "curative processes" of punishment in the name of "treatment." The lesson most often learned by the pun-

6. Excarcerate

> It is time to debate fundamentals: namely whether, within the frame of reference of historical experience, sound economics, basic principles of human psychology, and the dictates of the administration of justice, it is more sensible and practicable to improve our correctional institutions to the point where they can actually achieve the rehabilitation they are set up to achieve; or rather, to finally toll the bell on incarceration as a rehabilitation vehicle, to bite the penological bullet, and embark upon a program of "excarceration" …
>
> If the approach adopted at this juncture of history (after Attica, the Tombs, Rahway, San Quentin, Soledad, and even rumblings at quieter models such as Somers) continues in the direction of "improving conditions" and "funding more and better programs"-we shall have learned nothing from history and placed ourselves on a clear course to repeat it, at even greater human cost.
>
> On the other hand, if we are prepared to critically appraise the corrections system, accepting nothing as axiomatic and questioning everything regardless of sacrosanctity, the starting point must be the technique of incarceration itself. The argument here is that it is time to stop worshipping the Golden Calf of caging and/or isolating the so-

We consider prisoners and their families as the people most directly affected by the prison system. We have heard their cries for release; their grievances about conditions of brutality and injustice; their expressed fears for their welfare; their requests for legal assistance; their demands to be treated as human beings-but we have never heard them ask for smaller, shiny new prisons.

Moratorium is an opportunity to begin dialogue with those who support the building and use of prisons as a response to crime. There are no quick and total solutions to the complexities of crime and criminal behavior, but there are enough alternative choices available now to justify a moratorium on all prison/jail construction. With an end to prison construction, we can seriously examine and implement the use of alternatives as we move toward creating a more just system.

Developing a strategy for local moratorium

> The overcrowding of prisons is not necessary—it is *deliberate!* Because of its network of laws the state can easily increase or decrease its rate of arrests and prosecutions at will.
>
> It is *deliberate* because by overcrowding an excuse is created for justifying greater appropriations and the building of even more facilities.
>
> It is *deliberate* because it perpetuates a bureaucracy which benefits its careerist members.
>
> It is *deliberate* because overcrowding creates greater tensions and frustrations among prisoners which lead to occasional flashpoints of fights, attempted escapes, killings, rapes, or rebellion. This then is used as a way of demonstrating to the public what "animals" prisoners are.

> It is *deliberate* because the threat of having to turn such criminals loose terrorizes white middle-class society and prompts it to view the state as its protector. Contrast this tactic with the one that terrorizes the Black population by the constant *threat of imprisonment. So prisoners serve as scapegoat-criminals while the real criminals remain at large.*
>
> It is also *deliberate* because a large prisoner population is profitable for a great number of people including the legal, medical, and pharmaceutical professions, academic professionals, contractors, and practically the whole corporate system.
>
> —Bob Canney, Florida prisoner, *Come Unity*, March 1976

A community moratorium group should be prepared to develop a rationale and strategy for halting plans to construct a new penal facility. Tho local situations differ, in many respects prison construction issues are universal. Thus campaigns can draw upon experiences from similar moratorium efforts. NMPC suggests the following general outline for a strategy on moratorium:

- An indefinite moratorium on construction of any new jail, prison or juvenile facility.
- A citizen's task force to assure the implementation of alternatives, either thru developing proposals or by assuring that public officials do the same.
- An inter-agency criminal justice committee responsible to implement the alternatives.
- A community commitment by citizens, officials and politicians to work for social and economic justice for

of contracts could institute prisoner unions inside prisons, bringing about authentic bargaining power.

Fred Cohen,[30] in his perceptive foreword to the MAP evaluation report, speaks for abolitionists when he says:

> The conceptual seeds for some reform may be here. The very notion of a prisoner, not long ago described as a slave of the state, sitting down to negotiate a type of performance contract can be viewed as having considerable ameliorative potential. Making such a program truly voluntary would enhance the appeal. If certainty on time served is not to be achieved at the time of judicial sentencing … then post-sentencing certainty may be the best we can get.

[30] Fred Cohen is currently Professor of Law and Criminal Justice, S.U.N.Y. at Albany, School of Criminal Justice.

In a candid evaluation of the MAP program[29] in three states, published in 1975, James Robison concluded:

- At release, prisoners judged that MAP had provided them the greatest service thru more certainty of release, helping them plan for it and the opportunity for earlier release. They felt there was little difference in improved staff interest, access to prison programs or quality of those programs.
- Contract cancellations were almost always the result of disciplinary infractions rather than the prisoners' failure to satisfy work or training requirements; prisoner withdrawals were rare.
- There was no significant difference on time served in prisons, success in acquiring or holding employment, or recidivism within six months after release for those participating in MAP programs.
- The most obvious drawback to the model, as now in operation, is its vulnerability to coercive and discriminatory applications. Further safeguards, such as more adequate arrangements for appeal, should be considered.

If the trappings of "rehabilitation" and "correctional" gimmickry can be divorced from the program, MAP can be viewed as an interim procedure for reducing indeterminacy in sentencing. The contract forces the parole board to set a release date and in some cases this can mean earlier release. As Robison suggests, a collective extension of the concept

role Corrections Project, American Correctional Association, College Park, Maryland.

[29] James O. Robison, MAP Markers: **Research and Evaluation of the Mutual Agreement Program**, American Correctional Association, College Park, Maryland, 1975.

all citizens. Attention should be focussed on such areas as education, employment, nutrition, medical care and housing.

- Prisoners, ex-prisoners and prisoners' families should be included in the task force and community groups, as well as full representation of the poor and the powerless.

Every effort should be made to pursue nonjudicial avenues before initiating legal action for moratorium. Litigation is costly, slow and cumbersome. An evolving moratorium campaign built on factual, economic and practical arguments will help produce the type of evidence and documentation necessary to support a legal case.

If litigation ultimately is necessary, the litigants who first pursue nonjudicial solutions appear more reasonable and responsible. It would also be useful to assemble a group of moratorium advocacy lawyers to assist in developing and shaping a law suit if that becomes necessary.

Researching a moratorium campaign

Educating the public to the prohibitive costs of jails and prisons and the comparative benefits of alternatives requires solid research and concrete proposals.

Do not hesitate to undertake a moratorium on prison/jail construction in your community because you feel you don't have the necessary research, education or action skills. Your participation in a serious campaign will help develop them. There is no mystique to researching if you follow thru on three basic questions:

- What do we need to know about the prison establishment and other related institutions in order to conduct a moratorium?

- Where do we find the information?
- What do we do with the information after we get it?

What Do We Need to Know About the Prison Establishment?

Here are three important questions we need to answer:

- How does criminal (in)justice flow process operate? From arrest to final release, trace all the options.
- Who are the lawbreakers? How *many* are involved in this flow and punishment process?
- What are the *conditions* of prison confinement?

Flow process of existing system

Criminal (in)justice processes are comprised of three general components: police /apprehension, courts /adjudication and "corrections"/punishment. These components can often be found in each tier of government: city, county, state and federal. Usually there are additional separate courts and prisons for juveniles.

It is important to understand the flow process in your community when attempting to stop construction of new prisons/jails. Such information is also central to promoting various alternatives in program, procedure or policy that would diminish dependence on confinement. Appropriate alternatives can be introduced at different points in this flow process that will greatly effect the cost and numbers of defendants passing thru later points. For example, if there is less pretrial detention of poor people, we know that:

- Money can be saved on detention costs.

- Measurable goals for the prisoner are spelled out in such areas as education, vocational training, counseling and prison behavior. Corresponding guarantees are made by the prison to supply the needed programs and services.
- Prisoners who withdraw or who fail to meet contract terms revert to the regular parole process. In some states contracts can be renegotiated.
- Contracts are generally for about six months.
- In some states the contracts provide for an earlier release date than would be likely under the regular parole process. In other states the release date is set by law.

Maryland has combined contract parole with a voucher system for all women prisoners. They may get up to $3,000 in vouchers to buy services, largely outside the prison, that are needed to complete their contracts.[28]

In Massachusetts contracts are tied to restitution for the victim of a prisoner's crime; the victim helps negotiate the parole restitution contract, which includes a provision for payments that begin when the prisoner is on work-release.

North Carolina's contracts are signed by furniture manufacturers who promise to hire prisoners who complete a course in furniture making.

MAP has attracted a wide spectrum of critics. Administrators are criticized for using MAP to impose arbitrary and senseless requirement upon prisoners. Parole officials sometimes oppose the program for fear their discretionary powers will erode. Some state attorneys advise against the program because of the possibility of lawsuits over contracts.

[28] **Ibid**. Information in this section from materials included in Corrections article, and "An experimental research and demonstration project, funded by the Manpower Administration, U.S. Department of Labor," Pa-

with the goal of reconciliation. Further, a system of vouchers could provide for purchase of needed services and resources from community groups, thereby preserving the restitution focus of the program and preventing its shift into a "treatment" oriented vehicle.

Parole contracts

The use of parole contracts has spread thru the "correctional" systems with startling speed. In one year, Mutual Agreement Programming (MAP)[27] grew from use in three states to ten, with many more contemplating its use:

- Maryland, District of Columbia, Florida, Georgia, Maine, Massachusetts, Michigan, Minnesota, North Carolina and Wisconsin are using MAP contracts.
- Delaware, New Jersey and South Carolina are working to start programs.

The basic ingredient of MAP is a written, legally binding contract between the prisoner, the prison and the parole authority. Contracts vary but all set a fixed parole date contingent upon certain behavior. Other usual features in MAP contracts include:

- Face to face negotiations take place between the prisoner, the prison and the parole authority. Often the prisoner is aided in these negotiations by an advocate.
- An "outside party" is given responsibility to determine whether a contract has been fulfilled. Arbitration is provided for, should problems arise.

[27] **Corrections Magazine**, September/October 1975.

- Money can be saved on welfare costs.
- Cost of subsequent punishments can be reduced because research indicates a much lower imprisonment rate, all other factors equal, for pretrial releasees versus detainees.
- Constitutional guarantees and a sense of justice would be better assured.
- A lower recidivism rate will probably occur over the long run.

It is also important to examine the per capita detention rate of your state, and if possible, your city or county, to determine whether your lock-up rate is greater or less than other states.

Prisoners presently in confinement

Analysis of total population of confines

Legal status
Number pending trial
Number post-trial but pre-sentence
Number pending appeal or transfer
Number serving sentence
Number for parole or probation revocation, for violation, for alleged or judicially proven commission of new crime

Offense
Number for consensual, victimless, or status offenses (drunkenness, vagrancy, prostitution, consensual adult sex, drugs, runaways, etc.)
Number for unviolent offenses (burglary, car theft, embezzlement, credit card fraud, bad checks)
Number for violent offenses in which a friend or family member was the victim with no malice

aforethought.
Number for violent offenses, against strangers or premeditated.

Socioeconomic
Income level
Education
Job skills
Race
Residential pattern

Analyzing the imprisoned population, especially those for whom a new jail is anticipated, is an important research task. Information on confinees can usually be obtained from the administrator of the particular facility involved. In some states annual demographic statistics can also be obtained from courts or police agencies.

In terms of reducing dependence on confinement, it is important to determine who of those currently locked up does *not* require a secure setting. Tho appropriate alternatives can eventually be developed for all confinees, the most logical candidates for immediate decarceration include:

- Detainees awaiting trial because of inability to pay money bail or lack of community "stability" for release on recognizance.

- All the categories of offense listed above [below at Sidebar 2] except the last one, violent offenses against strangers or premeditated.

Until that time when abolishing-type changes depopulate the prisons, the reality of prison life must continually be exposed to public view. It is entirely possible that constitutional standards for prisons cannot be met due to fiscally squeezed budgets and because of the lawlessness of the prison environ-

Director Robert Mowatt asks, "What great horrendous thing has a guy who's passed $100 in bad checks done that says he is totally unsafe to be walking around the streets?"

Tho the original concept was to have the prisoner face his victim and get the personal satisfaction of directly addressing the wrong he committed thru cash payment, many contracts are now negotiated by parole counselors. Prisoners are encouraged to make the first payment in person, but even this is not required. Succeeding payments are generally made by mail.

When meetings do occur between victims and prisoners, often they are surprisingly cordial and dramatic. Many victims are strong supporters of the restitution concept.

The amount of restitution paid has ranged from $15 to over $2,000, with the average restitution contract about $250. Monthly payments average $25.

During the first years, 26 percent of the men left the program. About half had new felony indictments, tho no one was accused of a violent crime. The other half violated terms of their parole. Often this was because they were unable to keep a job and thus failed to make their restitution payments.

Critics of the program point to problems of equal justice and due process. The program is open only to those selected by the parole board, not to all who have committed the same kinds of crimes. Additionally, the program does not establish the principle of restitution, but merely deals with prisoners on a one-by-one basis.

Advocates of the program point out that any program instituted *now* has to fit into existing structures and limitations. They see it as a crusade: Until this first experimental test proves itself, they'll continue to structure the program to get as many prisoners out as possible. People with five to ten year sentences can be home in four months under parole supervision.

Abolitionists advocate shifting responsibility for parole restitution contracts from "correction" departments to the community. Third parties can bring victims and wrongdoers together

> therefore leaves both the offender and the victim in a healthier state while reducing crime.
>
> —Robert Martinson, Depopulating the Prison, p. 18

All screening, interviewing, meetings with victims and writing of restitution contracts takes place during the first four months of a prisoner's incarceration. A staff member of the center accompanies the prisoner to the parole board hearing, presents the proposed contract and a request for his release to the center. The contract is technically a list of special parole conditions. It is signed by the prisoner, his victim(s), two members of the parole board and a center staff member. If the contract is violated, parole is revoked and he is sent back to prison.

As restitution contracts were originally conceived, the only criterion for participation was justice: the victim would receive restitution for the loss suffered. No other rehabilitative demands were to be made on prisoners. However, the center now includes a variety of "treatment" programs, from a multilevel behavior modification plan to transactional therapy groups. The parole board often insists that Alcoholics Anonymous or drug counseling be part of the contract.

Prisoners proceed thru four phases at the center, acquiring more personal freedom with each step. After the first week they can stay in their own homes overnight or on weekends and the final phase can take place as early as three months after making contract. Prisoners can then be released from the center to the street and continue to make restitution while on parole.

Groups of residents initially awarded privileges, but now they are made by staff members. Since staff considers prisoners at the center to be "nuisances" to society, rather than violent threats, prisoners are given a great deal of personal freedom.

ment. Thus the conditions of prison life must be carefully monitored and challenged. It is necessary to seek both the official version of prison conditions *and* the testimony from persons presently caged or recently released.

Where Do We Find the Information We Need?

Framework for Gathering Data on Plans for New Prison/Jail Construction
Description and cost: _____

	Number of facilities	Bed capacity	Annual operating cost	Use
Existing facilities				Pretrial/ post-sentence
Adult/ youth				
Male/ female				
Closed/ work-release				
Misdemeanants/ felons				
Proposed facilities				Same as above
Net gain or loss				

Total cost of new facility:

1. Feasibility study planning $_____
2. Design specification and fee $_____
3. Site acquisition $_____
4. Site preparation $_____
5. Loss of property off tax rolls $_____
6. Construction $_____
7. Furnishings and equipment $_____
8. Debt service $_____
9. Annual operating and maintenance $_____

Total $_____
Life expectancy: $_____
Cost per year to taxpayers: $_____

It is important to understand which political entity wants the new facility and for which prisoners it is to be constructed. Is it the city council, county commissioner, or state legislature that is calling for the new prison/jail? In some cases it will be a federal prison being planned and at some time prior to construction hearings must be held in the community where the prison is to be located. The community should be alert to such hearings, as it provides an important arena for registering objections and educating the public.

The political unit desiring the new facility will contain within its structure a particular official (county sheriff, jailer, or warden; city jailer or warden; state warden or "corrections"

they might have felt drawn to restitution due to the proximity of death. On the other hand, many of those convicted of assault and theft indicated that they felt they were already paying for their wrongdoing by imprisonment.

Minnesota, Georgia, Oregon, Massachusetts and Iowa are experimenting with restitution programs inside their criminal (in)justice systems. The idea is beginning to grow as a "correctional" concept and the restitution programs do not seem to lack candidates.

The Minnesota Restitution Center

More than 100 prisoners participated in the first restitution contract program at the Minnesota Restitution Center.[26] During its first three years, they repaid $16,000 to 300 victims of their crimes. Originally started in 1972 with a LEAA grant, it is presently funded by the state of Minnesota and housed on several floors of a downtown YMCA in Minneapolis.

The Minnesota Corrections Authority, the state's parole agency, screens those who will be paroled to the center. Because screening is strict, the center often operates below its capacity of 22 places. "Professional" criminals, violent criminals and those who used weapons are excluded from the program.

> Let's reduce the damage to the offender by not putting him in prison or getting him out now and use the money to compensate his victim, if there is one. Such a plan would reduce the thirst of the victim, and the mass of potential victims that makes up the citizenry, for retribution. It

[26] Information in this section from **Corrections Magazine**, January/February 1975 and March 1976. Also panel discussions at First National Conference on Alternatives to Incarceration, September 1975, Boston, Massachusetts.

be creative and reconciliatory, the following conditions are important:

- Restitution should be truly voluntary.
- Restitution should occur in the community to bring the wronged and the wrongdoer together.
- Restitution should lessen the desire for vengeance and encourage reconciliation.

It is difficult if not impossible to attain these conditions within the criminal (in)justice systems. Thus, current restitution programs for those already imprisoned fall far short of the ideal. But since a growing number of prisoners regard restitution as an opportunity for "a way out of the joint," it should be seriously examined as a decarcerating mechanism.

Many reformers see parole/restitution programs as a first step. They look forward to fuller utilization of the concept when citizens and systems gradually become educated to the use of restitutive alternatives.

As it presently operates, restitution involves triple jeopardy: the wrong is paid for by serving time, by fulfilling "treatment" requirements and by paying money. No doubt, some intended lessons are learned, some new insights occur to both victim and victimizer-hut these beneficial side effects are coincidental.

Data indicating how many prisoners would be willing to make restitution is limited. A study of 88 prisoners in Florida in 1962 was limited to those who had committed major violent crimes.[25] Of those convicted of aggravated assault, 54.5 percent indicated willingness to make restitution; theft with violence, 55.4 percent; and criminal homicide, 94.7 percent. Many of those convicted of criminal homicide were on death row, so

[25] Stephen Schafer, "Compensation of Victims of Criminal Offenses," Criminal Law Bulletin, Vol. 10, No. 7, p. 631.

commissioner) who should be able to furnish demographic information about inmates and other data. If officials are uncooperative, a concerted effort by an organized community group will usually be able to get the information.

In the event that such material is withheld, citizens have other avenues for securing what is essentially public information. Since many states have fairly comprehensive public information laws, any withholding of information on the grounds that it is "confidential" can and must be challenged.

Sources

A great deal of the homework you discover you need to do, might already have been done, so it is important to be well acquainted with the major sources and publications of the criminal (in)justice systems of your locality. Many states have commissions which gather and publish data important to moratorium campaigns. For instance, in Connecticut, the Connecticut Justice Commission publishes annually a comprehensive document, The Criminal Justice System in Connecticut. Other data is available in that state from the apartment of "Corrections," its business office and various divisional offices.

Each state planning unit which disburses Law Enforcement Assistance Acts (LEAA) funds, has research reports which are public documents. LEAA Guideline Manual 4100.1, Chapter 1, Paragraph 28, states that all identifiable plans, applications, grants or contract awards, reports, books or papers maintained by State Planning Units (SPU's) "shall be made properly available upon request to any person for inspection or copying." LEAA's Washington Information Office very cooperatively forwards documents upon request. Details for researching state budgets and expenditures can be found in "Researching the Prison Power Structure," Chapter 9.

The responsibility for construction of new facilities for most state agencies is usually vested in a "Bureau of Building Con-

struction" or similar agency. Thus, if you want to know who is building a prison/jail already begun and how much it will cost, ask this bureau,- not the Department of "Corrections."

Funding prison/jail construction

Figures by NMPC

Legislative decisions on funding prison/jail construction are made by a city council, county commissioners, regional or special district authority, the state legislature, U.S. Congress, a criminal justice commission or task force or by other official bodies.

Other officials in positions of power who need to be influenced in their decision making are: city manager or mayor or city warden; county executive officer; county sheriff or warden; state governor; "corrections" commissioner; director of criminal justice planning agency; director of the Federal Bureau of Prisons; director of area criminal justice commission or task force and others holding similar power positions.

Funds for prison/jail construction come mainly from the following sources: general revenue, local and/or state, regional; bonds; LEAA, administered via local and/or state Criminal Justice Planning Agencies under various names or subdivisions; revenue sharing; or special tax.

The method of funding the proposed institution should be determined at the first possible moment. Isolating the source of funds, permits the educational program to be geared to the appropriate agency procedures and focusses the lobbying on the proper political figures. It is equally imperative that the use to which the facility will be put is perfectly clear. For instance, if the proposed construction is designed for pretrial detainees, it will be far more vulnerable to legal attack, since there are many established and proven alternatives to pretrial detention.

stitutional standards that must be maintained for the operation of a state prison. Ruling that mere confinement in the Alabama system violated the 8th Amendment (cruel and unusual punishment), he set 44 guidelines to require a graduated reduction of 50 percent while doubling the prison staff. He also indicated that if physical conditions in the state's four main penal institutions were not corrected within a year, he might close them.

The judge's order set further precedents by creating an enforcement mechanism-a citizen's review board to monitor improvements and report to the court. Moreover, he warned state officials that they could be held personally liable for monetary damages if they failed to comply.

How far the court will go in forcing depopulation is difficult to access. Alvin Bronstein, American Civil Liberties Union's National Prison Project's lawyer who assisted in litigating the Alabama suit, "hopes that in the Alabama case the judge will ultimately find the conditions so intolerable, and so expensive to remedy, that he will order at least two of the state's prisons closed and the inmates released ... [He] admits that even if that happened, it would be a rare case."[24]

Abolitionists can provide and stimulate needed community support for favorable judges and other decision makers. Additionally, we can bring legal prisoner-advocates together with prisoners who wish to file actions against prison conditions caused by overcrowding and other oppressive situations. The creation of re-entry support groups and services in the community will also encourage depopulation.

Restitution to victims

Restitution to victims is a promising concept, but prison setting hampers its most compelling aspects. For restitution to

[24] **Corrections Magazine**, March 1976, p. 21.

At a January 1976 meeting "Crisis in Corrections," sponsored by the Southern Governors Conference, a task force of southern prison officials recommended a broad program of liberal reform to relieve the crisis of prison overcrowding. The recommendations included the following decarceration statement: "Efforts should be made to examine current inmate populations and determine those inmates, not a threat to the community, who could be released from institutional settings. "[21]

The issue of overcrowding has increased the use of other excarcerating practices such as judges suspending or reducing sentences and the use of alternatives to prison. These include probation, restitution and programs that divert first offenders out of the criminal (in)justice systems into work and educational-release programs.[22]

These preliminary responses to overcrowding, clearly indicate the systems' potential for decarceration when conditions force such action.

Recent rulings of federal judges to reduce prison populations offer some potential for depopulation thru the legal route. Arkansas, Alabama, Florida, Louisiana and Mississippi are under court order to reduce crowding and relieve other problems. Similar suits are pending in Tennessee and more litigation is expected.

The strongest ruling so far occurred in Alabama[23] after two federal judges in August 1975 ordered state prison officials not to accept any new prisoners other than escapees or parole violators until the prison population was reduced from the 50 percent above design capacity level. Incorporating that ruling, in January 1976, federal Judge Frank M. Johnson, Jr. handed down, for the first time, a comprehensive set of minimum con-

[21] Summary, "Seminar on the Crisis in Corrections," Southern Governors' Conference, Task Force Committee on Correctional Problems, Nashville, Tennesee, January 21–23, 1976, p. 40.

[22] See **U.S. News and World Report**, March 1, 1976.

[23] **Pugh v. Locke**.

$40,000/bed-construction	$ 4,000,000	immediate
10 percent at 20 years-debt service	8,000,000	20 yrs.
$5,000/bed-furnishings and equipment	500,000	immediate
10 percent at 20 years-debt service	1,000,000	20 yrs.
$8,000/bed/year-operating and maintenance	16,000,000	20 yrs.
$4,000/bed-architectural fees (10 percent of construction)	400,000	immediate
$8,000/bed-study, planning, site acquisition, preparation (20 percent of construction)	800,000	immediate
Loss of property off tax rolls	?	
Total Twenty Year Cost	$30,700,000	

Costs of 100-Bed Prison

Total 50-year costs:	Per year costs:
$30,700,000 (1st 20 years)	$1,094,000/year
$24,000,000 ($8,000/bed/ year-yrs. 21–50)	50/54,700,000
$54,700,000	
	$10,940/inmate/year
	100/1,094,000

Amortization costs based on a 50-year life span of institution

How Do We Use the Data Collected?

Prison change requires extraordinary educational efforts and carefully conceived materials which stimulate dialogue and create an environment where change can occur.

Prisons and crime, prisons and fear, prisons and community safety are closely linked in the minds of the general public, making the change process both difficult and delicate. To a society that believes that all problems can be solved, vague promises of alternatives merely reinforce dependence on the familiar-the prison model.

> You want to appropriate money for better prisons. I say don't do it. Giving money to the states to build better prisons is like giving money to Himmler to build better concentration camps. It is wrong in principle.
>
> —Ysabel Rennie, testimony before U.S. Congress, Committee on Judiciary, Subcommittee to Investigate Juvenile Delinquency, 1971

The public or legislators rarely receive information and materials which provide new perspectives on issues of crime and imprisonment. Therefore, freshly conceived information and educational materials disseminated by moratorium campaigns

enforcement is forcing us into more liberal policies. You can only cram so many people into prison."[18]

Overcrowded conditions, particularly in southern states, have precipitated a number of legal orders, formal and informal administrative actions and liberalized parole procedures to reduce prison populations. Such actions demonstrate and reveal existing mechanisms for depopulation.

- The Georgia Board of Pardons and Paroles, for instance, due to a crisis in overcrowding, ordered reduced sentences for 5,000 of the state's 11,000 inmates. Sentences were reduced by an average of six months for most prisoners serving time for property or other unviolent crimes such as theft or burglary. Approximately 500 prisoners were rapidly freed and all 5,000 will benefit from accelerated early release under the order.

- To relieve overcrowding, South Carolina is making use of its Youthful Offenders Act of 1968,a law allowing early release of 17-thru 21-year olds by shortening each sentence on an average of three months.

- In North Carolina, the General Assembly adopted legislation requiring the early parole of all misdemeanants with less than a one year sentence unless there was "reasonable probability" the parole would be violated or the release would be "incompatible with the welfare of society."[19]

- In Alabama, the executive director of the Parole Board said the Board was releasing "borderline cases."[20]

[18] **New York Times**, January 25, 1976.
[19] **New York Times**, January 5, 1976.
[20] **Ibid**.

such as the American Bar Association, the National Council on Crime and Delinquency and a coalition of ex-prisoner groups could lend impetus to the movement to decarcerate by designing a variety of workable models.

Amendments already have been recommended to empower appeals courts to review sentences arid to modify or set them aside for further proceedings.[17] Similar amendments could extend the powers of the appellate courts to review and reduce sentences, releasing prisoners to the community. Sentences could be litigated as excessive, as unequal, or on similar grounds. Criteria, guidelines and procedures for review and release would be carefully determined, especially those governing the few who could be considered a threat.

Relieve prison overcrowding

All over the United States, prisons are bursting at their seams. As of January 1, 1976 approximately 250,000 people were in state and federal prisons and the nations' jails were filled to overflowing. This is an 11 percent increase over the previous year's population, the largest one year rise on record and the highest population ever.

It may well be that the crisis of overpopulation will dramatize the dilemma for states and taxpayers, forcing a choice between the bankrupting costs of imprisonment and a coherent policy of reducing prison populations. As stated by William D. Leeke, Director of the Southern Carolina Department of Corrections, "Many of you won't like this but the hard line on law

[17] Gerhard O.W. Mueller, "Imprisonment and its Alternatives," in A Program for Prison Reform, p. 43: "The Report of the National Commission on Reform of Federal Criminal Laws recommends an amendment of 28 U.S.C. 1291 by clearly giving courts of appeals the power to review sentences and to modify them or to set them aside for further proceedings. This recommendation is in accordance with the recommendations of the ABA and IJA Minimum Standards of Criminal Justice Project."

thru community meetings, press releases, pamphlets, newspaper and t.v. free speech slots, can have a profound impact on the public and legislators.

Forms of community action

Because decisions to build facilities often are initated by, or are the responsibility of, an executive or administrative official, such as a department of "correction," or a state or local LEAA planning agency, public effort should be focussed on administrative as well as legislative education and influence. Frequently these executive agencies are required to hold public hearings to air their proposals.

Public hearings are important. Sometimes you will have to demand them. Substantial numbers of citizens should be encouraged to attend. Informed speakers, including the author of any feasibility study, should be prepared to present an articulate discourse on the desirability and economic savings of alternatives to prison construction.

Pressure should also be applied to individual officials by seeking private audiences, writing letters, sending telegrams. Support should be enlisted from other legislators and community leaders who may be influential in persuading individual administrators to consider the proffered alternatives. This may be done by mobilizing a write-in campaign, especially to those serving on criminal justice committees.

Frequently the described types of concerted community actions are successful. However, more assertive action may be required where those methods are unproductive. These tactics include electing new officials to replace intransigents, recalling recalcitrant officials and initiating referendums when that is a legal option. Constituencies can be developed around these issues if organizing networks are maintained with prisoners' families, ex-prisoner groups, reformers, taxpayers' groups, so-

cial change groups, the religious and academic communities and interested individuals.

The power of people to make prison change has barely been tapped. Moratorium is the first step in saying "NO MORE CAGES."

What every prison changer should know about LEAA

> "Correctional" systems as presently constituted do not accomplish any of the social goals of imprisonment, with the possible exception of pure punishment. Therefore, prisons have failed as a method of dealing with criminal law violators. Prisons as they currently exist should be phased out, written off as a bad social investment, and viable alternatives should be developed and present plans to construct more prisons should be abandoned.
>
> —Ron Sturrup, "Prisons: Society's Barometer," *NEPA NEWS*, December, 1974

The Law Enforcement Assistance Administration (LEAA) is to the criminal (in)justice systems what the Pentagon is to the military. Operating in conjunction with multinational corporations and research institutes, the LEAA has financed the transfer of the techniques and hardware of military and space-derived technology to both police and prisons. Industries which profit grandly from "the war on crime" are in most instances the ones which reaped excessive financial rewards from the war in Vietnam. The social/ industrial complex is a blood brother of the military/ industrial complex.[1]

[1] Gregory McLauchlan, "LEAA: A Case Study in the Development of the Social Industrial Complex," **Crime and Social Justice**, Fall/Winter 1975,

imprisoned, parole, with all its many drawbacks, represents one of the few alternatives to the cage – the way out. "Anything that tended to shorten the time one spent behind the walls [is] a step in the right direction."[16]

As decarceration modes are implemented, substantial numbers of released prisoners will require community support and resources of an unparalleled nature. When street parole is used as a vehicle for early release, abolitionists support community-controlled parole, joining with The Action Committee of Walpole State Prison:

> Parole should be phased out. Community control parole should be established. The phase-out of the prisons will perhaps mean, in practical terms, an increase in parole for a while, but it should only be for the interim.
>
> If parole must be used-and it most likely will in any penal phase-out-it should be staffed principally with real community people. There must be in this the same basic interchange and input of community as there is in all workable correctional programs.
>
> —NEPA News, April/May 1975

Sentence review process

Once a decision is reached to begin decarcerating the majority of prisoners, a process will have to be devised for enacting full sentence review and release powers. Guaranteeing equal justice and due process, a sentence review and release process could be accomplished thru executive, administrative, judicial or legislative power or a combination of those forces.

While each state or the federal system would probably devise a different decarceration process, national organizations

- Because of nonparticipation in prison programs.
- Because of conduct within the prison which is not an indictable crime or which has resulted in the loss of good time.

Parole should last no more than one year or, under rare conditions, a maximum of two years. Parole supervision may be lightened if the parolee is doing well. Or it may be intensified short of parole revocation if more supervision is called for. A support fund is created to provide social services for the parolee. Procedures for parole revocation are spelled out.

The Citizens' Inquiry estimates that their program could be implemented six months after enabling legislation was passed and would result in financial savings the first year "in the millions of dollars."

Rooted in the reality of the present political climate, the proposal provides a detailed guideline for prisoners and parolees rights. Tho abolitionists are unlikely to be enthusiastic about the entire interim parole proposal, it provides a comprehensive overview of issues that must be considered in a transitional period and can be adapted to fit local needs.

Prisoners view parole

The parole board is a failure. The parole system is a failure. Parole is part of the indeterminate and the "reformatory" sentencing structure which must be abolished. Every prisoner knows that parole is a major coercive factor in prison life. In the long range, prisoners want the parole system abolished. But most prisoners will not support abolition of parole until sentences are drastically reduced to short flat terms. For those presently

role and Criminal Justice, Inc., 84 Fifth Avenue, New York, New York 10011.

[16] "Parole: Reform or Abolition," Report on New England Prisoners Association Conference, NEPA News, April/May 1975.

In June 1968, at the peak of the antiwar and civil rights movements, Congress enacted the Omnibus Crime Control and Safe Streets Act.[2] This bill laid the groundwork for massive federal intrusion into law enforcement, a function constitutionally and traditionally regarded as strictly local. The statute did not pretend to deal with the conditions that breed crime: unemployment, racism, poverty, slums, powerlessness and a culture that encourages violence and competition.[3]

When the "war on crime" was declared by the federal government, LEAA was the instrument created to disburse the funds, to lead the attack. The emphasis on technology and management techniques, reflects a specific ideology about the sources of crime and disorder. The decision to use a war-model response to problems that are essentially social and political has enormous significance because it is the first serious attempt to develop a *national* apparatus of control.

Since its inception eight years ago, LEAA has become an immense criminal (in)justice bureaucracy, one of the fastest growing agencies in the federal government and the most heavily funded division of the Department of Justice. LEAA's budget has increased from $63 million in 1969 to approximately $800 million in 1976, funding almost 100,000 programs and pouring close to $5 billion into the nation's criminal (in)justice systems.[4]

LEAA provides thousands of jobs to bureaucrats and criminal (in)justice professionals and researchers who feed off the LEAA pork barrel. But the biggest winners in the LEAA sweep-

pp. 15–16. Also Richard Quinney, **Critique of Legal Order**, pp. 105–132.

[2] For a legislative history of this act, see "Index to the Legislative History of the Omnibus Crime Control and Safe Streets Act of 1968," Office of General Counsel, LEAA, January 23, 1973. See also, Richard Harris, **The Fear of Crime** (New York, Praeger, 1969).

[3] Hannah Shields and Mae Churchill, "The Fraudulent War on Crime," Nation, December 21, 1974, p. 649.

[4] For funding history of LEAA see **The Law Enforcement Assistance Administration: A Partnership for Crime Control**, LEAA, U.S. Depart-

stakes are the manufacturers and suppliers of computers, electronics equipment and surveillance devices. The list reads like the top 100 war contractors: IBM, Burroughs, Motorola, RCA, Westinghouse, Litton, Honeywell, Bell Helicopter, Hughes Aircraft and many other familiar suppliers. Much of the counterinsurgency arsenal field-tested in Vietnam has been converted to the law enforcement market.[5]

The LEAA bonanza continues to serve as a "vehicle for ripping off frustrated taxpayers who want something done about crime"[6] even while serious charges of corruption and LEAA's wasteful spending of public funds are leveled at the agency.[7] The failure of LEAA to meet the stated but unrealistic goals of "reducing crime and insuring justice," and their questionable constitutional and moral practices, have attracted severe criticism. Both conservatives and liberals have criticized the bureaucratic inefficiencies of LEAA, with the former emphasiz-

ment of Justice, Washington, D.C., p. 15. Also Michael S. Serill, "**LEAA: A Question of Impact," Corrections Magazine**, June 1976, pp. 3–29.

[5] Shields and Churchill, p. 648. Also Anthony Platt and Lynn Cooper, eds., **Policing America** (Englewood Cliffs, New Jersey, Prentice-Hall, 1974). In addition to corporations profiting from the law enforcement market, the primary agencies involved include The Committee for Economic Development, the National Aeronautics and Space Administration, the Jet Propulsion Laboratory at California Institute of Technology, Stanford Research Institute, the Institute for Defense Analysis, the International Association of Chiefs of Police thru its Police Weapons Systems Program, and the National Bureau of Standards. See also **The Iron Fist and the Velvet Glove: An Analysis of the U.S. Police.**

[6] Carl Rowan, 'What LEAA Did Wrong," **New York Post**, May 14, 1976.

[7] Shields and Churchill, p. 648: "By 1972, Government Executive was reporting serious crime among the crime fighters -illegal or improper spending of $475,000 in Florida, $593,000 in Alabama, $4,00,000 in Massachusetts; payment of consultancy fees as high as $75 an hour to such favored firms as Ernst and Ernst; preferred treatment of certain electronic suppliers, such as Motorola, which cornered the LEAA funded walkie-talkie market in Louisiana and Wisconsin without competitive bids and often at higher than list prices."

The interim system is presented in a form from which legislation can easily be drafted and has three general aims:

- To structurally reduce arbitrariness and injustice and make more visible the exercise of discretionary power in parole release and supervision.
- To eliminate prediction as the rationale for decision making in parole release and supervision.
- To strengthen the capacity of parole to provide concrete, useful supportive services to parolees seeking to live a crime free life after release from prison.

In brief, The Citizens' Inquiry believes that prison release should be nondiscretionary and post release services should be provided without coercive supervision. "But this outcome," the interim report states, "can only be achieved when certain principles ... become axiomatic: that imprisonment is brutal enough punishment to be justly imposed only for short, definite periods; and that the best function for parole officers is as counselors, community resources and brokers of services which help restore to normality lives disrupted by the process set in motion by criminal conviction."

Further, the report establishes procedures for release on parole, placing the burden on the parole board to demonstrate why a prisoner should not be paroled on the earliest possible date. It specifically prohibits denial of parole on the following grounds:

- Because of circumstances or details of any crime for which sentence has been passed in a court of law or for which the prisoner has never been convicted.
- Because of circumstances or details of previous parole revocations.

one above, are beginnings, not ends, and are companion acts to creating community alternatives.

Like abolition of indeterminate sentences, abolition of parole is a long range systems change goal, requiring a series of short term recommendations. The abolition of parole will not prove beneficial to prisoners, *unless* it is coupled with much shorter sentences.

> No matter how much money you spend on the parole board and parole system, it still is going to be a failure, because it attempts to do something which cannot be done. I would save money in this instance by eliminating the parole board as it functions today.
>
> —Charles Goodell, testimony before U.S. Congress, subcommittee of Judiciary, 1972

Parole abolition is among the most common demands of prison change groups. Among them, The Citizens' Inquiry on Parole and Criminal Justice, in their 300-page comprehensive *Report on New York Parole*[14] declare parole to be baseless in theory, "a tragic failure" in practice. They find no substantial evidence that risk-predictions on which parole release decisions are based are reliable. They document instances of serious injustice and sometimes public harm, leading them to recommend the ultimate abolition of parole.

Subsequently, The Citizens Inquiry prepared *A Proposed Interim Parole System for the State of New York.*[15] This series of short term recommendations can prove useful until long range goals are attainable. While not a prison abolition document, portions are worthwhile for abolitionists to examine.

[14] Published as **Prisons without Walls: Report on New York Parole** (New York, Prager, 1975).

[15] Prepared by Donald Auspitz, available from Citizens Inquiry on Pa-

ing the structural and fiscal problems and the latter focussing on the need for an efficient, research-oriented and centralized approach to the problem of crime. Additionally, a number of radical scholars, predominantly in the muckraking tradition, have highlighted the paramilitary and repressive functions of the LEAA and its potential role in establishing a "police state."[8]

In California, LEAA was denounced as a waste of taxpayers' money by Governor Edmund Brown, Jr. Shortly after taking office in January of 1975, he cut the staff of LEAA's office of Criminal Justice Planning from over 200 to 40 people. He then threatened to reject California's fiscal 1977 block grant-about $50 million-unless LEAA and its state representatives are able to prove that the funds are having some impact on the crime rate. If they are not, he says, the money would be better used to reduce the federal budget deficit.[9]

Thus, $5 billion dollars after the declaration of the "war on crime," realistic LEAA administrators admit that the program has not only failed to reduce crime, but that the infusion of massive amounts of money at a federal or state level cannot solve or even reduce the incidence of crime.[10] Further, its officials do not know with any certainty how its money has been spent. LEAA is unable to provide a detailed breakdown listing various categories of programs and the exact amount of money expended on each, despite an expensive computer system originally intended to store information about every grant.[11]

Advocates of moratorium on prison/jail construction and other prison changers are in daily touch with the effects of LEAA funding. Since 1968 at least $1.5 billion of LEAA's funds have been expended on "corrections" in a total of

[8] McLauchlan, p. 15. Also, for a discussion of the repressive capabilities of LEAA see selections by Goulden, Webb and Pinto in **Policing America.**

[9] Serrill, P. 17.

[10] **Ibid.** , p. 12.

[11] **Ibid.** , p. 17

30,000 programs. If one includes other programs that have a direct impact on "corrections" such as pretrial diversion, drug treatment, crime prevention, community education and the "corrections" portion of criminal (in)justice planning efforts, the figure may well exceed $2 billion, 40 percent of total LEAA expenditures.[12] There has been increasing emphasis on funding of "corrections" corresponding to the growing militant activity within prisons.

Because of its massive funding capability, it is difficult to find a community-based "corrections program" or a prominent researcher or for that matter a prison reform organization that has not been the recipient of a LEAA grant. Events as diverse as the abolition of juvenile prisons in Massachusetts and the acquisition of college credits by 40,000 guards and other prison staff on 1,000 campuses across the country have been funded by LEAA. The Minnesota parole /restitution program, volunteer probationary programs, pretrial diversion projects, victim assistance programs, rape crisis centers and multi-million dollar projects to redesign an entire state's correctional system relied on LEAA for their funding. There is no state or territory and very few counties and municipalities that have not received LEAA money.

Thus, as the major force for influencing, standardizing, unifying and coordinating policies and programs for the criminal (in)justice systems, including "corrections," LEAA has been able to directly affect what types of new projects will be sponsored and what kinds of research will be supported. Because both "hard" and "soft" approaches to crime control are fostered by LEAA, most prison changers try to walk the chancy tightrope between reaping the benefits of reformist programs and protesting the ones that are repressive and militaristic.

[12] **Ibid.** , p. 4.

(a) Dangerous drugs, marijuana, and narcotics.

Section 9. CATEGORY VIII

(A) Category VIII offenses shall be decriminalized. They shall include, but not be confined to, the following:

(1) The use and possession of controlled substances.

(2) All private consenting sexual acts between adults.

(3) Acts which are offensive but not directly harmful to others, such as indecent exposure.

An interim parole proposal

Given choice, abolitionists would much prefer to immediately eliminate the present sentencing structure, abolish criminal law and create a nonpunitive reconciliatory system for resolving violent collective and individual behavior. Tinkering with a destructive, grossly unfair and damaging system of criminal law can be fraught with contradictions and danger. But the task of abolitionists is to begin where we are and move toward our long range goals. Interim sentencing strategies are based on the present reality of the major intent of sentencing-punishment and retribution. Given this harsh truth-how do we move toward our vision? We see structural and judicial restraints and uniformity in levying sanctions as crucial next steps if we wish to affect a system that is unrestrained and discretionary. Gradually reducing sanctions even while advocating their abolition is not contradictory *if we continue to reduce until they are eliminated.* Model sentencing acts like the

(B) The sentence for Category V felonies shall be fifteen (15) months.

Section 7. CATEGORY VI

(A) Category VI felonies shall include the following types of crimes.

(1) Property offenses in which the potential for bodily harm is minimal and in which the property loss is significant, such as:

(a) Burglary II.

(b) Grand theft.

(c) Grand theft auto.

(2) Property offenses involving fraud and forgery.

(B) The sentence for Category VI felonies shall be nine (9) months.

Section 8. CATEGORY VII

(A) Category VII offenses shall be reduced to misdemeanors and shall include the following types of offenses:

(1) Petty property crimes such as:

(a) Receiving stolen property.

(b) Petty theft.

(c) Credit card theft.

(d) Operating a motor vehicle without the owner's consent.

(2) Improper sale of controlled substances such as:

In 1971, a National Advisory Commission on Criminal Justice Standards and Goals was selected by the administrator of LEAA to formulate national standards and goals for crime reduction and prevention at the state and local levels. After two years the commission and its various task forces, produced six volumes including the report on *Corrections*.[13] The Task Force on Corrections included Norman Carlson, director of the Federal Bureau of Prisons and William Nagel, former warden and an outspoken advocate of a moratorium on prison construction, the abandonment of prisons and the creation of community alternatives.[14]

Tho standards and goals recommended in the report on *Corrections* are diverse, they indicate a move away from incarceration. The report advocates a moratorium on the construction of all adult prisons/jails while alternatives are developed and implemented and the closing of all public institutions for "juvenile delinquents." Many other progressive recommendations and critiques of existing practices contained in the report are useful to abolitionists in pressuring local and state systems to adopt more just and less punitive policies.[15] We perceive such improvements, however, as interim strategies, and not ends

[13] **Ibid.** , p. 28: The reports were funded with $1.75 million in LEAA discretionary funds. **Corrections** was the most controversial of the six volumes. It establishes 129 standards for the operation of jails, prisons, probation, parole and community programs.

[14] William G. Nagel, **The New Red Barn**, pp. 137–48.

[15] **Ibid**. LEAA did not adopt the standards as its own. Instead, according to Kay Harris, assistant director of the Commission's Task Force on Corrections, LEAA officials "have been falling all over themselves, disclaiming anything to do with it." While LEAA praised the "process" by which the Commission's standards and goals were determined, they urged the states to emulate the process by setting up their own standards and goals commissions. In a 1973 amendment to the Crime Control Act, Congress required the states to set up standards and goals commissions, and to report annually on the Commission's progress. So far $16.5 million in LEAA funds have been allocated to the various state commissions; and the debate goes on as to the degree to which the states can be pushed by the LEAA.

in themselves, mindful that the locus of power remains in the public system and not the community.

Prison changers reap other small benefits from LEAA. Many local programs of an experimental nature would not have evolved without LEAA funding. Also, for the first time, prison changers and advocacy researchers have had access to some hard-to-get national statistics and information about the criminal (in)justice systems. But at what great cost!

While on one hand the *Corrections* report advocates a moratorium on prison/jail construction, with the other, LEAA has been handing out funds to build new institutions. It is impossible to get a detailed breakdown of expenditures on construction and renovation of these institutions from LEAA. Officials contend that the amount of money spent on construction has been a small percentage of the total LEAA budget, and that much of that which has occurred has been for the renovation of outmoded facilities, or for the addition of "program space" to existing institutions.

The largest amount has been expended on the construction and renovation of jails, especially in the rural areas of the country. The amount runs into the tens of millions of dollars, but no exact figures are available.[16] Moratorium researchers can be more successful in pinpointing local and state construction expenditures.

The following information will prove helpful to advocates of prison/jail moratorium who need to understand the workings of the state and local LEAA apparatus:

- LEAA funds for prison/jail construction can be administered by local and/or state Criminal Justice Planning Agencies under various names or sub-divisions. State Planning Agencies (SPAs) and Regional Planning Units (RPUs) were established to plan and dispense these funds.

[16] **Ibid.** , p. 20.

violent emotional reaction to seriousprovocation.

(b) Homocide by criminal negligence.

(2) Felony acts where the potential for serious bodily harm or death is high.

(a) Assault with a deadly weapon.

(b) Armed robbery.

(c) Forcible rape.

(d) Kidnapping other than for profit in which there is danger of death or bodily harm to the victim.

(B) The sentence for Category IV felonies shall be two (2) years.

Section 6. CATEGORY V

(A) Category V felonies shall include the following types of crimes:

(1) Acts committed for profit in which there is potential for bodily harm such as:

(a) Unarmed robbery.

(b) Burglary I.

(2) Sexual acts by an adult with a minor which have potential for serious harm to the minor, such as:

(a) Statutory rape.

(b) Lewd acts on a child under 14 years of age.

(2) Extremely serious assaults with intent to kill or in which bodily harm occurs such as:

(a) Assault with intent to murder.

(b) Assault in which serious bodily harm occurs.

(c) Robbery or Burglary in which serious bodily harm occurs.

(d) Forcible rape in which serious bodily harm, other than the rape, occurs.

(3) Acts committed for profit which place the victim in danger of death or serious bodily harm for an extended period of time such as:

(a) Kidnapping for ransom or robbery.

(b) The sentence for Category II felonies shall be three (3) years.

Section 5. CATEGORY IV

(A) Category IV felonies shall include the following types of crimes:

(1) Non-premeditated homocides such as:

(a) Intentional homocide while under the influence of a sudden, intense and

- The law, as amended in 1974 makes provision for grassroots representation in those fund-dispensing groups:

  The State Planning Agency and any Regional Planning Units within the state shall, within their respective jurisdictions, be representative of the law enforcement and criminal justice agencies directly related to the prevention and control of juvenile delinquency, units of general local government and public agencies maintaining programs to reduce and control crime, and shall include representatives of citizens, professional and community organizations directly related to delinquency prevention. (emphasis added)

- The National Advisory Commission on Criminal Justice Standards and Goals report, *A National Strategy to Reduce Crime*, recommended that at least one-third of the membership of state and local planning agency supervisory boards and councils be from officials of *noncriminal justice agencies and from private citizens.*[17]

- When LEAA was up for reauthorization by Congress in 1976, testimony before the House Judiciary Subcommittee on Crime concerning citizen participation urged that the planning process include more than those with a vested interest in the criminal (in)justice systems, such as representatives from minority groups, welfare rights organizations, civil rights groups, religious organizations, poverty groups and private citizens.

- Money in the form of "block" grants, based strictly on population, is turned over to the states and localities which are expected to devise their own programs. LEAA

[17] See Rowan, who cites the testimony of Robert L. Woodson (National

has become less and less a block grant, revenue sharing type agency, and more what is known as a categorical or "discretionary" grant operation-with the LEAA central staff making the decisions about how funds will be used. By 1975 the proportion of block grants had dropped to 54 percent with most of the remainder devoted to discretionary grants.[18]

- While states retain the decision on how to spend the block grant money, the law mandates that the spending be part of a rational, "comprehensive planning" process involving representatives of police, courts and "corrections" agencies in each state. Block money is administered and disbursed by SPAs whose directors are appointed by the governors. The SPAs are required to map out their priorities in their plans, which must be reviewed and approved by LEAA before a state receives its grant.[19]

- LEAA has deliberately discouraged the use of the states' block funds for construction by requiring that states and localities provide a 50 percent match. There is no such restriction, however, on the use of discretionary funds, and some construction has been 90 percent paid for out of the LEAA discretionary budget.[20]

- "Part E" funds are exclusively marked for "corrections," with 50 percent going to the states as block funds and the rest handled in Washington for special discretionary programs. There are four ways in which states can receive money for "corrections" programs: Part E block grants, regular block grants which fall under Part C of the leg-

Urban League), March 11, 1976.

[18] Serrill, p. 5.

[19] **Ibid.**

[20] **Ibid.** , p. 20.

ARTICLE IV. SENTENCING CATEGORIES

Section 1. All existing felony offenses shall be redefined as necessary and divided into the following categories.

Section 2. CATEGORY I

(A) Category I felonies shall include:

(1) Murder committed with deliberate premeditated malice aforethought and extreme atrocity or cruelty.

(2) Felony murder as presently applied in California committed with extreme atrocity or cruelty.

(B) The sentence for Category I felonies shall be ten (10) years.

Section 3. CATEGORY II

(A) Category II felonies shall include:

(1) Murder committed with deliberate premeditated malice aforethought.

(2) Felony murder as presently applied in California.

(B) The sentence for Category II felonies shall be six (6) years.

Section 4. CATEGORY III

(A) Category II felonies shall include the following types of crimes:

(1) Intentional homocide in which provocation is inadequate to reduce the crime to manslaughter.

but because the overburdened system cannot handle the ever-growing populations that have resulted from indeterminacy.

Tho the pace is slow, strong coalitions, careful campaign planning and unified strategies can gradually reduce sentencing discretion and disparity. But first, many questions must be answered: What kind of strategies build a united movement? In this transitional stage where shall the lines be drawn? What is a reasonable length for determined sentences? What compromises in penal codes are acceptable? What if legislatures abolish parole but institute longer flat sentences? What is our interim sentencing philosophy?

If prisoner-related groups coalesce and begin to find answers to these questions, healthy coalitions for change can be formed.

An interim sentencing proposal

One California coalition has proposed a model sentencing law. Its strength is its critique of California's present sentencing system. We regard it as an exercise that all local groups should undertake, but we do not specifically endorse all of its proposed recommendations.

The proposal limits sentences for all unviolent crimes on the basis that long term incarceration has a damaging effect to both society and the lawbreaker. Only in cases of serious bodily harm do proposed sentences exceed two years. The plan moves toward the restraint of state power, equality in sentencing and the redefinition of some crimes so that sentencing can reflect the degree of harm done. This proposal can serve as an example of how an interim model can be structured. Local groups working to abolish indeterminate sentencing and parole can alter it to suit their own needs.[13]

[13] Coordinating Council of Prisoner Organizations, **Determined Sentencing Proposal**, published in January 1975. Available from the council, 1251 2nd Ave., San Francisco, California, 94122, for 25 cents.

islation and are allocated at the SPAs discretion, Part E discretionary grants and Part C discretionary grants.[21]

Abolitionists advocate that as long as LEAA survives, prison changers should:

- Become familiar with the SPAs, RPUs or the local Criminal Justice Coordinating Council in your area.
- Contact the SPA, RPU or CJCC to investigate the state's specific standards and goals for its criminal (in)justice systems, then measure the role of state projects in achieving those goals.
- Find out if a "comprehensive plan" exists to establish alternatives in the community. If not, press for a comprehensive plan before any new construction is undertaken and present an alternative community-controlled model.
- Find out who serves on the planning and supervisory boards and how they became members (See Chapter 9).
- Pressure for representation of community and minority constituencies and prison changers on the planning boards and councils.[22]
- Organize prisoner-related groups and community service agencies around the issue of moratorium and the need to divert funding for construction into community services and resources.

In the long range, LEAA will fail and he discarded for the reasons stated by Dr. Jerry Miller, a member of the Consultant

[21] **Ibid.** , p. 5.

[22] A survey of 14 state boards by Network, a Roman Catholic lobby group, showed that private citizens are grossly underrepresented on state boards, with only two of the 14 state boards having the recommended one-

Committee on "Corrections" which analyzed LEAA's "corrections" accomplishments. The grant approach to "corrections" reform can never work because those proposing the solutions (state arid local "corrections" officials) are part of the problem and as a result most LEAA programs have served only "to sustain and build on existing failure." Most of the LEAA funded diversion and community-based programs have not really diverted offenders from institutions, but have instead, Miller says, swept new people into the system who otherwise would have been ignored. His own experiment in Massachusetts, which abolished existing juvenile institutions, was largely funded by LEAA. This was the unusual, he asserts—one of the very few truly innovative efforts funded by LEAA.[23]

Nothing less than a restructuring of American society and our system of law can be expected to significantly alter the crime situation. Vigorous investigation of boondoggles such as LEAA should be undertaken so that the enormous wastes of taxpayers' money can be exposed and the LEAA or similar models abolished.

Federal Bureau of Prisons: A growth industry

Tho convincing arguments can be made to stop the construction of state and local prisons, extravagant plans of the Federal Bureau of Prisons (FBOP) to construct at least 34 new prisons provides an unrivaled focal point for moratorium advocates. Despite impressive rationale advanced by numerous experts and organizations particularizing why the entire federal system of prisons should he abolished, the FBOP unashamedly

third citizen participation. Women and minorities were also consistently underrepresented.

[23] Serrill, p. 21.

tively. Actually, the Adult Authority set terms many months higher than proposed legislation, Senate Bill 42.

Decarceration thru legislation

Reforms in SB42 included shortened sentences, a focus on the crime committed rather than on the lawbreaker and only a bare minimum of discretion accorded to sentencing judges who would be required to specify why a particular sentence was chosen. By no means a model sentencing act, prison changers perceived SB42 as a realistic first step toward restructuring the penal code and eliminating indeterminacy.

Finally carried over as "old business" into the 1976 legislature, the bill was battered by a variety of amendments. For a while it seemed that law enforcement lobbying and the political maneuverings of a presidential election year would either bury the bill or wipe out the reforms the prison change movement had struggled to attain.

But a healthy coalition of ex-prisoner and prison changers, publicly challenged Governor Brown to meet a list of demands which restored most of the original intent of the bill. Almost all of their demands were met. Ex-prisoners predict it will take at least five years to determine whether prisoners will actually serve less time under the law. But they point to the relief prisoners will feel in knowing with certainty the length of time they will serve, when they will be released and that parole need be endured only for a maximum of one year.

Thus the brakes have been applied to unbridled discretion and the California prison movement can begin working on the next legislative step toward further reduction of penalties.

The legislative struggle is long and difficult. There are no simple solutions to the problems involved with instituting reforms of sentencing procedures and codes. Determinate sentences eventually will become a reality, not only because conservatives, liberals and prison reformers are demanding it,

It demonstrates that decarceration as a process is realizable providing approval is forthcoming from those who hold power in the criminal (in)justice systems; (2) It warns us that when selective decarceration is dependent on the whims or preferences of the powerful rather than on law, in the end equity and justice suffer.

After the California Supreme Court in several cases required the Adult Authority to set primary terms and release dates, Governor Edmund Brown, Jr. approved a new policy and the Adult Authority began setting firm release dates for all 20,000 men (the policy did not affect women felons) in California institutions. Supposedly, a prisoners' performance in institutional programs would no longer have any bearing on release date.

The dates computed for the prisoners' release were based on elaborate tables that detailed the time served for each category of offense over the last several years. Once fixed by the agency, a prisoner's release date would be adversely affected only if he became involved in a major incident while in prison.[11]

In ten months, nearly 11,000 prisoners were released on parole, twice the number set free in all of 1974. The short term impact of this plan was a dramatic reduction in the size of the prison population, which had swelled as a result of former Governor Reagan's policies. Some prison units were closed down.

The decarceration policy was denounced by the state's Attorney General, many district attorneys and police chiefs, the California "Correction" Officers Association and several state legislators. They called for an end to California's controversial indeterminate sentencing policy and a return to fixed prison terms, as well as the abolition of the Adult Authority.[12]

The depopulation created the false media impression that the indeterminate sentence problem had been solved administra-

[11] **Corrections Magazine**, July/ August 1975.

[12] **New York Times**, December 14, 1975.

continues to expand in all directions, augmenting its own bureaucracy with profits gained from the slave labor of prisoners.

The NMPC and other organizations are beginning to muster needed opposition to the huge federal prison boondoggle. However, it will take the support of the entire prison change movement and concerned taxpayers thruout the country to stop further unwarranted expansion of the mammoth federal caging bureaucracy.

There was a time, prior to 1895, when the first federal prison was established in Leavenworth, Kansas, that federal lawbreakers were caged in state prisons and leased out to private contractors-at a handsome profit.[24] But Congress put a stop to that practice in 1930 by passing legislation that authorized the establishment of a complete federal prison system which mushroomed into a major industry-the FBOP. By fiscal year 1977, the FBOP has the authority to employ more than 8,900 career-minded people with a budget exceeding $302 million, an increase of $67 million and 161 positions over fiscal year 1976.[25] Its burgeoning complex of cages, classification categories and diversified industries produce profits that rival those of other huge growth corporations.

Despite a concerted moratorium effort by national organizations,[26] the expressed reservations of the General Accounting Office (GAO)[27] and members of Congress, close to $57 million of the 1977 budget increase provides for the planning or construction of four new prisons. These are merely the tip of the

[24] John Bartlow Martin, **Break Down the Walls** (New York, Ballantine, 1954) p. 146.

[25] President Gerald Ford approved the FBOP's total budget request for fiscal year 1977 in July 1976 when he signed the Department of Justice's Appropriations Bill for fiscal year 1977. The Bureau requested $302,012,000 and 8,926 positions, an increase of $67,254,000 and 161 positions over fiscal year 1976.

[26] See **Jericho**, newsletter of the National Moratorium on Prison Construction, May/June 1976.

[27] See "Federal Prison Construction Plans Should be Better Developed

building iceberg. As of June 30, 1975, the FBOPs' ten-year master plan called for building 34 more prisons at an estimated cost of $460 million.[28] This hefty construction plan was shaved down from an even more gargantuan proposal for 66 projected prisons at a potential cost of $670 million.[29]

Presently, the FBOP controls 52 prison/institutions located in 23 states at sites ranging from rural communities to major metropolitan areas. They include the infamous segregation unit at Marion Federal Penitentiary, Illinois, the most open and experimental institution at Fort Worth, Texas and the fearsome experimental center at Butner, North Carolina. At the end of fiscal year 1975, about 80 percent of federal prisoners were in federal prisons and about 20 percent in state and local prisons/jails, totaling 28,600 in all.[30]

Detailed facts and figures on FBOPs' building plans will be available from NMPC as they continue to monitor the program. In addition to strategies already cited for moratorium on local and state prisons, we suggest the following three points be made in pressing Congress to cut construction funds for the FBOP:

> *The federal government should not operate any prisons at all.* The dismantling of the federal prison system has been advocated by numerous individuals and organizations. Among them: The National Council on Crime and Delinquency; William G. Nagel, Director of the American Foundation; John 0. Boone, former Commissioner

and Supported," Report to the Congress by the Comptroller General of the United States, April 27. 1976. Available from U.S. General Accounting Office, Washington, D.C. 20548.

[28] **Jericho.**

[29] "Federal Prison Construction Plans," p. 6.

[30] **Ibid.** , p. 1.

The struggle in California

The history of California's determinate sentencing bill provides an example of the level of persistent pressure required of prison change groups if indeterminacy is to be abolished. Before it was signed into law in September, 1976, convicted felons received indefinite sentences of anywhere from one to five years minimum up to life. Decisions rested with the Adult Authority, which periodically reviewed male prisoners' applications for parole. In all but a few instances, the law denied judges any authority to fix prison terms. No other state required indeterminate sentencing for such a wide range of crimes.

Indeterminate sentences in California applied to almost all felonies except capital crimes, such as first-degree murder, for which the death penalty or life imprisonment is mandatory. First-degree robbery, for instance, was punishable by five years to life, first-degree burglary by one year to life and second-degree burglary by one to 15 years.

As a consequence, the indeterminate sentence in California has been under attack for a decade. It was cited as one of the major causes of uncertainty, despair and violence among prisoners. The Adult Authority's parole decisions, often reached in a 15 minute hearing, reflected the composition of the board: ex-wardens, narcotic agents, retired district attorneys and police officers.[10] The end result of a reform originally envisioned as a way to decrease periods of incarceration was 24 to 40 months more time served.

Administrative decarceration

Beginning in April 1975, several factors produced a policy of massive decarceration of felons from California prisons. The example is valuable to abolitionists for at least two reasons: (1)

[10] **Report on the Community Conference**. American Friends Service Committee, Pasadena, California, June 1975.

present maximum penalties are much higher. Under the new code most crimes are assigned to one of five categories; the sentencing judge must set a term within the limits of the category. The maximum terms: for an A crime (for example, armed robbery), 20 years; for a B crime (arson), ten years; a C crime (burglary), five years; a D crime (possession of LSD), less than one year; and a class E crime (public indecency), six months. Criminal homicide in the first degree carries a mandatory life sentence. The earliest a lifer can he released, counting good time, is after 25 years. Criminal homicide in the second degree requires a minimum of 20 years imprisonment. Sixteen years must he served before the court can be petitioned for release.

While parole board discretion is eliminated, judicial discretion remains. Two persons who have committed the same crime might receive widely varying sentences, and thus there is no guarantee that armed robbers will in fact do more time than small-time burglars.

The prisons also retain considerable discretion under the new law because "good time" is retained. That is, for good behavior-as defined by the prison-the prisoner may be excused from serving up to one-third of the sentence. Another area of discretion vested in the prisons is that of deciding which prisoners will be allowed to take part in work-release or education-release programs.

Thus with the DMHC becoming a semi-parole agency, and-as prisoners and ex-prisoners expect—Maine lawbreakers doing more prison time for the same offense, the Maine reform "has failure built into it … a sobering example of what could go wrong" with a well-intentioned reform.[9]

[9] **Ibid.**

of Corrections in Massachusetts and the Group for the Advancement of Corrections.[31]

Basically, critics contend there is no justification for federal prisons,[32] they duplicate state institutions and move prisoners far away from their communities. Further, federal agencies should not be making plans for their own perpetuation and aggrandizement.

Even if one believed in imprisoning lawbreakers, there is nothing to set federal prisoners apart from state prisoners except that they broke a federal law rather than a state or local law. Federal laws are duplicative of state laws. As William Nagel points out, by far the majority (88 percent) of federal prisoners are confined for the same kinds of crime which might have landed them in state prisons-larceny, drugs, robbery, guns, auto theft and murder. Further, reciprocal agreements already in effect permit state prisoners to be caged in federal prisons and vice versa. This common practice demonstrates that prisoners need not be placed in federal prisons. Advocates for federal prisons lack any coherent rationale on the practice of placing lawbreakers in cages labeled "federal" rather than "state." If, as Nagel hypothesizes, Congress passed a law making all crimes in which guns are used federal offenses, suddenly thousands of "state" offenders would become "federal" offenders. Should the FBOP then

[31] See: "Phasing Out the U.S. Bureau of Prisons," National Council on Crime and Delinquency Board Policy Statement, 1974; John 0. Boone, "U.S. Federal Prison History Unfolded," **Fortune News**, May 1975; William G. Nagel, "With Friends Like This, Who Needs Enemies?," a paper presented at the University of Illinois, Champaign-Urbana, Illinois, February 7, 1974; and Toward a New Corrections Policy: Two Declarations of Principles, p. 13,

[32] See Milton Rector, President, National Council on Crime and Delinquency, "Statement of the National Moratorium on Prison Construction Regarding the Federal Bureau of Prisons Fiscal Year 1977 Budget Request," before the Subcommittee on State, Justice, Commerce and Judiciary of the U.S. House of Representatives Appropriations Committee, March 24, 1976, p. 12.

build 10,000 new cages? Should the state close 10,000 of theirs? Nagel concludes that given the FBOPs' current trend, if such a law were passed they would probably build those 10,000 cages, call them "rooms" and paint them pastel![33]

Moratorium advocates cite roles for the federal government other than an operational one. As examples, they point to specific services which are mandated and funded by the federal government but operated by state and local governments. This kind of "federalism" serves as an enabling model for vocational rehabilitation services, public assistance programs, medical assistance, mental health, poverty and educational programs. Largely the product of federal standards and money, these services are owned and operated by the states. Measured within this context of "federalism" the FBOP itself is as anachronistic as are its prisons.[34]

> *The federal government should be taking the lead in advocating community alternatives to prison.* The FBOP should be converted into an agency that would provide technical assistance, program guidelines and research for state and local governments that develop community alternatives and services instead of building new penal and detention institutions.[35] Consensus on the failure of prisons is widespread and publicly acknowledged by many prominent federal figures.[36] To pour billions of dollars into a failing systems' construction and operating costs thus constitutes

[33] Nagel, "With Friends Like This," pp. 5–6.

[34] **Ibid.**

[35] Tom Wicker, "The Wrong Model," **New York Times**, July 27, 1972.

[36] Among hundreds of national figures who have publicly commented on the failure of prisons are a notorious two who might well have experienced the failure from inside the walls: ex-President Nixon, quoted as saying "The American system for correcting and rehabilitating criminals presents a convincing ease of failure," and former Attorney General Mitchell who was

Though reforms of this nature are usually associated with progressive prison change groups, Maine's action was prompted in part by a backlash against a liberal parole board that often released up to 97 percent of the prisoners who appeared for their first parole hearing. Critics, reacting with alarm to parole board leniency, accused the five-member panel of unilaterally converting Maine's minimum/maximum sentences to straight minimum terms, and releasing prisoners too soon. Thus, the handwriting was on the wall: motivation for the new criminal code leaned toward making prisoners spend more rather than less time in prison.

In the name of reform, Maine now has a determinate sentencing system which is not determinate and an "abolished" parole that will continue to see prisoners released into the community under some form of "correctional" supervision. In return, it seems inevitable that prisoners will serve much longer sentences.[8]

By examining some highlights of the new code we begin to perceive the problems:

- Judges must sentence to flat terms.
- There will be no parole although the Department of Mental Health and "Corrections" (DMHC) may allow a prisoner to return to the community under work-or education-release programs.
- Judges are given discretion to choose the terms and conditions of sentences. They may select probation, fines, restitution, imprisonment or a combination of these penalties.
- Tho the Governor's Task Force asked for a maximum term of five years for most offenses exclusive of murder,

[8] **Labyrinth**, September 1975.

> of discretion in the fixing of terms of imprisonment; the definite sentence would automatically eliminate administrative parole board procedures which now consist largely of an untrammeled discretion which reduce prisoners to little more than supplicants. The ultimate goal should be no indeterminacy whatsoever in sentences.
>
> —A Program for Prison Reform, p. 12

The interim or transitional replacements for the old systems of indeterminate sentences and parole are crucial. Even minor legislative revisions to criminal codes drastically affect the lives of millions of individuals who are caught in the criminal (in)justice systems. Thus, proposed interim penal codes must be carefully scrutinized and approved by those whose lives are directly affected.

In 1975 there appeared to be a healthy movement developing toward abolishing indeterminate sentences and parole. Examining some of the issues raised by results in Maine and California helps us to define some of the paradoxes and problems inherent in interim reforms.

Maine's new law

On June 18, 1975 after two years of extensive study and debate, Governor James B. Longley signed a new criminal code into law, making Maine the first state in the nation to abolish indeterminate sentences and parole.[7] Acclaimed by reformists, the provisions of the oft-amended new code took effect May 1, 1976.

[7] Material on Maine based on information printed in **Corrections Magazine**, July/August 1975, pp] 16–17 and Labyrinth, September 1975 and telephone interview with Attorney General's office August 10, 1976. For a copy of the new law, see **Maine Revised Statutes Annotated**, effective March 1, 1976 (St. Paul, Minnesota, West Publishing, 1975).

> a premeditated and criminal waste of taxpayers' money.

The FBOPs' glaring inconsistencies in their stated rationale for building new prisons has been effectively challenged. But alternative recommendations have gone unheeded by federal decision makers.[37] Even if overcrowding is as serious an issue as the FBOP contends, its director, Norman Carlson, already advocates a depopulation solution for state prison systems which could easily solve any real or imagined population problem for the federal prison system:

For example, according to Mr. Carlson, states might consider whether all inmates now in prison really belong there: "Young first offenders, alcoholics and those found guilty of not making support payments to their families" unnecessarily clog the prison system. He argues that such offenders could be handled just as safely in the community. Other offenders who needlessly inflate prison rolls, suggests Mr. Carlson, are those convicted of so-called victimless crimes, such as prostitution, gambling and drug addiction. Those convicted of such crimes are usually nonviolent, and can he treated outside prison if they need "correction."[38]

If the FBOP were to take its director's decarceration strategy seriously, the first wave of prison depopulation could solve all alleged overcrowding as well as other serious problems. Only slightly more than 25 percent of all federal prisoners have been convicted of what the director would call a "violent offense."[39]

"appalled at the situation in many of our prisons today." Quoted in Fred Cohen, "The Discovery of Prison Reform," **Buffalo Law Review**, Spring 1972, p. 857.

[37] Contact NMPC for critique of FBOP's rationale for federal prison construction plans. Also see "Federal Prison Construction Plans" footnote 27.

[38] Norman A. Carlson quoted in "Yesterday's 'Baby Boom' is Overcrowding Today's Prisons," **U.S. News and World Report**, March 1, 1976, p. 67.

[39] Norman A. Carlson, in testimony before the Subcommittee on Courts,

Thus, by Director Carlson's own standards, on the basis of their having committed unviolent acts, almost 75 percent of the federal population could be released with no threat to the community.

> *The federal government should not build prison factories that use slave labor to produce profits for the expansion of its own bureaucracy.* Tho the purported "business" of the Federal Prison Industries, Inc. (FPI) is "to provide training and employment for prisoners" confined in federal prisons,[40] like all major corporations, its real purpose is to earn larger profits thru increased marketing design ability, greater efficiency and lower operating expenses. In the words of one federal prisoner:
>
> The American prison business could not survive and prosper as it does were it not for those of us inside who labor. As we labor for prison industry profits we also work for the exploitation and degradation of ourselves and our fellows; we labor to maintain our incarcerated and insulted existence ... Rehabilitation in prison has become a code-word for a cheap labor market; and thanks

Civil Liberties and the Administration of Justice, House Committee on the Judiciary. July 30, 1975, p. 8. See also Fred Cohen, P. 883. See also **Trial Magazine**, November/December 1975, report on Norman A. Carlson's speech before the Fifth U.N. Congress on the prevention of Crime and Treatment of Offenders in Geneva, Switzerland:

"... We believe that whenever consistent with the public interest, maximum use should be made of alternatives to incarceration such as probation and diversion. The real problem is the chronic and violent offender. For this group we believe incarceration in a humane institution is necessary.

[40] "Introductory Schedule of Products Made in Federal Penal and Correctional Institutions," U.S. Department of Justice, Federal Prison Industries, p. 1.

—Struggle for Justice, p. 144

The Western Association of Prisons in America completed a four-day meeting on September 16 with a call for the elimination of parole and use of the indeterminate sentence. Any release from an institution should be "a complete discharge, rather than a conditional release," stated the association.

Claiming the indeterminate sentence has left administrators with too much discretion to authorize an individual's release, the association alleged that it has "encouraged excessive and unequal confinement in the name of treatment." To counteract the indeterminate sentence, the organization called for a reduction in the maximum terms associated with some crimes and advised that standards be set and adhered to.

—Free World Times, October 1973

Indeterminate sentences must be ended. Maintaining incarceration because it is predicted that the prisoner presents some future danger must also come to an end.

—Statement of Ex-Prisoners Advisory Group,
Toward a New Corrections Policy: Two
Declarations of Principles

The indeterminate sentence has not had the salutary effects predicted. Instead it has resulted in the exercise of a wide discretion without the guidance of standards and in longer periods of time served in prison ... There should, therefore, be strict limitations on the judicial and quasi-judicial exercise

> Those are the most radical things I've said in some time … I was an early advocate of the indeterminate sentence … but I have reversed myself completely … We assumed we knew how to treat criminality but we found out we don't know … we let people believe that we know when a prisoner should be let go.
>
> The mistake made in pushing for indeterminate sentencing is that we used a false analogy, a medical analogy. The assumption was that a prison is like a hospital, where the inmate is cured and released when the doctors, or the prison officials, say so. But prison officials don't cure prisoners and it is the parole board, not the officials, who decide when a prisoner is released … the indeterminate sentence has proven out generally, to mean an increased sentence, roughly 24 to 40 months more time, for the prisoners … with abolition of the indeterminate sentence and of the parole board, we should give it all back to the courts who are equipped by training to deal with it.
>
> —The Outlaw, July 1974

Voices against indeterminacy

Many other prisoner-related groups and organizations advocate abolishing indeterminate sentences and/or the present parole system. Among them:

> Whatever sanction or short sentence is imposed is to be fixed by law. There is to be no discretion in setting sentences, no indeterminate sentences, and unsupervised street release is to replace parole."

> to the George Meanys of this world [one of the directors of the FPI], American prisons will continue to serve as a source of cheap labor [and] huge profits.[41]

As new federal prisons are constructed, they will become factories for expanding the FPI.[42] New products will be added to the seven product divisions already in full operation at factories located in 24 prisons. In 1976, FPI's retained earnings of $6 million, more than doubled those of fiscal year (FY) 1975. Total gross sales increased $9 million, from $72 million in FY 1975 to $81 million in FY 1976. Substantial increases in earnings were realized in electronics, textiles, shoe/brush and metals divisions. Electronics represented the highest division gain, increasing from $10.3 million in sales in FY 1975 to $14.3 million in FY 1976. The Department of Defense is the primary customer for these electronic products used to make weapons of war.

FPI, Inc. is a wholly-owned government corporation established in 1934,[43] administered by a board of six directors appointed by the President to serve without compensation. The board represents industry (Berry N. Beaman), retailers and consumers (James L. Palmer), the Department of Defense (John Marshall Briley), labor (George Meany), agriculture (William E. Morgan) and the Attorney General (Peter B.

[41] Tony Medina, #37426, Atlanta Federal Penitentiary, in a letter to **Fortune News,** December 1974. He adds: "Prisoners who resent being forced to maintain their own incarceration and who want to resist their self-exploitation should refuse to work for prison industries until at least the minimum wage is made applicable to all who labor in the prison business."

[42] "Director Foresees Larger Role for Prison Industries," **Monday Morning Highlights**, U.S. Department of Justice, February 23, 1976: "Mr. Carlson also announced that industries will be expanded during the coming years as new institutions are being constructed."

[43] FPI, Inc., was established under Acts of Congress and an Executive Order which are now incorporated in Chapter 307, Sections 4121 to 4128,

Bensinger). Norman A. Carlson serves as Commissioner of Industries and David C. Jelinek as Associate Commissioner.

The sale of articles produced in the FPI is restricted by law to departments and agencies of the federal government. In all but a few instances, it is mandatory for federal departments and agencies to purchase products from FPI rather than from other sources.[44] The numbers of products and services available are staggering—and the *1975 Annual Report. Federal Prison Industries, Inc.*[45] reads like a prospectus for any large corporation seeking stockholders and further investment. Like it or not—and we don't like it-all U.S. taxpayers are shareholders in the proceeds of captive prison labor.[46]

The fact that FPI is one of the most profitable lines of business in the country is not surprising when we examine the pay rates for prison workers -a small detail not included in the glowing annual report. Current wages range from 26 cents to 70 cents per hour, averaging in the high forty cent range. They report that in 1975 more than 13,300 prisoners were employed by FPI for a total of $4.6 million in prisoner wages. Average daily prisoner employment exceeded 5,200, accounting for more than one-fifth of the entire federal prison population. Nearly 580 staff trained and supervised the prison laborers.[47]

Until the federal prison system is dismantled, prison changers must demand an end to slave labor. We must deny all funds to the builders of prisons and educate the public to the dishonesty involved in the practice of raising the banner of "rehabilitation and training" over conditions of slavery. If prisoners are offered work, they must also receive minimum wages. Vo-

Title 18, U.S. Code.

[44] "Introductory Schedule of Products," pp. 1–2.

[45] Available from Federal Prison Industries, Inc., Washington, D.C. 20534.

[46] See Jessica Mitford, **Kind and Usual Punishment**, pp. 19697.

[47] **1975, Annual Report, Federal Prison Industries**

term which the prisoner must serve before parole will be considered.[5]

Indeterminate sentences unjust

According to one California ex-prisoners' group,[6] indeterminate sentencing comes under widespread attack because it violates four basic principles of justice:

1. Lack of equity. Men and women do very different amounts of time for commission of the same crime. No psychiatrist, ex-prison guard, or any other human being can say with reasonable accuracy when a person is "rehabilitated."

2. Lack of predictability. The uncertainty in a prisoner's mind as to when s/he will be released is a prime source of anxiety, frustration, bitterness and violence in prisons.

3. Length of time served. *Under the indeterminate sentence law, terms in California have lengthened. They are now among the longest served anywhere in the world.*

4. Procedural due process. When decisions are being made affecting a person's liberty, it is essential that the relevant evidence and arguments be fairly tested for accuracy. Without procedures insuring due process, it is unlikely the truth will be found.

Richard McGee, for 23 years director of the California Department of Corrections and one of the strongest advocates of indeterminate sentencing and the medical model, did a complete about face when he finally realized its basic assumptions had been proven false. In an interview with an ex-prisoners' group, he advocated abolishing indeterminate sentences along with parole boards:

[6] "The Sentencing Struggle," **The Outlaw**, June/July 1975.

clemency, pardon or reprieve or how to establish the unconstitutionality of a case.

Abolition of indeterminate sentences & parole

Like most prison reforms, the indeterminate sentence adds to rather than lessens the coercion of prison. For more than 60 years indeterminate sentencing philosophy has dominated "correctional" policy and practice. Based on the rehabilitative medical model which views the criminal as a sick person who requires treatment until cured, it allows system functionaries to obtain the widest possible discretion in order to be allowed sufficient time to effect a "cure."

The change in sentencing law occurred with the introduction of rehabilitative reforms and parole. Indeterminate sentences with minimum and maximum time, replaced sentences with definite numbers of years to he served. For instance, a person convicted of armed robbery who formerly might have received a definite sentence of ten years, under an indeterminate sentence law might receive "five to fifteen years"-a minimum term of five years before parole eligibility and a maximum of 15 years imprisonment. In practice the judge delegates an important portion of his penalty-fixing authority to the parole board.

California and Washington have extreme forms of indeterminacy. In these states the courts have little sentencing power apart from granting probation. Almost every person sent to prison receives the maximum term prescribed by the legislature for the offense. The parole board investigates and provides a hearing for each prisoner during the first six months or year of confinement, after which it announces the minimum

Summer 1974.

[5] Daniel Glaser in Lloyd Ohlin, ed., **Prisoners in America**, pp. 86–92.

cational training programs can be made available in the community as alternatives to prison industry.

As the FBOP grinds out slick publications and press releases "selling" the public on their staggeringly expensive air-conditioned, carpeted, electronic hi-rise nightmare versions of 20th century prisons, the press naively hails them as "an advance in jail design."[48] A young prisoner tells a different story from inside the federal "Metropolitan Correctional Center" in New York City:

> To be lockstepped into the recently opened federal "Metropolitan Correctional Center" in New York City is to be marched into the future. The latest word in federal penology turns out to be a greater obscenity than anything it was designed to replace. It is enough to make one yearn for the up-frontness of iron bars and stone walls.
>
> "Residents" are uniformed in bright orange jumpsuits to match the plastic furniture. They crowd around narrow, never-opened windows 11 stories above a totally soundless city from which they are completely dismembered. They are jammed together on carpeted floors, between paneled or pastel walls, in front of deafening color t.v. sets, around a hustler's pool table. It has all the human gravity of a floating space station. Menus and distribution of food are designed for convenience, not diet, and guards in blazers remain just one step out of sight but never out of earshot.
>
> There is one urinal, one toilet, one shower, two sinks, and two small tables for each twenty residents. Men (and boys) who have just been

[48] Paul Goldberger, "New Detention Center at Foley Square is Hailed as Advance in Jail Design," **New York Times**, July 26, 1975.

sentenced to 25 years share and compete for facilities with those who are serving 30 days, and those who are awaiting trial, and those who have to be reminded not to light the filter end of their cigarette. Residents with a past history of resistance to the state are afforded an extra measure of harassment and humiliation. "Counselors" are seldom seen and almost never available.

There is virtually nothing to read. Fresh air is not needed, nor sunshine, nor room to exercise, nor *any* movement beyond one half of one floor. Pills are liberally dispensed; proper medical care is not. There is a constant white noise coming from the multitude of ventilators along with the incessant blasts of chilling air. There is no place to run and no place to hide; only electric wizardry and closed circuit surveillance, all purposely calculated to minimize any human contact.

All this costs millions and millions of taxpayers' dollars, and it is called "enlightened."

Prisoners have always been seen as nothing other than commodities in a soulless landscape, like goods in a warehouse. What makes the new "MCC" so "progressive" is its highly touted neo-HolidayInn-lobby facade behind which men and women are even more greatly ignored and numbed, manipulated by unseen forces, until vision and hope, like their muscles, atrophy in the face of abandonment. It is a futuristic nightmare where antiseptic trappings disguise the despair within. It says something not only about the future direction of prisons, but also something about the future direction of the country.

1. *Abolish the system of bail* and with it pretrial detention for all but the very few who, with predetermined criteria, could be considered a threat to public safety. By this reform jail population could be reduced approximately 50 percent.

2. *Abolish indeterminate sentencing and parole.* This would drastically cut down prison populations if definite, shorter sentences were imposed. Over 140,000 incarcerated persons in federal and state prisons were eligible for parole in 1975, but only an estimated 49,000 to 56,000 prisoners were released on parole[4], leaving about 90,000 prisoners in cages who could be on the street.

3. *Create a sentence review process* to implement the release of the majority of prison population to the community, utilizing contractual services as needed.

The following modes of early release do not involve systems change but are appropriate abolition strategies:

4. *Seek court orders ordering depopulation* because of overcrowding or other cruel and unusual conditions.

5. Where prisoners request it, *provide options for making restitution to victimized parties in lieu of serving further time and use contracts for negotiating conditions of early release.*

6. Audit prison populations to be sure all *decriminalized offenses are made retroactive* thru initiating sentence reductions, class actions or other means of redress.

7. Educate prisoner legal advocates and others about *procedures for reduction of sentence, applying for executive*

[4] Alvin Bronstein, "Rules for Playing God," **Civil Liberties Review**,

- Release those needing some supervision to parole officers who will function as interim contractors for community-controlled services.
- Release those needing close supervision to community support groups on a one-to-one contractual basis.
- Release those very few who are considered a public threat to small secure settings for the least period of time (see Chapter 7).

Interim strategies

Beginning to identify the series of concrete acts and intermediate campaigns that can lead to long range goals is a first step in planning for decarceration. We caution strongly that all interim as well as long range strategies be considered only after conferring with knowledgeable prisoner and ex-prisoner groups. Interim policies crucially affect the lives of prisoners still inside the system and many ex-prisoners on the streets. What seems a paltry and therefore unacceptable change to those outside the wall, might be a highly significant and desirable change for those who are caged or under control in the streets. If there are differences in strategies between prisoners who have experienced the day to day reality of prisons and prison changers who have not, take the time to hammer out differences and reach agreement. Strategies and tactics that are not in unity weaken the total movement toward systems change.

Modes of decarceration

At least seven modes of decarcerating prison/jail populations can be identified. Some are long range goals, which require interim strategies:

The New York City prototype will be duplicated in Detroit and Phoenix. But for whose benefit? Reputations and salaries will be made for young progressive wardens, for innovative architects, for Washington bureaucrats, for academics and criminologists with their precious detachment. Society will not be embarrassed with eyesores, either structural or human: medieval looking buildings or the poor who do not abide by national priorities which put more heat on the already oppressed.

I believe that all confinements of freedom lead to aspects of death. The actual existence of prisons-more prisons, newer prisons, pastel prisons, coeducational prisons, prisons that don't look like prisons, prisons that aren't even called prisons-the actual existence of prisons means living with death's metaphor. It corrupts both the victim and the society.

The houses of those who are made to begin dying will always be with us-like sanctified criminality in high places; like insulation of certain crimes; like the selective enforcement of selective laws to converge on the young, poor and Black. But to consent to these Holiday-Inn hells as an improvement or as somehow more "humane" only enforces the hypocrisy with which death corrupts life.[49]

[49] John Bach is a member of the Whale's Tale community in Hartford, Connecticut. He has spent 35 months in prison for draft resistance and was recently imprisoned for an act of nonviolent civil disobedience on Hiroshima Day, 1975.

5. Decarcerate

In Illinois, a newspaper reporter asked a number of persons both inside and outside prisons: "What would happen if Illinois opened the gates of all its prisons tomorrow and let everyone out?"

> Hans Mattick, criminologist: "If the prisons were opened tomorrow it wouldn't make any difference. The fear of crime is a greater problem than objective crime itself.
>
> For every 100 serious crimes reported, 25 men are arrested, 12 are convicted and three end up in prison. If you let those three out of prison, would it make a difference in the crime rate? Not a tremendous difference."
>
> Richard J. Fitzgerald, Cook County Criminal Court Judge: "I'm sure if everyone were released I'd have a few more customers the next morning. But with screening for the most violent offenders, the most dangerous criminal, a general amnesty might work. The violent offender is a minority anyway."
>
> Peter Kotsos, chairman of the Illinois Parole and Pardon Board: "Well the first thing that would happen is that we'd save a lot of money. But it would be chaotic not to send the vicious criminal away. But I'd say we could divert about 70 percent of the men currently in prison to other places."

- We advocate a decarceration strategy which maximizes protection of the public and also maximizes community-controlled services to releasees.
- We advocate prompt cutting of ties to the criminal (in)justice systems, including parole and probation, utilizing the services of community groups on a contractual basis.
- We advocate a working coalition between prison change and community service groups to assure needed support and services in the community.
- We advocate a maximum five year time-line for release of the first 95 percent of the present population in jails and prisons: at least 80 percent immediately and 15 percent gradually over the next five years, and a ten year maximum time-line for releasing the balance of the population-based on agreed upon criteria for settings and services.

Let us spell out in more detail our proposals for releasing those now in prison:

- Release immediately all pretrial detainees except those few who present a serious threat to public safety.
- Release immediately those who have served their minimum sentences or are eligible for parole.
- Release immediately those needing no supervision or support services.
- Release on a contractual basis to community groups and peer groups, those who do not need supervision but who do need support and services; the nature of these to be determined by the releasee.

University of Massachusetts. They remained there for a month, each working with a student advocate.

- July 1974, the last juvenile institution was closed: a cottage at Lancaster which housed 20 young women.

Thus was the Massachusetts juvenile prison system entirely dismantled. The swift closing of institutions forced the development of dynamic alternatives to meet the needs of the youngsters. The wide range of community programs permitted enormous flexibility for program shifting. The administrative system was decentralized, with seven regional offices set up to make all decisions about individual youth placements and needs. Almost all services for the juveniles were contracted from private agencies, resulting in the creation of a wide range of community programs.

Volumes are being written about the "success" or "failure" of the experiment. There is no doubt that data on recidivism, costs, efficiency and other traditional measurements are important to final evaluations of the decarceration of youth in Massachusetts. Nonetheless, for prison abolitionists, Miller's very act of decaging and his willingness to take the risks involved, stands as a symbol of daring and courage.

The Attica slaughter and the Massachusetts juvenile experiment occurred in the same half-decade. One response, a symbol of the state's brute power -elimination by death of prisoners and hostages. The other, a human response-elimination of the cage for most of those caught in that system.

Abolitionist proposals

- We advocate a program for decarceration with the goal of shrinking the prison population as rapidly as possible.

> William Stave y, convicted murderer: "There would be some chaos, but the vast majority of the men would do nothing. You'd never see 80 percent of them again."
>
> Vernon Housewright, warden of Vienna prison: "I really doubt if the crime rate would increase that much. I think the Gideon decision showed us that … I don't say tear down all the walls. But I admit that some prisons may do more harm than good."
>
> —Roger Simon, *Chicago Sun Times*, April 11, 1975

Many wardens, "correctional" professionals, prisoners and others close to the criminal (in)justice systems believe that 50 to 90 percent of prisoners presently incarcerated in jails and prisons could be released to society without any threat to the public:

> Even prison administrators do not believe in the institution they are administering. A few years ago, while attending the annual meeting of the American Correctional Association, I found myself in a hospitality suite in a San Francisco hotel, chatting with a roomful of very relaxed prison administrators. Each man headed a major prison institution; all were veterans in the business; none were "bleeding hearts," "soft" on crime or naive about criminals. I asked the warden sitting next to me what percentage of the people under his supervision needed to be in prison in order to protect society from personal injury About 10 to 15percent," he said. We canvassed the other wardens in the room; none disagreed. Since then, on visits to numerous prisons around the country and abroad, I have always asked the same question. I have never received a different answer.

—Ronald Goldfarb, *Look*, July 27, 1971

> Carl G. Hocker, then captain in charge of custody at San Quentin … now warden of the Nevada State Prison, known through out the system as a stern disciplinarian and tight custody man …told me that he thought the figure 80 percent was too low, and that in his opinion 90 percent of the people in prison do not belong there.

—Benjamin Dreyfus, quoted in *Kind and Usual Punishment*, pp. 285–86

> The employment of imprisonment and other criminal sanctions must accordingly be sharply curtailed. Indeed the release of the majority of the prison population, coupled with the provision of community programs and services, would not increase the danger to the public, and ultimately would enhance public safety.

—A Program for Prison Reform, p. 9

> All too often critics respond to the notion of phasing out the prisons by describing the nightmare cases, the three-time rapist or murderer. Anyone can imagine someone who must be incarcerated, but that is no reason to legitimate all incarceration. The issue should be to discover how many persons now inside can be let out, without worrying yet about the hard core. Probably 50 to 70 percent of inmates in state prisons could safely be returned to the community.

—David Rothman, *The Nation*, March 19, 1973

Despite the overwhelming agreement that the majority of prison/jail populations can be safely phased out, federal and

Dr. Miller was appointed in October 1969. Quickly he became convinced that the juvenile institutions in Massachusetts could not be humanized. He proceeded one by one to shut them down:

- August 1970, the Institute for Juvenile Guidance at Bridgewater Correctional Unit was closed. This institution had handled the most difficult and obstreperous youth in the system. Most of the 60 boys were sent home on parole; 12 who had been committed for major violent crimes were housed in a cottage on the grounds of Lyman School.
- March 1971, the entire population of Oakdale, boys seven to twelve, was paroled.
- By April 1971, the average time served in training schools had been cut from eight months to three months. The average daily population had dropped from 1,200 youths to under 400.
- December 1971, the Industrial School for Boys at Shirley was closed. Most of the children were paroled; a few were transferred to Lyman. As part of his public information campaign, Dr. Miller and some of the youngsters sledgehammered the bars of the segregation cells in the disciplinary unit.
- January 1972, with only 20 days of planning, Lyman school was closed. Arrangements were made to house the 39 youths temporarily in a dorm at the University of Massachusetts at Amherst.
- The remaining male juveniles in custody-60 youths from Lancaster Training School and two reception centers, Westfield and Roslindale-were also sent to the

releasing anyone who is a physical danger." Lowe recommends a seven year weeding out process for this group.

4. The fourth group, the final 15 percent, should be given full medical and psychological study. In the new environment some knowledge may result on how to deal with such persons and hopefully how to prevent others from following their patterns. A ten year transition period for this last group's transfer would be required. And the prisons could be closed.

Decarcerating a juvenile prison system

We have examined two strategies for decarceration: one based on availability of services in the community and the other on perceived safety of the public. A third approach to decarceration is illustrated by the unprecedented and creative experiment that occurred in the juvenile prison system in Massachusetts in 1972.[3] It involves a rare combination of ingredients-not easily duplicated.

In the beginning, there was no grand design or very much prior planning for closing down the juvenile training schools in Massachusetts. The ingredients present for permitting the decarceration to become a reality included: A governor who wanted a new and humane way of dealing with children committed to the state's care. Progressive legislation which created a Department of Youth Services (DYS) under a super agency of human services and empowered the DYS commissioner to place youth in any institution or program. Key media support. Active child advocate groups. A new, creative commissioner, Dr. Jerome Miller.

[3] Material on decarcerating Massachusetts' juvenile prisons based on data gathered by David Martin and reportage in **Corrections Magazine**, November/ December, 1975, pp. 3–40.

state prisons and local and county jail populations soared to an all-time high during 1975–1976. Strategies for shutting off the flow at the other end-into the prisons-will be proposed in Chapter 6, Excarcerate. Here we will begin to seriously examine how we work toward decarceration-getting the present population out of the cages.

Strategies for decarceration

At the First National Prisoners Conference, Dr. Don C. Gibbons, Chairman of the Department of Sociology at Portland State University and former Director of the Staff Training School of Oskalla Prison Farm in Canada,[1] proposed a decarceration strategy based on the availability of services in the community. Next to public threat, he views the major factor in calculating priority for release, the level of need required by the ex-prisoner. If there is no place the decarcerated can go to receive real help, "he and we may have to wait until there is."

Gibbons' decarceration strategy would divide prisoners into three groups:

1. The essentially law-abiding citizens who are not pursuing criminal careers and need no more in the way of social services than those generally available presently. These represent about 50 percent and if let out promptly, money saved could be used to strengthen existing community services.

2. Professional criminals. These represent about 40 percent and need special services which can never be provided in the penal setting. Such services are beginning to be made available for selected prisoners in work release centers and other alternatives with some degree of supervision.

[1] Don C. Gibbons, "Prisoners without Reason: Priorities for Release,"

3. The few for whom violence is a main mode of expression, judged to be about ten percent. The public has every right to be protected, but that is no excuse for relentlessly punishing the offender as is done now. Secure but supportive surroundings are needed in urban centers where community resources can be drawn upon. These facilities are not now available in the U.S. and must be developed.

Thus, rather than devising a strategy of systematically classifying prisoners for release by using the old categories of first-timer versus recidivist, the unviolent versus the violent, the misdemeanant versus the felon, Gibbons has calculated on the basis of the sufficiency of community services.

In the fourth category, Gibbons' orderly abolition of the prison focusses on the thousands of unconvicted who are imprisoned for long periods prior to trial. He advocates the end of money bail and the immediate release of those imprisoned while awaiting trial, estimated at 52 percent of the total jail population.

A second strategy for decarcerating prisons was enthusiastically cheered at the First National Conference on Alternatives to Incarceration.[2] Ira Lowe, for 25 years a Washington, D. C. trial lawyer and civil libertarian, whose clients have ranged from antiwar activist Tom Hayden to John Ehrlichman of Watergate, briefly outlined a ten-year release time-plan. Basing rapidity of release on potential threat to public safety, he prefaced his remarks by pointing out that "the judiciary and all of us must accept the fact that there is no such thing as good and bad torture; no such thing as a good prison. We must accept the fact that they must be emptied. Once we set that as a goal we can begin to act."

in Steve Bagwell, ed., **Depopulating the Prisons**, pp. 32–38.

[2] The First National Conference on Alternatives to Incarceration, September 19–21, 1975, Sheraton-Boston Hotel, Boston, Massachusetts.

Lowe's plan calls for (1) a moratorium on all prison sentences beginning immediately. (2) Attorneys and judges would propose and structure alternative sanctions. (3) Victimless crimes would carry no more sentences. (4) No prison sentences at all would be allowed until the government proves beyond a reasonable doubt that they have tried alternatives unsuccessfully. (5) Attorneys would be required to present alternatives to the court and (6) all probation reports would recommend alternatives.

Lowe further advocated dividing current inmates into four classes with an equal number of task forces of law enforcement officials, aided by citizens, assigned to administer a weeding out process and administration of punishments. Each task force to start at once:

1. The first group-approximately 15 to 20 percent of the prison population-perpetrators of "victimless crimes" such as gambling, prostitution, marijuana use and homosexuality-would be identified and released from prison immediately. Release of this group should take less than a year.

2. The second group-between 45 and 55 percent of the prison population-persons who even prison officials would clearly consider releasable, offenders of nonviolent crimes such as crimes against property without weapons or violence, would be released from prison and allowed to complete their term of sentence by performing a public service to society and, where applicable, specific restitution to their victim(s). This task force could accomplish its purpose within five years.

3. Lowe believes that of the remaining 30 percent, about half are borderline cases and eventually releasable. The third task force, then, would cull out this 15 percent for in-community sanctions, "not taking chances of

cells, controlling drugs and arbitrary decision-making that are the standard of imprisonment today.

The politics of dangerousness

The selective and arbitrary process of labeling dangerousness is inherently political. Such labels are the basis of "preventative detention" and other forms of "treatment" which result in the violent (non)solution of caging. It is crucial that abolitionists examine the political implications and reliability of "dangerous" labels and predictions:

> We might expect the origins of the word "danger" to be related to… its current use in denoting physical objects and events that might damage property or injure people. Surprisingly … the term seems to have shaped out of linguistic roots that signified relative position in a social structure, a relationship between roles on a power dimension. The root is found in Latin in a derivative of dominium, meaning lordship or sovereignty … The implication … leads us … into the conception of danger as a symbol denoting relative power in social organization … Those persons or groups that threaten the existing power structure are dangerous. In any historical period, to identify an individual whose status is that of member of the "dangerous classes," (i.e., the classes that threaten the dominium or power structure) the label "criminal "has been handy.
>
> —Theodore R. Sarbin, The Myth of the Criminal Type, pp. 16–17

> People do not come into the world labeled "chattel" and "not chattel," "schizophrenic" and "not

cial offender, and, worse still, fattening it with precious and scarce tax dollars.

Instead, the major premise must be excarceration, with a massive increase in the use of probation coupled with community based and community-oriented alternatives, and linked closely in turn to restitution to victims. Such a program, while not ignoring the demands of society for crime deterrence and even punishment, would place far heavier emphasis on fines, on social stigma, confinement to a residence except during working hours, and similar non-incarceration alternatives.

Without attempting to offer a detailed blueprint on the "new corrections," with all materials and specifications laid out, the author would suggest four main routes for reaching the goal of excarceration: (1) decriminalization, (2) democratization of pretrial release, (3) adoption of standards and procedures for sentencing, and (4) emphasis upon restitution for victims.

> —Emanuel Margolis, "No More Prison Reform!" pp. 456, 471–72.

Imprisonment should be a last resort. The presumption should be against its use. Before any offender is incarcerated, the prosecution should bear the burden of proving in an evidentiary hearing that no acceptable alternative exists. An equal burden should be required for the denial or revocation of "good time," probation, and parole, which really are only other ways of imposing imprisonment…

We should further reduce our excessive reliance on prisons by making extensive use of alterna-

> tives to imprisonment, such as fines, restitution, and other probationary methods, which could at least as effectively meet society's need for legal sanctions. However, such alternatives must be made available to all people who have committed similar offenses, so as not to become a means for the more affluent to buy their way out of prison. And where some kind of confinement seems necessary, halfway houses, community centers, group homes, intermittent sentences, and other methods of keeping offenders within the community should be preferred to prison.
>
> —A Program for Prison Reform, pp. 10–11

Moving away from incarceration

Ideas for moving away from the notion of imprisonment are not new-they have been advocated for generations, but seldom acted upon. For decades we have been aware that decriminalizing harmless behavior could save untold numbers of individuals from the cage. Community dispute and mediation processes have long been proposed to keep the settlement of specific complaints and conflicts outside the criminal (in) justice systems. Also, abolishing the money bail system and thereby eliminating almost all pretrial detention, is another excarcerating idea that is hardly new. In order to implement such proposals, it is essential that abolitionists organize constituencies around these excarceration issues.

Recently, two prestigious task forces, after intensive research into the failure of prisons and the validity of alternatives, proposed a series of excarcerating procedures. While not yet implemented, both reports are notable for their scope and conclusions and can be useful to abolitionists in excarceration campaigns.

definition of "the dangerous offender" is unclear, we had best discard the classification and focus on the acts rather than the actors. Our next task is to define as specifically as possible the violent crimes that require physical restraint for a period of time.

Acts which cause bodily harm, whether committed individually or collectively, by private citizens, corporate entities or the state, can be clearly classified as crimes on the basis of harm done to the victim. However, only a very small percentage of all lawbreakers cause bodily harm.

Those who do exhibit persistent patterns of behavior defined as dangerous, require restraint or limited movement for specific periods of their lives. This restraint should be subject to carefully drawn procedures. The goal of such "last resort" procedures should be to work out the least restrictive and most humane option for the shortest stated period of time.

Individual rights, safeguards and due process must be guaranteed to those who threaten public safety. The judiciary should bear the burden of proving in evidentiary hearings that no acceptable alternative to physical restraint exists for the present.

Focus should be on improving the life of the lawbreaker with the help of peer groups and the community. No person should be excluded from participation in as many decisions about his/her life as possible. The opportunity for changing violent, physically harmful behavior should always be present.

Small community restraining and re-education centers are needed. These centers should be controlled by peers of those who will be served. Such centers do not now exist, tho projects such as Delancey Street, Synanon and House of Umoja provide some criteria of what they might be like.

Confinement in peer centers should be considered as imprisonment because-at least for some-confinement will not be voluntary. However, intentional family-type structures in the community should be vastly superior to the iron bars, isolation

7. Restraint of the Few

The question of public safety deserves the focused efforts of everyone, including abolitionists. Fear of "dangerousness" is at the heart of public acceptance for holding hundreds of thousands of people captives: the accused in jails, the convicted in the grip of indeterminate sentences and under the thumb of parole boards, and the released under surveillance on the streets. In the interest of justice, it is imperative, therefore, that the question of "dangerousness" and its predictability be thoroly explored and clarified.

As abolitionists, our hope is to reduce significantly all violent behavior, including the act of caging. Our assumptions regarding definitions, causes and predictability of "dangerousness" are central to determining the solutions we advocate.

Long conditioned to the belief that problems of criminality lie mainly within the individual, society has fastened its attention on "dangerous individuals" largely ignoring the *learned* nature of behavior. Once educated to the notion that human behavior is significantly shaped by social interaction and subtle learning processes as well as the broader structure of society itself, we can begin to transform the institutions and values that are conducive to violent behavior.

In our view individuals cannot be accurately or reliably classified as "dangerous" or "not dangerous," tho the violent acts they commit can. While individuals and their acts obviously are related, the assumption that a status of dangerousness can reliably be attached to a given person has been greatly overemphasized. Because psychiatric prediction is unreliable, owing to the tendency to over-predict, and because the

The National Advisory Commission on Criminal Justice Standards and Goals, in their report *Corrections*, recommends that each "correctional" system begin immediately to develop a systematic plan with time-table and scheme for implementing a range of alternatives to institutionalization.[1] The Commission's guiding principles advocate the most limited possible use of institutionalization: (1) no individual who does not absolutely require institutionalization for the protection of others should be confined, and (2) no individual should be subjected to more supervision or control than s/he requires.

After more than a year's intensive research and study, in 1972 *The Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation*, "unequivocally established as its most fundamental priority the replacement of Wisconsin's existing institutionalized corrections system with a community based, non-institutional system."[2] The Study Committee, comprised of a broad range of individuals including ex-prisoners, placed particular emphasis on community services suited to the individual needs of the lawbreaker. But, the primary value of the report in addition to its scope and detailed proposals, is its advocacy of community control of programs rather than control by the Division of "Corrections."

Paradox of interim strategies

Abolitionists could spin off a long list of reasons why such reports could be regarded with suspicion: (1) Many of those who produce these reports are in the forefront of the reformist movement. They represent prevailing economic and political

[1] **Corrections**, Report of the National Advisory Commission on **Criminal Justice Standards and Goals**. See Standard 7.1, Development Plan for CommunityBased Alternatives to Confinement, p. 237.

[2] Wisconsin Council on Criminal Justice, **Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation**, Madison, Wisconsin, July 1972, p. 1.

power arrangements. (2) Instituting reforms of decriminalization, modernization of the courts and community alternatives to incarceration still permits the legal and penal apparatus to focus on the same powerless class as before. (3) What passes for liberal and humane improvements of the system simultaneously contributes to the efficiency and acceptability of the control apparatus in a less crude form.

While critical political analysis is crucial to all social change work, it should not limit the use of materials or programs that can correctly be perceived as vehicles to move us *toward* abolition. Regardless of the systems-connections of the authors, portions of the above reports serve as valuable *interim* proposals, useful in beginning the move from incarceration to excarceration. Belief in the long range goal of abolition, should not detract from shorter range strategies that provide the potential for *gradually* diminishing the role of prisons. Some reformist options can be utilized as interim abolition strategies *as long as we consistently move toward our long range goals.*

If the proposed options prove inadequate to the need, we can recast them, discard them or create new alternatives. The recommendations are not envisioned as ends in themselves. They are *part* of a continuum strategy-a social change process which moves us both closer to abolition and at the same time brings desired relief to those who would otherwise be caged.

Abolitionists must remember that many forms of excarceration are still considered punishment by the affected individuals-though a much lesser punishment than that of prison. We hope that gradual reductions in the degree and type of punishments can, in the long range, lead toward the total elimination of sanctions.

Excarceration-keeping all people out of cages is our primary goal. As we examine caging alternatives, we can test our consistency with abolition principles and ideology by again asking ourselves:

tion of the prevailing system. We identify as abolishing-type sentencing reforms those which:

- Limit sentence disparity and punishments.
- Shorten all sentences.
- Eliminate insofar as possible judges' discretionary power in sentencing.
- Create new model sentencing acts and rules.
- Structure non-incarcerative options in the community.

Interim strategies

Abolitionists can easily he caught in a paralyzing dilemma regarding sentencing. On the one hand, our visions for the future include not only abolition of prisons, but abolition of the present criminal (in)justice systems.[112] We look forward to alternatives to the adversary system,[113] particularly small local civil courts based on the mediation model rather than punishment. Other long range goals include broadening the application of restitution to all wrongdoing and simplifying, equalizing, reducing and eventually abolishing criminal law.

We realize it will take a long time to achieve these goals. We realize too that we live and work in the present. We know that each year between one and two million persons stand before judges. These judges hold enormous power. They make decisions of life or death for many. Physical death in the case of capital punishment, day to day death for those imprisoned- and excarceration for the chosen few. We cannot make the leap from the present reality to our abolitionist vision without a series of leaps in between.

Abolishing-type reforms define the nature of these little leaps. These strategies gradually diminish the power and func-

prisonment and a $65,000 fine from another.

Also Martin Dyckman, "Study Reveals Bias in Florida System," **Free World Times**, April 1973: A study of bias in the Florida sentencing process revealed that Blacks are sentenced more severely and held in prison longer than whites for equivalent crimes.

Also H. Jack Griswold, et at., An Eye for an Eye, p. 68: Prisoners, complaining of the evil of disparate sentences, tell about two different armed robbers in Wyoming. A thief in the northern part of the state who stole $7.50 was given a ten to-twelve year sentence; another in the southern section received two-to-three years for stealing $124.

[112] See Gilbert M. Cantor, "A Proposal for Ending Crime and Punishment," **The Shingle** (Philadelphia Bar Association, May 1976) pp. 99–114.

[113] John Hogarth, "Alternatives to the Adversary System," **Studies on Sentencing**, (The Law Reform Commission of Canada, 1974). Available by mail from Information Canada, Ottawa KIA 059, Canada for $5.

- Do we improve or legitimize the prevailing system by the actions we advocate?
- Does our advocacy reflect and support the values of economic and social justice, concern and empowerment for all people and reconciliation of the community?
- Do our excarceration strategies move us closer to our long range goal of abolition?

Modes of excarceration

We cite eight specific modes of excarceration, some for the long range and others which could immediately reduce dependency on prisons:

- *Decriminalizing* numerous kinds of behavior which should not be within the province of the law.
- *Abolishing the system of bail* and with it pretrial detention for all but the few who, with predetermined criteria, could be conceived as a threat to public safety.
- *Establishing community dispute and mediation centers* which divert cases from the criminal (in)justice systems and train community members in the art of mediation.
- *Restitution*, creating community mechanisms for assuring payment or services by the wrongdoer directly to the wronged.
- *Fines*, adjusting the amount to the financial status of the wrongdoer.
- *Suspended sentences* and forms of conditional release to be utilized in far more cases than are presently receiving this disposition.

- *Community probation* programs, utilizing community services and support as an alternative to today's probation programs.

- *Alternative sentencing*, fixed by law to eliminate disparity and guarantee fairness and equity.

Decriminalization

The notion that we live in an "overcriminalized" society has long been acknowledged.[3] Penal code legislation has penetrated further and further into the spheres of private morality and social welfare, proving ineffective and corruptive, making hypocrites of us all.[4]

The process of decriminalization means simply to wipe certain laws off the books, eliminating criminal sanctions by the stroke of a legislative pen. v

The crimes most frequently considered for decriminalization and upon which we will focus are those which are "victimless." They are defined as:

> ... offenses that do not result in anyone's feeling that s/he has been injured so as to impel him/her to bring the offense to the attention of the authorities .[5]
>
> ... behavior not injurious to others but made criminal by statutes based on moral standards which

[3] Sanford H. Kadish, "The Crisis of Overcriminalization," **Annals of the American Academy of Political and Social Sciences**, 374, November 1967, pp. 157–70.

[4] Norval Morris, **The Future of Imprisonment**, p. 7.

[5] Herbert L. Packer of Stanford University Law School, as quoted in Edwin Kiester's **Crimes with No Victims** (New York Alliance for a Safer New York, 1972) p. 3.

judge is still "the man." This almost godlike power with relatively little oversight or review has been criticized for generations.

American trial judges have no formal training or apprenticeship in judging.[107] Further, most American judges have never seen the inside of a prison; even fewer have found it necessary to spend more than a few hours in any penal institution.[108] They are mostly middle aged male Caucasians who have not associated much with criminal defendants (many are former prosecutors), who have not lived recently in poverty, who have been more than ordinarily "successful" in their profession.[109] As white middle class males, they are subject to the same race, class and sex bias as others. Whatever pettiness, malice, bigotry, fear, paranoia, resentment, vengefulness, and spite are generated in the hearts of men can be demonstrated in the sentencing decisions of judges.[110]

Such sweeping power, combined with the unpredictable circumstances of the personality of the sentencing judge, leads only to injustice-disparate sentencing-the bitterest pill for prisoners to swallow.[111]

lower courts is unknown because of inadequate records, but if even 15 percent of them are given some sort of sentence, ranging from a small fine to a year in jail, we are talking about another million persons. Based on arrests rather than convictions, it is estimated that the total load of the adjudicatory system of the country is made up of about 57 percent misdemeanants; 26 percent juveniles; and 17 percent adult felons."

[107] Leonard Orland, **Prisons: Houses of Darkness**, p. 124.

[108] Ibid.

[109] Marvin Frankel, **Criminal Sentences-Law without Order**, p. 13.

[110] Willard Gaylin, **Partial Justice: A Study of Bias in Sentencing**, pp. 40 and 42.

[111] Arnold H. Lubasch, "Study of U.S. Judges Finds 'Glaring' Gap in Sentencing," **New York Times**, September 7, 1974. 50 Federal judges in New York, Connecticut and Vermont were given identical "facts" about 30 hypothetical criminal cases but handed down a "glaring disparity" of sentences when asked to rule on them. In one instance, a crime that merited a three year prison term in the opinion of one judge drew a penalty of 20 years' im-

Abolitionists must continually work toward limiting sentence disparity by enforcing new penal codes and sentencing rules[105] which focus on alternative sentences. Persistent and gradual alterations will need to be made to existing codes, until penal sanctions are eliminated entirely. At the same time, resources and services must be created in the community to serve as sentencing options.

Current status of sentencing

In the U.S. between one and two million persons each year stand before the bench to hear a judge pronounce sentence.[106] The lion's share of the responsibility for sentencing rests upon the shoulders of individual trial court judges-the trial court

[105] See Arnold H. Lubasch, "Court Panel Sets Sentencing Rules," **New York Times**, March 18, 1976. One of the more hopeful developments for advocates of alternative sentencing are the proposed new rules for sentencing procedures in the Second Circuit federal courts of New York, Connecticut and Vermont. These procedures have been approved by the Second Circuit Judicial Council. They should increase the "openness, fairness and certainty" of criminal sentences in that District.

The new rules would require judges to give their reasons for each sentence, allow defense lawyers to be present when probation officers interview defendants for presentence reports, authorize a hearing on any disputed facts that may form the basis of a sentence and provide a presentence conference to consider sentencing alternatives.

The approved rules have been sent to the district courts for final adoption.

Under the new rules a sentencing judge must explain on the record his reasons for imposing the sentence and rejecting alternatives. They encourage the defense lawyer to submit a sentencing memorandum that can propose sentencing alternatives to judges.

[106] Richard A. McGee, "A New Look at Sentencing," **Federal Probation**, June 1974, p. 3. "About 500,000 of these are adult felons who have committed acts ranging from the illegal possession of drugs or automobile theft to burglary, armed robbery, and homicide. Another 350,000 or so are juveniles who have engaged in behavior which would have been treated as felonious had they been adults. There are also about 7,000,000 arrests of adults and juveniles for misdemeanors. How many of these are actually sentenced in the

> disapprove of certain forms of behavior while ignoring others that are comparable.[6]

The essential factor is that there is no victim to bring complaint. Three categories emerge within this definition: moral statutes, illness statutes and nuisance statutes.

Victimless crimes may be irritating, annoying, or troublesome in general, but they are not really injurious to anyone in particular.[7] They are "crimes" because the law says they are "crimes." Among those usually cited are noncommercial gambling, prostitution, "deviant" sexual acts in private between consenting adults, public intoxication, possession, sale and distribution of illegal drugs, "blue laws" against doing business on Sundays, loitering, disorderly conduct and vagrancy.

Other behavior that could best be handled thru procedures outside the criminal (in)justice systems are juvenile statutes which include truancy or running away or "incorrigible," "stubborn" or "ungovernable" behavior. Most juvenile courts have become "in essence criminal courts with criminal type dispositions."[8] Though juvenile proceedings are intended to be civil in nature, commitment to an institution on a delinquency petition continues to carry much the same stigma as a criminal conviction.[9]

Why decriminalize?

Abolitionists advocate drastically limiting the role of criminal law. We do this not because we wish to encourage certain be-

[6] Sol Rubin, counsel for the National Council on Crime and Delinquency, as quoted in **Crimes with No Victims**, p. 3.

[7] William Ryan, **Blaming the Victim**, p. 261.

[8] Elizabeth W. Vorenberg and James Vorenberg, "Early Diversion from the Criminal Justice System," in Lloyd E. Ohlin, ed., **Prisoners in America**, pp. 166–67.

[9] Lloyd E. Ohlin, ed., **Prisoners in America**, p. 8. "It is becoming increasingly clear that the resort to criminal sanctions in these various types

havior, but because we realize that criminal sanctions are not an effective way of dealing with social problems.

There are far too many laws on the books.[10] It would be prohibitively expensive to enforce them all. This results in unjust and arbitrary law enforcement. Powerless persons are imprisoned while more powerful persons go free. Blacks and poor people bear the brunt of unequal law enforcement.

Enforcing morality has no rightful place in our penal codes. Morality cannot be coerced thru law. A democratic society should tolerate a wide range of individual differences. A person's right to do as s/he wishes should be respected as long as s/he does not infringe upon the rights of others.

A system "bursting at its seams" is perhaps the most visible effect of over criminalization. *Almost 95 percent of the short term prisoners in the nation's jails are there for acts we would decriminalize.* Two million persons are arrested annually for drunkenness alone and more than three million when related vagrancy and loitering charges are included. And the costs are enormous:[11]

- California alone spent $100 million during 1970 to enforce laws against possession of marijuana.

of problem cases generally does more harm than good."

[10] **Struggle for Justice**, p. 129. "We are acutely aware that criminal law is passed on the assumption that great margins of discretion will be exercised. We presently have a system so overextensive that no one would want to see it fully enforced. This is exactly the state of affairs we object to. Let us end the legislative practice of passing laws as symbolic gestures with no intention that they be enforced, or passing purposely vague laws with the intention that something other than full enforcement be accomplished. One of the basic principles we wish to promote is that of restraint. The goal thruout the system should be to reduce the extensiveness of the use of legal sanctions to govern our affairs. As this goal is approached, and the legislature only supports the laws they intend to be enforced, this justification for discretion will be removed."

[11] All statistics quoted from Kiester, p. 5.

> The sentencing powers of the judges are, in short, so far unconfined that, except for frequently monstrous maximum limits, they are effectively subject to no law at all. Everyone with the least training in law would be prompt to denounce a statute that merely said the penalty for crimes "shall be any term the judge sees fit to impose. " A regime of such arbitrary fiat would be intolerable in a supposedly free society, to say nothing of being invalid under our due-process clause. But the fact is that we have accepted unthinkingly a criminal code creating in effect precisely that degree of unbridled power.
>
> —Judge Marvin E. Frankel, Criminal Sentences-Law without Order, p. 8

Alternative sentencing thru law

Abolitionists applaud individual examples of creative alternative sentencing because they move people away from the cage and into the community. At the same time, we must recognize that they reflect the use of discretionary power vested in the role of the judge.

Without legislative guarantees, judicial discretion and disparity will continue to occur in the sentencing of those who possess characteristics, lifestyles or histories that activate the judges' race, sex and class biases. Prisons will still be filled with the same unfortunates, while sentencing alternatives are handed out to the few who are luckily included on the judges' private lists of those who qualify for preferred treatment. As long as this unjust system persists-all sentences, including the range of alternatives, must, in the interest of equality and fairness, be fixed by law and subject to review.

These and other examples of probation programs are useful in advocating excarceration strategies. They demonstrate a cheap and effective alternative to caging that most citizens are familiar with, and most judges are already using. Abolitionists consider systems-connected probation an interim strategy. We advocate unsupervised probation and community-controlled probation with services and resources supplied by peer groups in the community.

Alternative sentences

> Sentencing is a flashpoint in the administration of criminal justice anywhere. It has played and will continue to play a major role in filling our prisons because judges see no alternatives to caging and have been conditioned to think in terms of prison almost by way of presumption in many criminal cases and with many kinds of offenders.
>
> The presumption and the procedure must be changed, root and branch, as part of any movement toward excarceration. If the state's attorney intends to recommend prison, why should he not carry the burden of proof, even if only by the preponderance-of-evidence standard? Why should the defendant not be entitled to a presumption, borne out by hundreds of years of experience, that incarceration should only be an absolute last resort for the incorrigible, dangerous offender who is not amenable to treatment and rehabilitation in the community?
>
> —Emanuel Margolis, "No More Prison Reform!" p. 477

1974, pp. 5–8 and Newman, et al., pp. 274308.

- *U.S. News and World Report* estimates that victimless crimes accounted for $20 billion of the nation's $51 billion annual crime bill, which includes the cost of law enforcement, losses from drug-related thefts, and illicit gains from gambling, prostitution and narcotics.
- Executive Director of the National Alliance for Safer Cities in testimony before a committee of the New York State Assembly estimated that, "Every man, woman and child in the U.S. suffers a tax of more than $100 a year for inclusion of non-victim crime in the criminal justice system."

Over criminalization encourages the wide use of discretionary power in law enforcement. Because there is no complainant, police resort to questionable means of enforcement. Investigative techniques used to gather evidence are often immoral and sometimes illegal. These include entrapment, use of informers, wiretapping and infringement of constitutional rights such as illegal search and seizure, invasion of the right to privacy and self incrimination.[12]

The enforcement of victimless crimes also encourages corruption. Graft and pay-offs are frequently made by neighborhood numbers rackets[13] and places of prostitution. Liaisons extend beyond the police to the larger profiteers of organized

[12] Edwin M. Schur, Our **Criminal Society**, pp. 196–98. See also Edwin M. Schur and Hugo Adam Bedau, **Victimless Crimes** (Englewood Cliffs, New Jersey, Prentice-Hall, 1974) pp. 15–16.

[13] It has been suggested that gambling be legalized in the Harlem community and that the money which was originally used for police "pay-offs" and "graft" be channeled into a community corporation to support educational and medical needs of the community. Thereby legalizing gambling, but not in the same sense as off-track betting in New York. The gambling would remain in the hands of the private sector of the community, subject to taxes and controls; it would additionally provide a revenue solely for the use of the community generating the gambling in the first place.

crime. Crime syndicates manage to soak up much of the money flowing thru illicit "industries" such as gambling and drugs.

Victimless crimes are also linked to secondary crimes which do have victims. For example, heroin users frequently support their habits by such crimes as robbery and burglary. Police estimate that 75 percent of the burglaries in New York City are drug-related. This is an additional cost of criminalizing drug use.

Though decriminalization has been increasingly advocated for the last decade, only minimal progress has been made on revising penal codes. In order to understand opposition to decriminalization, we must examine those who hold power to legislate. The mores of the powerful determine whether there is openness to decriminalization. A prime example is the legalization of alcohol in contrast to the criminalization of marijuana. Almost every legislator consumes alcoholic beverages and tolerates excessive drinking. It is fair to assume that only a small proportion presently smoke marijuana.

Under criminalization

While we advocate decriminalizing a range of individual behaviors, we also must point to the injustice of under criminalizing certain dangerous collective behaviors. Collective criminality reflects institutional assaults on whole social groups or on the public. Examples include the violence of racism, starvation, war and corporate pollution. These antisocial acts produce victimization in far greater amount than other classes of crimes.[14] Yet in many instances these acts do not violate any criminal code. The criminal (in)justice systems, with the aid of the media, focus mainly on individual crimes of the poor, virtually excluding collective criminality.

[14] Joan Smith and William Fried, **The Uses of the American Prison**, p. 139.

showing is made that imprisonment is necessary for the protection of society.[102]

Probation was used for more than 70 percent of convicted lawbreakers in the Saginaw Project in Michigan between 1957 and 1962 with a very low rate of failure. Taxpayers' savings were over half a million dollars.[103] Other follow-up studies of probation indicate that failure rates are relatively low and savings very high.

To encourage the use of probation as a community based alternative to imprisonment, in 1965 California's legislature authorized a probation subsidy program which developed incentives for counties that lowered their commitment rates to state prisons.[104] Counties are reimbursed by the state at the rate of $2,000 to $4,000 per individual based on the reduction of previous commitment performance. This "reward" saves money for the state which is reimbursed to the county probation departments.

In 1966–1967, its first year of operation, prison commitment was reduced by 1,398 cases. By fiscal 1972–1973, the program had succeeded in excarcerating 5,449 cases, a commitment reduction of 50 percent from the base period. The degree of excarceration thru probation subsidies was double that hoped for by the original planners and was achieved with no resultant increase in the use of local jails. Subsidy funds cannot be used to establish or improve local jails.

According to one estimate, by mid-1974 the incentive program had reduced first admissions to state prisons by nearly 40,000 and provided the counties with $105 million in subsidies. As of January 1974 more than 17,000 men, women and children were in special probation subsidy case loads.

[102] **Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation**, p. 34.

[103] "Saving People and Money: The Saginaw Project," (pamphlet) National Council on Crime and Delinquency, January 1963.

[104] Based on reports published in **Corrections Magazine**, September

> alcoholics, drug abusers, gamblers and other addicted people. The probationer under community care is far better off than one under the constant threat and surveillance of the system. One-to-one community volunteer probation programs can be developed on a contractual basis with a voucher system to purchase needed services. Volunteers can also be responsible for bringing victims and lawbreakers together for the purpose of restitution. Probation began thru the efforts of a volunteer and more than a hundred years later, volunteers can restore the original purpose of probation as first envisioned by Jonn Augustus. Volunteer probation programs are already gaining superior results around the country.[99]

The National Advisory Commission on Criminal Justice Standards and Goals predicted that probation will become the standard sentence in criminal cases with imprisonment retained chiefly for those who cannot safely be returned to the community.[100] It is both cheap and effective.

In California, for instance, even with expanded probation services, the cost of probation runs little more than one-tenth the cost of imprisonment, approximately $600 per person annually compared to $5,000 for institutionalization.[101] These savings were also recognized when the Governor's Citizens' Study Committee on Offender Rehabilitation in Wisconsin recommended that all persons subject to imprisonment for conviction of a criminal offense be given probation unless a special

[99] In Royal Oak, Michigan, for instance, Volunteers in Probation attained excellent results. When probationers from Royal Oak were compared with probationers from nonvolunteer courts, it was found that recidivism rates were cut in half. See Elizabeth and James Vorenberg, p. 164.

[100] Corrections, p. 159.

[101] **Ibid**., p. 315.

Decriminalizing prostitution

Since the laws against prostitution attempt to regulate private sexual activity of willingly participating adults, they clearly violate the "right to privacy." This "encompasses the constitutional right of the individual to control the use and function of his or her own body ..."[15] It is the right of the individual, married or single, to be free from unwarranted intrusion by the government.

Related laws used to arrest prostitutes are constitutionally questionable. The due process clause of the 14th Amendment is often violated by use of vaguely written statutes against loitering, disorderly conduct, and obstructing the sidewalk. Reputation, past record or presence in an area where prostitution is known to be practiced are often grounds for arrest.

As in all crimes, enforcement patterns are selective and discriminatory by race and class. It is seven times more likely that prostitution arrests will involve Black women. Most customers, however, are white, middle class men between the ages of 30 and 60.[16]

Because of selective enforcement, only a handful of all prostitutes are arrested. The estimated costs of processing thru the criminal (in)justice systems for prostitution approach $10 million a year $100-$175 per arrest.[17]

Enforcement is usually only against women involved in prostitution, although both parties to the agreement are equally

[15] Judge Charles W. Halleck in an Opinion submitted November 3, 1972, Superior Court of the District of Columbia, Criminal Division, p. 6. He quotes from **Eisenstadt v. Baird**, 405 U.S. 438 at 453 (1972).

[16] Marilyn G. Haft, "Hustling for Rights," **Civil Liberties Review**, Vol. 1, No. 2 (1974), p. 14. See also Tom Buckley, "Prostitutes' Chances of Arrest Depend on Whether They Solicit on the Streets," **New York Times,** December 6, 1974.

[17] Kiester, p. 35. "On a per-case basis, it is one of the most expensive nonvictim crimes to 'control.'"

consenting.[18] The discrimination based solely on sex blatantly denies the women the right to equal protection. Furthermore, in the rare instances when "johns" are arrested, they are held only briefly, possibly for testifying against the women, or receive considerably lower penalties than the women.[19]

In D.C. and other places, where prostitution itself is not a crime, solicitation (an exchange of words) constitutes the offense. This, in effect, punishes someone "for soliciting another to commit an act which is itself not a crime."[20] Criminalizing this verbal offer violates freedom of speech rights.

Universally, prostitution is not widely prohibited; the U.S. is one of the few nations in which prostitution is illegal. (Only Nevada and some places in Arizona provide for local option.)

The prostitute is a frequent victim of related crimes, especially assault. Because her profession is outside the law, she is easily victimized. According to one study, 75 percent of prostitutes have experienced injuries; 64 percent by customers, 20 percent by police and 16 percent by pimps.[21]

We favor decriminalization of prostitution because regulation would invite many of the abuses of the present system. Licensing prostitutes would extend governmental intrusion into consensual adult activity rather than curbing it.

[18] Kate Millett has stated: "Prostitution is really the only crime in the penal law where two people are doing a thing mutually agreed upon and yet only one, the female partner, is subjected to arrest." Quoted in Schur and Bedau, pp. 24–25.

[19] Karl Menninger, **Whatever Became of Sin?** , p. 66. "Not five percent of the women engaged in prostitution are ever arrested and less than one percent of the men involved in the racket are every arrested."

See also Haft, p. 16: "The New York Code, for instance, makes patronizing a prostitute a criminal offense, but in 1968 there were only 112 arrests of customers in New York City against 8,000 arrests of prostitutes."

[20] Halleck, p. 5.

[21] "Prostitution: A Non-Victim Crime?" **Issues in Criminology**, University of California, Berkeley, California, Vol. 8, No. 2(1973), based on a study conducted in Washington, D.C.

munity. If social control aspects were eliminated from probation, staff would be freer to function as advocates for their clients. Many committed probation officers already see themselves in this role and would like to be released from control functions. They could serve as the probationer's bridge to community services.

- *Extending the use of probation.* Keeping more people in the community, even tho they have committed impulsive crimes as violent as murder, has worked successfully in a number of instances. In Des Moines, Iowa, for instance, one woman who shot her armed, drunken husband before he could shoot her, was put on probation. Ordinarily she might have spent up to eight years in the State Reformatory for Women at Rockwell City, Iowa, but because of the Polk County community probation program, she still holds the same job she did before the shooting and lives at home with her children.[98] The rationale behind the program is that almost everybody is better served because she went home rather than to prison: the taxpayers saved the costs of her incarceration as well as those of placing her children in foster homes or institutions; the children were better off by staying with their mother and she is better off in the community rather than the dehumanizing environment of prison.

- *Community probation.* Basically, we are committed to the concept of community groups filling the helping role which is presently part of the task of the probation officer. A convicted person could be released to his/her neighborhood group. They could secure employment, education or vocational training, housing, medical care or related services, mental health counseling, help for

[98] Judy Klemesrud, "Should These Criminals Go to Prison?" **New York Times**, April 15, 1974.

	Total Sentenced	% Prison	% Probation	% Fine Only	Average Sentence in Months	Average sentence inmates released 1973	Average time served inmates released 1973
White Collar Crime:							
Embezzlement	1,493	18	79.8	1.7	15.3	21.1	9.7
Fraud	1,695	32.7	57.9	6.4	19.5	27.2	13.6
Tax Fraud	1,162	33.3	57.6	8.8	12.8	12.8	7.2
Forgery	3,509	44.5	54.7	.2	34.2	32.1	17.6
Crimes of the Poor:							
Robbery	1,552	89	11	—	126.5	133.3	50.0
Burglary	207	56.5	43.5	—	60.5	58.7	29.9
Larceny & Theft	3,276	38.5	59.3	1.7	29.4	32.8	18.0
Auto Theft	1,802	68.8	30.6	.4	36.1	36.8	20.6

Various Sentences of Convicted Criminal Defendants in U.S. District Courts, 1974

Empowerment. Some prostitutes are beginning to organize for their rights, most notably COYOTE (Call Off Your Old Tired Ethics) and SCAPEGOAT.

COYOTE has focused primarily on the decriminalization effort in California and has developed strategies for economic independence.[22] SCAPEGOAT, a relatively new group in New York, has developed a multi-phased approach: They are developing a childcare center and health facility that will service all prostitutes, as well as opening a hospitality house that will serve several functions. It will be a resting/meeting place for women working the streets and offer consciousness-raising groups.

Abolitionists uphold the right of an individual to choose a sexual relationship, regardless of the exchange of money or other consideration. It is inappropriate for the government to interfere with sexual activity. Sexism itself, however, which affects the values underlying sexual and other relationships, must be countered in all institutions of society. More economic options must be made available to women so that prostitution can clearly be a lifestyle they choose, rather than a survival mechanism.

Decriminalizing homosexuality

Laws against sodomy and other laws criminalizing homosexual behavior are seldom enforced.[23] This is partly because of the private and consensual nature of the behavior made illegal, but also because of a growing acceptance and practice of such activities among the general population.

[22] Patricia Lynden, "The Oldest Profession Organizes at Last," Ms. Magazine, December 1973, p. 17. Also Lile Ruppenthal, "Hookers Demand No License," **Majority Report**, Vol. V, No. 5, July 12, 1975, p. 3; "Decriminalizing of Prostitution Urged," **New York Times**, June 23, 1975.

[23] "The term sodomy has been used in a broad sense to designate any sexual acts other than heterosexual genital-genital relations between human beings; sometimes it refers specifically to homosexual or heterosexual anal

Even so, the existence of these archaic laws is a constant threat. Men and women face prison penalties ranging up to 20 years-or even life in some states.

Though enforcement is generally difficult and therefore uncommon, the threat of enforcement is nevertheless real. The police, in their political need to keep up a facade of alertness, frequently resort to harassment of gay bars, entrapment, and other exploitative tactics, including "shakedowns" with token arrests.

Vulnerability of gays does not end with law enforcement. Since their behavior is labeled "criminal," they have little recourse to the law's protection and therefore are exposed to victimization in many forms: blackmail, theft, violence and constant fear.

Myths. Underpinning the repressive laws against homosexuals are numerous stereotypes and myths:

- Homosexuality is forbidden in all cultures. Not so. Such a lifestyle is not a crime in most European countries, including England, West Germany, Denmark, Switzerland, Sweden, Poland, Czechoslovakia, Italy and France, as well as many non-industrial cultures throughout history.

- Sexual relations with persons of the same sex are a "perversion" or manifestation of "mental illness." Not true. The Kinsey studies reveal that "a third of all white Americans engaged in homosexual behavior at some time in

intercourse between humans; it has also been used to mean sexual relations between man and beast." Roger S. Mitchell, **The Homosexual and the Law** (New York, Arco, 1969) p. 17. According to Kiester, "The total number of sodomy arrests in New York City in the first half of 1972 was 402, less than one-fifth of one percent of all arrests."

[24] Kiester, p. 48.

[25] "Psychiatric Unit Upholds Stand that Homosexuality Isn't Illness," **New York Times**, June 1, 1975.

In practice, probation is a subsystem of the criminal (in)justice systems; an extension into the community of the authority and functions of the court.[96] Its officers have police powers. They may carry guns and make arrests. Many under its control consider it a supplement to incarceration rather than a true alternative. Subjected to the continual possibility of revocation of probation at the officer's discretion and with few if any rights to appeal such decisions, most probationers label their situation "street prison."

At present, there is scant definitive data on the characteristics of probation, but the results of court watching programs and preliminary studies indicate that white, middle class people receive a highly disproportionate amount of probated sentences while poor whites and minority persons are sent to prison.[97]

While it is true that many convicted persons have experienced probation as an oppressive and discretionary system, it is still a far more desirable option than prison. Abolitionists support the extended use of probation over and above prison, but advocate strategies which forge new links between probation and the community.

Source: 1974 Annual Report of the Director, Administrative Office of the U.S. Courts, Table D5, pages A .54,A-55 and Federal Bureau of Prisons Fiscal Year 1973 Statistical Report, Table C-2, pages 97–98.

- *Unsupervised probation.* Further use could be made of unsupervised probation where persons who committed certain kinds of wrongs would be under no compulsion to report or participate in programs, but could request help as needed from probation officers or preferably the com-

[96] Merrill A. Smith, "The Federal Probation System," **Federal Probation**, June 1975, p. 30.

[97] Scott Christianson, quoted in "Probation: Reform or Abolition," NEPA News, April/May 1975.

with them the threat of imprisonment; most variations of the suspended sentence require simply that no law be violated—the wrongdoer is not placed under supervision.

There is no reason to limit suspended sentences to misdemeanants and petty lawbreakers. The distinction between misdemeanors and felonies is generally the distinction between less serious and more serious crimes, but that does not always hold. The line between a theft that is a misdemeanor and a theft that is a felony is drawn by the value of the property, a distinction that may be totally irrelevant in determining the sentence.

In jurisdictions where suspended sentences are permitted for felonies, at least occasional use is made of it. And in those where suspended sentences may be used only for misdemeanors, reduction of a plea is sometimes granted so that the reduced sentence may be imposed.

For abolitionists, the suspended sentence represents the least punitive of a range of alternative sentences. Studies on the suspended sentence are practically nonexistent. We urge that further study be undertaken to determine the widest number of wrongs that can safely be disposed of by suspended sentences. Court watching programs might want to pay special attention to the types of cases and individuals presently receiving suspended sentences. Criminal codes and sentencing rules can be revised if data reveals the appropriateness of the expanded use of this sentencing option.

Probation

Probation is one of the most commonly accepted and widely used modes of excarceration. Though more often utilized for nonviolent crimes, probation has been extended to include homicides and other serious wrongs which usually result in imprisonment.

their lives."[24] The American Psychiatric Association has removed homosexuality from its list of mental illness.[25]

- Gay people are "security risks." Unfounded. Many homosexuals work at all levels of government. Indeed, their classification as "security risks" depends on their vulnerability to blackmail, which in turn rests on the illegality and stigmatization of their sexual orientation-an outrageous double example of "blaming the victim."

- Homosexuality undermines the family. In European countries where gay relationships are acceptable, "there are no indications that family stability has been impaired ... To single out homosexuality as a prime factor in whatever erosion is taking place in family life is a reprehensible and unwarranted piece of scapegoat."[26]

- Decriminalizing homosexuality would result in an increase in the seduction of minors. There is no evidence to support this prediction.[27] At any rate, forced sexual interaction would still be criminal and fall under the definition of rape.

Empowerment. A gay liberation movement grew out of the "Stonewall rebellion" in 1969, when homosexuals stood up against police harassment. Though much remains to be accomplished, there have been many positive changes in the day to day lives of gay people. Many are able to be proud and open about their sexual identity and to work against age-old prejudice and discrimination.

[26] Judd Marmot, president, American Psychiatric Association, in letter to editor, **New York Times**, September 12, 1975.

[27] See Edwin M. Schur, **Crimes without Victims** (Englewood Cliffs, New Jersey, Prentice-Hall, 1965) p. 111: "It is not clear why elimination of the legal ban on the private acts of consenting adults should increase the dangers of seduction."

- In recent years 16 states have decriminalized sodomy and so-called "crimes against nature." These are Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Maine, North Dakota, Ohio, Oregon, South Dakota, Washington and West Virginia. In New Mexico, sodomy was never a crime.

- Localities which have enacted gay civil rights legislation include District of Columbia, East Lansing, Ann Arbor, Seattle, Minneapolis, Detroit and San Francisco. In New York City and elsewhere gay organizations are still struggling for the passage of such bills.

- Though some court decisions have been discouraging-for example, those involving the rights of homosexuals to teach or to serve in the military-even in these areas gains are gradually being won. For example, the California Supreme Court has held that being homosexual is not sufficient grounds for dismissal from a teaching job; it must be shown that a person's conduct affects work performance.[28]

- Openly gay candidates, such as Massachusetts legislator Elaine Noble, have been elected to public office. Groups such as the National Gay Task Force are working for congressional gay rights legislation.

- The needs of gay Christians are being served by such groups as Dignity (Roman Catholic) and Integrity (Episcopal). Metropolitan Community Church, founded in 1968 by Rev. Troy Perry, is a Christian church with an outreach to the gay community which now has more than 100 congregations throughout the world.

[28] Kiester, p. 47, "In California, the State Supreme Court held that a teacher could not be fired as a homosexual unless his/her homosexuality affected his/ her classroom performance."

- The imprisonment of indigents for nonpayment of fines should be abolished, since all but a very small number of people will pay fines imposed on the basis of ability to pay.[94]

As an excarceration mode, fines are one of the least drastic sentencing alternatives and one with which the public is already familiar.

Suspended sentences

Abolitionists advocate expanded use of suspended sentences, or unconditional discharge, as an excarceration mode.[95] It is a useful mechanism to establish responsibility for wrongdoing without imposing punishment or any supervisory conditions on the wrongdoer. A suspended sentence has additional value because the defendant loses fewer civil rights.

Another important function of the suspended sentence is its interim use as an alternative to sanctions for victimless crimes. Until certain offenses are eliminated from the statutes, judges can utilize suspended sentences to dispose of such cases.

Many people presently imprisoned could have been released by suspended sentence with equal safety to the community. Similarly, many convicted persons who are presently sentenced to probation, and require and receive only superficial supervision, could do as well under outright suspended sentences. Suspended sentences cost the community nothing at all, whereas probation involves some costs and imprisonment is terribly expensive.

Suspended sentences differ in a number of ways from probation. The main difference is that conditions of probation carry

[94] Charles Miller, "The Fine-Price Tag on Rehabilitative Force," **NPPA Journal**, 2 October 1956, P. 383: "Where in addition, installment paying is allowed, less than five percent of those who would have been incarcerated if this method has been used were finally committed."

[95] Material in this section based on Hickey and Rubin, pp. 413–18.

fine system, similar to that used in Sweden and other countries, might be examined.[93]

The amount of the financial penalty imposed in Sweden is based on the seriousness of the offense and the wrongdoer's financial resources-each determined independently of the other. Offense seriousness is penalized according to a scale of "day fines" ranging from one, for the most trivial, to 120 for the most serious. Financial worth is reduced to *per diem* income, obtained from the person's financial circumstances, including property holdings, at the time of the sentence and generally formulated as .1 percent of annual income. The total amount of the fine is calculated by multiplying the number of day fines by the *per diem* amount.

Day fines can be imposed by public prosecutors as well as by judges, according to a set pattern which permits very little discretion. The amount of the day fine is decreased for each dependent child and a wife with no income of her own. There is a movement in Sweden to increase the use of financial penalties by extending the day-fine system to include serious offenses.

With its efficiently operating day-fine system, imprisonment is used in Sweden as a last resort in extreme cases of obstinacy or negligence. Out of approximately 250,000 people sentenced to fines in one year, imprisonment was applied to less than 200 cases.

Abolitionists advocate increased use of fines as one mode of excarceration:

- Fines should be extended to all misdemeanors and to most felonies where restitution to victims or groups is impossible.
- A non-discretionary system similar to the Swedish day-fine system is preferable. It should include alternatives to monetary payment.

[93] Newton, materials on day fines, pp. 110–17.

Prejudice against homosexuality is deep-rooted. It is to be expected that it will take many generations to eliminate this prejudice entirely. Even so, impressive gains have been made by homosexuals during the last decade.

Decriminalizing public intoxication

Public drunkenness comprises the largest single category of all arrests (one-fourth to one-third) and convictions (approximately one-half).[29] The costs are equally exorbitant: a range of $50 to $70 per arrest is estimated, including court costs. The national total cost per year approaches $100 million.[30]

Alcoholism is widely defined by the alcoholic and others as a medical problem-a disease not a crime. In a culture which accepts and encourages its use, alcoholism can best be viewed as a social problem and an economic one. Lifelong repeated offenses are poignant testimony of the absurdity of caging alcoholics:

> In 1957 a committee in Washington, D.C., found that six men had been arrested for public drunkenness a total of 1409 times, and had served 125 years collectively, at a cost to the taxpayers of $600,000. Needless to say, none were helped; they were all victims of what has been called "life imprisonment on the installment plan."
>
> —Jim Castelli, "Crimes without Victims," U.S. Catholic, April 1972

Because visibility highly determines the focus of law enforcement, public intoxication laws are largely applied to the poor and minorities, most often "on the streets." The laws are seldom applied to the white, middle class, professional. These

[29] **Ibid.,** p. 14. Also Mitford, pp. 72–73.
[30] **Ibid.** , pp. 15–16.

persons are screened from arrest by position and by societal acceptance of drinking patterns.[31]

Empowerment and community services. Peer groups such as Alcoholics Anonymous play an important role in helping people cope with their drinking problems. Beyond this they educate the public and legislators about the absurdity of criminalizing alcoholism.

Thanks to this educational work, plus the contributions of medical and scientific researchers, several states have decriminalized public intoxication, including Alaska, Maryland, Florida, North Dakota, Massachusetts, Connecticut and New York.

Mere decriminalization is not enough when dealing with alcoholism. Major problems surface if community resources and facilities are lacking. Hospitals are overburdened and usually lack the whole range of services important to alcoholics. With no provisions for "drying out" stations, for instance, police typically resort to arrest on disorderly conduct instead.

In addition to advocating decriminalization of public intoxication, abolitionists support the establishment of the widest spectrum of community facilities and services to meet the needs of alcoholics.

Decriminalizing marijuana

Criminal sanctions imposed on the possession and use of marijuana-a derivative of the cannabis plant commonly

[31] See Thomas Szasz, **Ceremonial Chemistry**, (Garden City, New York, Anchor, 1974) pp. 52–53. "Culturally accepted drugs have traditionally been promoted, and today continue to be promoted, as the symbols of adulthood and maturity... The social approval of certain recreational drugs is reflected and sustained by the language we use to describe the various activities associated with their manufacture, sale, and use. People who make liquor are businessmen, not the 'members of an international ring of alcohol refiners'; people who sell liquor are retail merchants, not 'pushers'; and people who buy liquor are citizens, not 'dope fiends.'"

ing firearms, threats, narcotics and escape. This suggests that "fine only" has been an appropriate disposition for more serious crimes.[89]

Various restrictions in states' penal laws drastically curtail the use of fines as an alternative to prison. In New York, for instance, the criterion for imposition of a fine states that "the court may impose a fine for a felony if the defendant has gained money or property thru the commission of a crime." A second restriction in the new (1974) penal code states that the "fine only" sentence is unavailable to offenders in certain categories of felonies, thus severely restricting the number of cases in which courts might consider a fine as an alternative to prison.[90]

Note the contrast in the case of corporate crime. In these cases the punishment is usually monetary, consisting of fines and cost of damages. But these sanctions have little effect on the life of the corporation. It is proposed that corporate crimes be made more burdensome: "The magnitude of these crimes must be recognized and fines sufficient to strongly affect the corporation should be imposed."[91] Corporate offenders very often consider fines to be just another cost of doing business, to be passed along to the consumer in higher prices or poorer quality merchandise.[92] The crimes of corporations will be impossible to control as long as their enormous power and influence are tolerated.

To take into account the inequitable distribution of income and employment among those who are fined in the U.S., a day-

[89] **Ibid**., pp. 256–57.

[90] **Ibid**., pp. 259–60.

[91] William Hickey and Sol Rubin, "Suspended Sentences and Fines," Crime and Delinquency Literature, September 1971, pp. 423–24.

[92] Paula Gill Lane, "The Spectrum of Sentencing," Criminal Justice Issues, Commission for Racial Justice, United Church of Christ, Vol. 2, No. 4, November/December 1975, p. 4.

we've already identified as a prime cause of criminal behavior. In order to counter the influence of a culture where economic needs are continually increasing and worth is measured by the yardstick of the dollar, the options of service and other modes of payment should be equally considered.

Further, the law of fines is as inconsistent and chaotic as that establishing prison sentences. The amount of a fine usually is fixed by statute or determined by the judge within narrow limits, but little guidance is given to the courts for the imposition of fines,[86] thus encouraging judicial discretion.

Fines are usually coupled with probation, conditional discharge, or as an addition to a prison sentence. Traditionally a civil remedy, the fine has been used in criminal law mainly for traffic offenders and misdemeanants When it is used for felonies, the sentence of a fine is most frequently given to first-timers or to "white-collar" criminals and others involved in illegal profiteering.[87]

In Pennsylvania, a fine can be imposed for all crimes except first degree murder. Because of these broad provisions, in 1949, 26.1 percent of the total felony sentences were to "fine only" (in contrast to 32.4 percent imprisonment). These included manslaughter, larceny (excluding auto theft), embezzlement and fraud, rape, other sex offenses (excluding commercialized vice), gambling (69.5 percent) and arson cases (23 percent). In 1967, of 26,735 convictions by Pennsylvania's major criminal courts, 7,764 or 29 percent were fined.[88]

"Fine only" dispositions are being used with less frequency in the U.S. District Courts. In the 1950's, nine percent of those sentenced for all offenses were punished solely by fine, but by 1972 "fine only" dispositions had dropped to six percent. These included assault cases, as well as general offenses involv-

[86] Corrections, p. 162.

[87] Newman et al., p. 254.

[88] **Ibid**.

known as "grass," "pot," and "mary jane"-is a classic example of victimless crime. Smoking marijuana is a voluntary act. No harm is done to others and there is no "victim" to issue a complaint. Yet it remains an illegal drug, very often with excessive penalties applied for possession of even the smallest amount. (For example, the 1973 New York State drug laws allow a possible 15 year prison term for possession of as little as one ounce.)

Although marijuana is increasingly used by a wide range of the population, selective enforcement of the laws has fallen on the young in an attempt to control "hippie types" and "youth drug culture."[32] Most arrests involve people under 25.

Like other victimless crime laws, marijuana legislation "seeks to compel adherence by all to the professed morality of those holding legislative power. Its result is to criminalize conduct that inflicts no physical harm on others and is more or less widely considered to be permissible or desirable.Ó[33]

The impact of spiraling marijuana use on the criminal (in)justice systems has been phenomenal. Since 1965 a total of 1,900,000 Americans have been arrested by state and federal authorities for marijuana violations. One-fourth of all felony complaints in California in 1968 were for violation of the marijuana laws. A total of more than 34,000 adults and 17,000 juveniles were arrested for marijuana offenses in California.[34] By 1973 the total had climbed to 95,110 arrests. Nationally,

[32] Kiester, p. 55. This youth culture is usually associated with persons "whose life style, dress or length of hair offend the sensibilities of the majority."

[33] **Ibid.** , p. 59. "Such enactments are an arrogant misuse of power, and the administration of such laws results in corruption, discrimination, and increased disrespect for law."

[34] Schur and Bedau, p. 28, quoting from John Kaplan's **Marijuana-The New Prohibition** (New York, Pocket Books, 1971) p. 30. Also "Marijuana Arrests Up to 420,700 in '73," **New York Times**, July 21, 1974: This number accounted for "66.9 percent of all drug arrests in that year."

marijuana arrests average about 500,000 a year-nearly 70 percent of all drug-related arrests.

Selective enforcement of a largely unenforceable law has led to serious violation by the police of many constitutional rights, illegal search and seizure being most prominent. Increasingly, undercover agents, on college and high school campuses, establish false identities, develop trust and friendship among the students and then provoke situations of sale and consequent arrest. As provocateurs they initiate an offense which otherwise would not have occurred. Enforcement has been arbitrary, often harsh and cruel.

The suggested harmful effects of marijuana on the human body are essentially irrelevant to the issue of decriminalizing its use, possession, cultivation, sale and distribution. Indeed, it is probable that the debate about marijuana arouses considerably stronger psychological reactions than does the ingestion of marijuana.[35]

As abolitionists, we advocate decriminalizing not only marijuana, but all drugs-including those such as heroin which clearly are addictive and pose a threat to an individual's health. As we have stated before, this is not necessarily because we advocate the use of these substances, but because we see the folly of trying to solve the problems they pose via the criminal (in)justice systems.

In this section we focus on marijuana because the process of decriminalization is already in progress. We hope it will be a model for the decriminalization of other drugs.

Dangerousness. While it is difficult to prove that any substance is totally harmless, no definitive scientific evidence has yet established that moderate use of marijuana is dangerous.

> Several recent studies of chronic marijuana users, conducted independently in half a dozen countries,

[35] Richard J. Bonnie and Charles H. Whitebread II, **The Marijuana**

Fines

In the U.S., the fine has been traditionally and properly objected to because of the lack of equal protection. The poor, unable to pay fines, systematically filled the jails until a Supreme Court decision in 1971 ruled that an indigent could not be imprisoned upon nonpayment of a fine, but must be given an opportunity to pay in installments.[82] The California Supreme Court went further, absolutely prohibiting imprisonment of an indigent for nonpayment of a fine,[83] but the most effective step so far has come by way of legislation in Delaware, where no one-indigent or not-may be imprisoned for nonpayment.[84]

Ways have been devised to answer the equal protection objections by introducing greater flexibility into fines: gradation of the amount according to the defendant's ability to pay; provision for installment payments; and procedures by which nonpayment does not automatically result in incarceration but whereby other sanctions such as "work off" or modification of sentence can come into play.[85]

As an alternative to imprisonment, abolitionists support the use of fines based on ability to pay, wherever restitution to victims or groups is not appropriate or possible. The benefits of fines are obvious: the wrongdoer is not incarcerated and can stay in the community as a self-supporting citizen, saving the state probation expenses, welfare expenses and the human costs of caging.

However, the translation of accountability into financial terms, may only serve to perpetuate a materialism which

[82] Tate v. Short, 401 U.S. 395, 91 5. Ct. 668 (1971). See also Board of Directors, National Council on Crime and Delinquency, "The Nondangerous Offender Should Not be Imprisoned," p. 454.

[83] **Ibid**. See also In re Antazo, 89 Cal. Rptr., 255, 473, P. 2d 999 (1970).

[84] **Ibid**. See also Delaware Session Laws 1969, ch. 198.

[85] Newman, O'Leary and Christianson, Community Alternatives to Maximum Security-Institutionalization for Selected Offenders in New York State (SUNY, Institute for Public Policy Alternatives, June 1975) p. 268.

cooperative and the wrongdoers have almost always been willing to comply. Restitution is usually completed within a few months of initial attempts at reconciliation.

VORP staff is impressed with the marked change in the attitude of offenders and victims between the first and subsequent encounters. Though it is by no means easy for either offenders or victims to come face to face, once they have met and talked and agreed on a settlement, a wrongdoer can, as one actually put it, "walk down the street and not be ashamed" if s/he meets the victim. Victims who feel neglected and left out in traditional processes, feel in touch with what is going on and play a prominent role in what happens.

VORP staffers hope, as various stores, local businesses and individuals see that the reconciliation method can work, that the community will join in a greater effort toward reconciliation without resorting to police and courts. A dispute and mediation center would contribute to that possibility. In the interim, VORP would like judges to send more cases to them instead of having probation officers supply them. Then, instead of having to go thru costly court proceedings at taxpayers' expense, the wrongdoer would have a court appearance, validate the crime, and if willing to plead guilty, be referred to VORP by the judge.

Though VORP represents only a tiny effort to bring about a reconciliatory system thru the use of restitution, the program has already spun off two other reconciliatory efforts: a counseling/discussion group for parents of young offenders and a course in victim/offender conflict resolution at the Conrad Grebel College of the University of Waterloo. Both projects affirm the long range goals of VORP staffers-reconciliation, and the application of its principles to the broadest expanse of human relationships.

> indicate that the drug has no apparent significant adverse effect on the human body or brain or on their functions. The research essentially corroborates and expands on the results of an earlier study of marijuana use in Jamaica that found no significant correlation between heavy use of the drug and impaired physical, intellectual, social and cultural activities.
>
> —Bayard Webster, "New Marijuana Studies Show No Adverse Effect," *New York Times*, January 28, 1976

- Most studies make no distinctions between marijuana *usage* and possible marijuana *abuse*. The effects on users of small amounts of "grass" on an occasional basis are rarely differentiated from that of heavy, daily usage.

- Contentions of dangerousness range from lowered testosterone levels and impairment of immunity to apathy, lack of motivation, and incapacity for sustained concentration. According to Karl Menninger, similar lists could be proposed for alcohol and tobacco usage or even tennis playing.[36]

Numerous accusations of harmful effects[37] have been challenged as research continues. Jared R. Rinklenberg, Stanford University psychiatrist, states:

> There has been no evidence of marijuana induced brain damage. I do not mean to imply that the heavy use of marijuana is innocuous, but rather

Conviction (Charlottesville, University of Virginia, 1974) p. xi.

[36] Menninger, p. 68.

[37] Walter Sullivan, "Marijuana Study by U.S. finds No Serious Harm," **New York Times**, July 9, 1975.

that to employ criminal penalties to control its use because of potential hazards is, at present, simply not warranted, especially in comparison with alcohol and tobacco.[38] Chief Justice Jay A. Rabinowitz of the Alaska Court issued this statement:

> It appears that the use of marijuana, as it is presently used in the U.S. today, does not constitute a public health problem of any significant dimension ... It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol, barbiturates, and amphetamines.[39]

- One year after Oregon abolished criminal sanctions for possession of small amounts of marijuana, a survey showed no significant increase in use, according to the Drug Abuse Council.[40] It is estimated that at least 20 million Americans smoke pot.[41]

Empowerment. Despite severe penalties, use of marijuana in the U.S. has not been inhibited.

- A survey of New York State voters reveals 53.9 percent favoring milder "traffic ticket" response. Furthermore, a recent poll of the New York State Legislature shows that

[38] Quoted in George Skelton, "Assembly Justice Panel Approves Marijuana Bill," **Los Angeles Times**, April 17, 1975.

[39] Quoted in "Use of Marijuana in Home Legalized by Alaska Court," **New York Times**, May 28, 1975.

[40] "Pot Can Harm, But Does Prison Help?" **U.S. News and World Report**, December 2, 1974.

[41] William Safire, "Going to Pot," **New York Times**, November 21, 1974. See also Bonnie and Whitebread, p. 262. Also, Harold M. Schmeck, Jr., "Half of Americans Age 18 to 25 Said to Have Tried Marijuana," **New York Times**, February 12, 1976.

doer, the payment seemed more like a fine than reimbursement for an actual loss.

With the help of a third party and under the judge's stipulation, the two young men visited each victim. After six months, restitution had been completed.

By March 1975, a project committee had been formed with representatives from the Mennonite Central Committee of Ontario (a sponsor of the Volunteer Probation Program), probation office staff, and a community person from Kitchener. A proposal for an ongoing victim/offender reconciliation program was drafted and sent to concerned citizens, probation and parole officers, judges, lawyers, the crown attorneys and the police. Though doubts and questions were raised, the response was generally very positive.

In addition to payment for damage or theft, another form of reconciliation has been developed where the lawbreaker, victim and third party agree on so many hours of work as restitution. Several examples from VORP files indicate that work assignments satisfy all involved:

- Three young men who robbed a bookstore each agreed to work seven hours in the store.

- Three 18-year-olds convicted of burning a township bridge each did 60 hours work for the community—including snow shoveling and preparing ice surfaces for the local arena.

- Youths involved in a series of break-ins arranged to make restitution to the victims by doing painting and clean-up.

The number of meetings in a VORP case range from one or two to as many as 29. Phone calls between parties can rise as high as 60 or more when a victim or wrongdoer is at first unwilling to participate in direct confrontation. But VORP staffers point to consistent successes. Most victims have been

VORP brings together victims and wrongdoers in cases such as mischief, theft, break and enter, malicious damage and minor cases of assault.

Cases involve unidentifiable victims, particularly private individuals and small businesses. Victims are brought together with wrongdoers with the help of a third party, either a VORP staff member or a trained community volunteer, whose role is to activate dialogue. Then the group attempts to reach a mutual agreement on restitution. Usually the lawbreaker already has been placed on probation and the mutual agreement process is part of the probation order. If agreement is not reached or carried out, the matter will be referred back to the court. Once restitution is completed, further supervision is not required.

VORP has a research component to ascertain what works best in the reconciliation process, so that this knowledge can be utilized to train community volunteers as third party reconcilers. The work also involves the development of liaison and working relationships with community agencies, probation officers, lawyers, crown attorneys, police and judges.

The program evolved from Kitchener's Volunteer Probation Program, where the need was perceived for victims and offenders to come together to work out a mode of restitution.

The opportunity came in May 1974 when two young men in a one night spurt of drunken vandalism caused a total of $2,200 damage to 22 victims in Elmira, Ontario. Tires were slashed, windows broken, churches vandalized and stores and cars damaged. Having pleaded guilty to all 22 charges, both were remanded out of custody to a Probation Officer, who later joined the VORP staff. He suggested to the judge that there might be value in a direct confrontation between the young men and their victims. Until that time, where restitution was ordered by the court, payment was made thru the court office and the lawbreaker never saw the victim. The victim was not paid until the full amount had been received, and to the wrong-

"grass" has even invaded our legislatures: one out of every five legislators responding admitted having smoked marijuana; one out of every four respondents favored legalization of "pot"; one of the legislators admitted smoking regularly.[42]

- A report from the Attorney General's office in New Jersey, based on a study by the State Department of Law and Public Safety stated:

  > It is our opinion that the possession of marijuana and hashish for personal use should no longer be subject to criminal penalties. Decriminalization of possessor offenses would better comport with common notions of fairness, current scientific evidence relating to the effect of marijuana and contemporary expectation of conduct.
  >
  > —Ronald Sullivan, *New York Times*, September 27, 1974

- Elimination or lessening of criminal penalties for the private use or possession of marijuana has occurred in many states, including Oregon, Alaska, Colorado, Michigan, California, Maine, Ohio and Minnesota. South Dakota will decriminalize marijuana April 1, 1977.

- Most changes affect only use and possession, generally in the home, not sale and distribution. The trend seems to be toward making private possession and use a civil rather than a criminal offense. If the amount is small (one to three ounces), use of citations or fines of $100 to $200 are the usual penalties.

[42] Josh Friedman, "Pot Poll in Albany: 25 Percent Want It Legal," **New York Post**, January 15, 1976.

- The constitutionality of present marijuana laws is being tested in courts on the grounds of violating the liberty, pursuit of happiness and private property rights of citizens.[43]

- Encouragement for easing marijuana laws has come from such organizations as the National Council of Churches, The National Commission on Drug Abuse, American Bar Association, American Public Health Association, Board of Governors of the American Medical Association, National Education Association and Consumers' Union.

- Nationwide, extensive lobbying and public education are carried out by NORML (National Organization for the Reform of Marijuana Laws). *Time* and *Newsweek* refused for publication this proposed NORML ad:[44]

  LAST YEAR, 300,000 AMERICANS WERE ARRESTED FOR SMOKING AN HERB THAT QUEEN VICTORIA USED REGULARLY FOR MENSTRUAL CRAMPS

Abolitionists believe any proposal for decriminalization should include a provision for the expungement of criminal records of those previously convicted of the offense to eliminate the "criminal" stigma.[45] Further, the present trend

[43] "Marijuana Law Challenge," **New York Times**, December 14, 1975.

[44] "Pot Ad Refused," **Washington Park Spirit**, July 9, 1974.

[45] Letter to the Editor by Frank R. Fioramonti, New York State director, National Organization for the Reform of Marijuana Laws, "How to Decriminalize Marijuana," **New York Times**, December 24, 1975. He suggests the incorporation of "three key provisions" in the revision of New York State's marijuana laws:

"1. In lieu of a civil fine for first offenders, judges should be empowered to direct attendance at a sensible drug education program which spells out the potential hazards of the recreational use of any drug, including

often ask the court to waive the restitution requirement and discharge the defendant from probation.

Though probation is virtually never revoked solely because the defendant has filed to pay restitution, orders of restitution carry with them the sanction, whether implied or overt, of a jail sentence. Anyone under court order who did not make restitution could be committed as a violation of probation or by revocation of a suspended sentence.

Failure to complete restitution orders, not only threatens the freedom of the offender, but the welfare of the victim. In such cases, state victim compensation programs should respond to the unmet needs of victims.

Abolitionists advocate restitution as an important device to decrease imprisonment and in the long range, to reduce the scope of criminal law. Restitution should be authorized in penal codes solely as an alternative sentence-not part of a sentence.

A Canadian community project represents an interim step in shifting restitution to a total community focus. It is an important development and the success of this and similar programs will encourage the broader use of restitution as an excarceration mode.

Victim Offender Reconciliation Program

In only two years of operation, the Victim Offender Reconciliation Program (VORP) in Kitchener, Ontario has had a remarkable success.[81] Thru its work in the system but not of the system, VORP provides an excarceration model for dealing with community crime thru reconciliation, utilizing restitution as its working tool.

[81] Material in this section is based on VORP literature, interviews by PREAP with VORP personnel in February and May 1976 and on articles in the Kitchener/ Waterloo Record, January 28, 1976 and February 25, 1976 and in the Cambridge (Ontario) Times, February, 18, 1976.

as a condition of probation. In the Hawaii Penal Code enacted in 1972, not only are there provisions for restitution, but one of eleven conditions the judge is advised to consider for not imposing imprisonment is that the defendant has or will make restitution to the victim.[78]

In practice, restitution is most commonly advocated as a condition of probation. It may be ordered in any case in which the victim has suffered a loss. Probably the most frequent are bad check, forgery and larceny cases in which the stolen property has not been recovered. In burglary cases, restitution may be ordered for damage to the building as well as un-recovered stolen property, and in negligent homicide or manslaughter cases, the restitution order may encompass hospital expenses, property damages, funeral expenses and support for the deceased's dependents.[79]

Usually, if the court places the defendant on probation with a restitution order, the amount is unspecified. The probation officer then verifies the restitution amount with the victim and again with the defendant, and the court specifies that amount in the restitution order.[80]

The restitution order normally requires full payment to be made before the end of the probation period. In almost all cases, the payments are made in installments, accumulated in special probation department accounts, and paid to the victim when the full amount has been collected.

If the defendant's probation period is almost over and full restitution has not been made, supervision may be extended if it appears the probationer can make full restitution if given additional time. If it appears unlikely the defendant will be able to make full restitution, the probation officer will most

quency Literature, March 1976, p. 122.

[78] Gerhard O.W. Mueller, Minnesota Law Review, 50, December 1965, pp. 249–50.

[79] Dawson, p. 106.

[80] Ibid.

in decriminalizing use and possession of small amounts of marijuana is only an immediate and short term response to our present situation. Based on present research, all restrictions on marijuana should be removed from criminal law.

Abolition of bail & Pretrial detention

Generations of Americans have been taught that bail is a guarantee of liberty when in fact it is the very cornerstone of injustice. The system of bail must be abolished and with it the widespread, indiscriminate and uncontrolled use of pretrial detention of the poor and powerless. Anything less threatens the civil liberties of all Americans.

Constitutionality

Enshrined in the American Constitution is the presumption that *all* persons are innocent of crime until proven guilty, and the imperative that no one may be deprived of liberty without due process of law. The mechanism developed by British society for this purpose, and known to the founding fathers, was bail. The explicit-and by American jurisprudence, the only constitutionally permitted-purpose of bail is to assure the pres-

the dangers inherent in the immoderate use not only of cannabis but also of such licit substances as alcohol, tobacco, caffeine and the often abused prescription sedatives and 'diet' pills.

"2. Provision must be made for expunging the records of those thousands of New Yorkers recently arrested and convicted for possession of small amounts of marijuana. Failure to so act will penalize with a lifelong criminal record as many as 100,000 mostly young state residents arrested during the 1970's.

"3. Assuming the new law makes legal the possession of several ounces of marijuana... then the transfer of small amounts of marijuana should be treated in a similar fashion. At present, merely passing one marijuana cigarette to another person-regardless of whether any money changes hands-is considered a sale and is punishable by fifteen years in prison. Such obvious inconsistencies must be eliminated."

ence in court of the person charged with crime on the date his/her case is set for trial.[46] By its prohibition against excessive bail, the Constitution implies a promise to protect the citizen against arbitrary imprisonment before trial.

No constitutional promise is more dishonored in practice.

> The civil and criminal procedures of the Americans have only two means of action-committal or bail. The first act of the magistrate is to exact security from the defendant, or in case of refusal, to incarcerate him. It is evident that such a legislation is hostile to the poor, and favorable only to the rich.
>
> —De Toqueville, Democracy in America, 1833

As De Toqueville clearly saw, the bail system is inherently discriminatory against the poor. By placing a price tag on the right to freedom before trial beyond the reach of the indigent, it makes a mockery of the presumption of innocence and provides the underpinning for the use of the criminal (in)justice systems by the powerful to control the powerless.

Despite the Constitution's pious injunction against "excessive" bail, the fact is that *all* bail is excessive to those who cannot pay it.

Constitutional pieties notwithstanding, bail has historically been administered as ransom. The criteria for setting bail have seldom, if ever, attempted to consider the financial ability of

[46] For a history of bail in England, the American colonies and the United States, see Caleb Foote, "The Coming Constitutional Crisis in Bail, I," in Caleb Foote, ed., **Studies on Bail** (Philadelphia, University of Pennsylvania Law School, 1966) pp. 181–221. Foote points out how the bail system illustrates a triumph of unexamined custom over well-intentioned law. Imported intact from a rigid class society and introduced at a time when mere pauperism, without crime, was customarily punished by deprivation of liberty, exploitation and callous cruelty, the system has survived unchallenged for two cen-

dant seems able to make restitution.[75] Again, this process is fraught with opportunities for the use of discretion, particularly when the wrongdoer is poor.

In Tucson, Arizona, the Pima County attorney has established a pretrial diversion program for first offense felons considered "eligible," utilizing a restitution and victim/offender confrontation procedure. The victim must consent to the diversion. In many cases this is achieved by bringing the victim and offender together with a facilitator, each relating his/her side of the story and negotiating the terms of understandings that will become the basis of the diversion arrangement.

One anecdote shows the potential of this procedure. A young man stole a color television set. At the diversion hearing he found that his victim was an invalid woman; the television set was one of her few links to the outside world. He was able to grasp the full consequences of his act-he had not just ripped off a T.V., he had materially hurt the quality of the woman's life. In addition to returning the T.V. set, he agreed to paint her house, mow her lawn and drive her to the doctor for her weekly checkup.

Many victims have entered into the process reluctantly, only to find themselves later offering to serve as volunteer probation officers for other offenders. After one year's operation, the program has been successful in all but nine of the 204 cases which it accepted. The project calculates its costs at $304 per case, compared to $1,566 required to process an average felony case.[76]

Generally restitution is not authorized in penal codes in the U.S. although in Pennsylvania and Iowa, courts' authority to order restitution as a sanction has been written into the criminal code.[77] The State of New York has a provision for restitution

[76] John M. Greacen, "Arbitration, a Tool for Criminal Cases?" National Institute of Law Enforcement and Criminal Justice, LEAA, U.S. Department of Justice, Washington, D.C., p. 53.

[77] Anne Newton, "Alternatives to Imprisonment," **Crime and Delin-**

- It brings the victim and wrongdoer together as human beings, not as stereotypes.
- It lessens the community's need for vengeance and contributes to needed reconciliation and restoration.
- It saves the community, the state, and the affected individuals the economic and psychic costs of trial and probable imprisonment.
- It reduces the role of criminal law.

Within the system

When restitution is *imposed* within the criminal (in)justice systems, it can be perceived as a form of punishment, though certainly much milder and more preferable than incarceration. If imposed, it should be the sole punishment, in lieu of, not in addition to a prison sentence.

Restitution is available, but not widely used, as an excarceration mode at all stages of the criminal (in)justice process: prearrest diversion, pretrial diversion and sentencing, where it is most often imposed as a condition of probation.

At the pre-arrest stage, disputants confront each other and work out the problem in a controlled setting, providing the police and prosecutor with an alternative to arrest and formal prosecution. This reduces the number of crimes which find their way into the courtroom.

Normally in bad check, forgery and minor larceny cases, if the wrongdoer is able and willing to pay restitution and the victim is willing, the prosecutor will drop charges. When a case reaches court, the likelihood of probation is great if the defen-

[75] Robert O. Dawson, **Sentencing: The Decision as to Type, Length and Conditions of Sentence**, Report of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States (Boston, Little, Brown, 1969) p. 97.

the particular accused to pay-which would seem to be essential if indeed the only purpose of bail is to guarantee appearance for trial. Instead, these criteria have been attached to the seriousness of the alleged offense, on a sliding scale described as "average" or "usual" for the offense. What is "average" is never clearly defined, but it is beyond the reach of the poor, and a financial drain to the middle class. As Caleb Foote points out, the legal position has been, in effect "... that bail set in the average amount is reasonable and that individualization is required only for amounts greater than the average ... The bail 'usually fixed' for serious crimes, however, is in an amount which the great majority of defendants cannot make."[47]

Where the only alternatives are bail or jail, the practical result is that the presumption of innocence and the right to freedom before trial are not really rights, but privileges, available to those who can purchase them and unavailable to those who cannot.[48] From these two positions-the privileged and the unprivileged—flow two different sets of consequences for the alleged lawbreaker, ending in freedom for some and prison for others, with the difference resting not so much on innocence or guilt as on wealth or poverty. Seen in this light, the entire system of jails, and the prisons they feed, is simply a holding system for hostages, from which ransom is the first, best and only real means of escape.

Who pays? Who benefits?

Bail has also been shown to be unnecessary to accomplish its stated objective of return to court. The costs are paid in three coins: in human suffering by the poor who are its hostages;

turies.

[47] **Ibid.** , p. 217.

[48] The occasional informal use of ROR, without bail, does little to alter this picture as ROR customarily is limited to the less serious offenses and the most "dependable" defendants. The majority of poor defendants are as

in money by the taxpaying middle class who pay most of the bill to incarcerate the hostage class; and in the erosion of civil liberties arising from the system's hidden abuses.

In the presence of such costs, it becomes necessary to ask who benefits'? The principal beneficiaries include: professional criminals for whom the ransom is a "business expense"; the wealthy, who are protected by a custody system paid for mainly by the taxes of the middle class as an instrument of social control against the poor and dissident; and bonds people, who make their living from the bail system and are pledged to preserve that system.

Is bail necessary?

The underlying assumption in the system of bail is that the financial stake of bailees, which they would forfeit for nonappearance, compels them to appear in court. The assumption implies that one who has no financial stake will have no incentive to appear and will therefore abscond to avoid prosecution.

Experience shows that these are false assumptions. For the self-bailed, the bondsperson-bailed, the bail-fund client and those released on recognizance (ROR), the rate of failure to appear has generally been found to be low. It is even lower for serious than for minor offenses and is usually inadvertent and not willful. There is little variation whether or not the release has a financial stake in appearance. This experience has been duplicated in many jurisdictions, and shows that in terms of appearance before trial, the poor when given a chance are at least as reliable, and sometimes more so, than those who can make bail.

In Philadelphia, for instance, the Philadelphia People's Bail Fund, which operates by use of property bond put up primarily by Philadelphia churches, is able to bail more people, facing

unable to secure ROR as they are to make bail. Recent formal "diversion" programs based on ROR have enlarged this form of pretrial release, but are

munity settings, bypassing the system entirely. Abolitionists recommend dispute and mediation centers as the most desirable places for restitution agreements to be negotiated by conflicting parties. There, settings and goals are more consistent with the purposes of restitution as a reconciliatory process. However, settlements can also prove effective when arranged in court at pre-sentencing or sentencing procedures.

Restitution need not be only in the form of money. If the wrongdoer is wealthy and can "buy" his/her way out of taking responsibility for wrongs committed, a sentence or mediation agreement can utilize the lawbreaker's skills or training to benefit the victim or society in general. Contributing services is superior to the extravagant costs and damaging effects of the prison sentence and a better use of time.

Presently, the criminal (in)justice systems' selection process usually leaves out the poor and minorities as candidates for restitution as an alternative to prison. Restitution options should be available to all lawbreakers, not only those who can afford the money or possess the skills to contribute services. Statutes must be uniformly protective of the rights of the poor to make restitution in whatever way possible, given their life situations, and a wide range of options should be included for them to do so.

Outside the system

Restitution is an ideal community mediation and excarceration mode:

- It keeps the lawbreaker in the community, permitting him/her to correct the original wrong.
- In some measure, it corrects the discomfort and inconvenience caused the victim.

> There would surely be risks, and just as surely, some failures. But whatever failures such a system might encounter, they would necessarily be Lilliputian in contrast to the total failure of the present pattern for both offender and victim alike, as well as for the community as a whole.
>
> —Emanuel Margolis, "No More Prison Reform!" pp. 479–80

The potential for broad, creative use of restitution as an excarceration mode excites the abolitionist's imagination. Most offenses for which people are committed to prisons are economic crimes: theft, fraud, robbery, burglary and embezzlement. Though restitution can be utilized in practically all wrongdoing, it is most obviously appropriate for economic crimes. "If a loan, freely made with honest intent to return it, is not repaid, the lender has a legal right to proceed against the borrower. It would seem to make sense to apply that same procedure in economic relationships where the loan is of involuntary or fraudulent nature.[74]

"Abolitionists believe restitution makes a great deal of sense as an alternative to incarceration, not only in non-violent crimes but also in those involving violence. The idea of advocating restitution where loss of life is involved should not startle Americans. It is not without precedent. For generations the U.S. government has made restitution to survivors of members of the armed forces killed in combat or by accident. Similarly, survivors of citizens killed by auto accidents are monetarily reimbursed by insurance companies or thru civil suits.

While restitution options are welcome alternatives to prison at any point after a wrong has been committed, it is most meaningful in the pre-arrest or pretrial period when handled in com-

[74] Benedict Alper, **Prisons Inside Out**, p. 101.

more serious charges and at higher bails than is the usual revolving cash bail fund. It is so understaffed and has such a large volume of activity that it is able to exert little or no control, even to the extent of reminders, to ensure court appearance of its clients. Even so, its experience over five years shows a bail-jumping rate well within the normal range for all bailees and ROR releases. The rate of nonappearance is about six percent. Of this, only about 2.5 percent is willful,[49] and the rate of nonappearance decreases as the seriousness of the charges increases. This is so even though bailees have no financial stake in their bail.

> I had never been in a prison. I was smart. I arranged to be born white. I was lucky. The doors of education opened up to me and I fell in. I was careful. I didn't get myself raised in a ghetto. When I committed a misdemeanor, they called it a prank. And I never got caught.
>
> But I met some people today who did get caught. Ninety-five percent of them are Black and Puerto Rican. There are 6,200 living persons on that island [Rikers], we were told, the largest penal colony in the nation, and eight out of eleven of them are

often so structured as to constitute not an alternative form of release, but an alternative form of prosecution.

[49] Figures provided by Philadelphia People's Bail Fund, October, 1973. Compare: Manhattan Bail Project, 5.3 percent total, of which 4.6 percent willful, failures to appear, in a two year period with 36,917 summonses issued; San Francisco Bail Project, ten percent failure to appear, one percent evaded justice altogether, in a four year period with RORs. Comparison where financial interest is in a bondsperson or in the defendant is provided by Illinois Ten Percent Cash Bond Program, the case bond put up by defendant himself. In one year in Cook County (Chicago), where 686 ten-percent cash bonds were accepted and 600 surety bonds were written by bondspersons, forfeiture rates were for cash bonds, 5.4 percent; for surety bonds, 6.3 percent. **Corrections**, pp. 109–110.

in the remand center. That's an institutional-type word that means they are being held until they can get to trial, primarily because they can't afford bail. And 50 percent of them, prison officers said, will be proved innocent when they get to trial.

"We're no bleeding hearts here," said a uniformed correction officer "And we don't want the community to bleed for the guy who is a hardened criminal. But there are people here who should be moved thru the courts right now ….What brings them here? Drugs, racial bias that holds them down, a lack of education, a lack of job opportunity. But prisons can't solve those problems. The country and every person in it has to work that out…..

—James E. Gorman, "A Rikers Visit Recalled," *New York Times*, December 18, 1975

An *ad hoc* federal experiment in unsupervised ROR showed even higher reliability. In a two year period, 1963 to 1965. the rate of such ROR granted on federal charges rose from 6 to 39 percent, sparing approximately 9,000 people from federal pretrial detention. This group showed only a two percent non-

[50] Ramsey Clark, **Crime in America**, pp. 282–83.

[51] **A Program for Prison Reform**, p. 13.

[52] On a single day, March 15, 1970, 54,868 persons were being held after arraignment and pending trial in local jails in the United States. Computed in **Local Jails: A Report Presenting Data for Individual County and City Jails from the 1970 National Jail Census** (Washington, D.C., U.S. Department of Justice, LEAA, Criminal Justice Information and Statistics Service, January 1973). In New York State alone, exclusive of the five New York City boroughs, about 100,000 people pass thru county and local jails each year, of whom between 60 and 70 percent are unsentenced, primarily pretrial detainees. In 1973, the exact number was 104,116, up from 60,807 in 1959. Data obtained by telephone from New York State Commission of Correction, Albany, New York, April 14, 1976.

- Full discussion of all events leading up to the conflict is encouraged. Separate sessions are viewed as invaluable. Participation of witnesses or other family or friends is seldom and cautiously used.
- The mediating role is seen as one of facilitating only. The process of both parties reaching an agreement themselves is stressed. "In order not to promote a welfare mentality, anyone seeking CAP's help is required to involve him/herself in the resolution of the problem."
- Periodic contact with the conflicting parties is an essential part of CAP's follow-up. This continual interest and expectation of accountability to the terms of the contract are the only binding influences which CAP wields.
- Good cooperation with the police and court personnel has been established thru careful communication and follow-up. More importantly, however, referrals from the community and other nonofficial sources are mounting.

Restitution

Instead of the insane vengeance of an eye for an eye, why not payment by the offender of X amount of dollars for a particular kind of injury and Y amount of dollars for another, as in workmen's compensation or in tort?

The logic of such a scheme is irresistible. Not only are taxpayers' funds saved on the level of prisoners' maintenance and security, but the victims of crime do not become charges upon the community and expensive state-funded crime insurance is unnecessary, or purely supplementary …

but the staff feels that other sorts of cases could be readily handled. This is especially so in instances of theft, where solutions could involve cash restitution or work.

While many problems plague CAP-funding, press coverage, more staff, more office privacy for mediation centers, contact with other community mediation centers-the community and staff have great confidence in their community project. They shun professional labels, saying: "It's the process that's important." Confidence in the process comes more readily when the person mediating can say "I've been there,—I am in the struggle too."

Abolitionists support the CAP model because:

- *All* mediators are drawn from the community itself. Legal expertise is not required. Personal experience with the community and background involvement with housing disputes, for example, are regarded as important qualities, along with a personal dedication and concern.
- Mediation sessions take place in settings most comfortable for those involved: in the CAP office, at lunch, at the home of one of the persons, in a car. Times are flexible.
- Agreement with the least intervention from the mediator is sought. At times, a resolution is reached before the point of bringing together both parties.
- Written contracts are signed when an agreement is reached. Copies are sent to the judge only when a court referral is made.
- CAP has no legal power to enforce the agreement. If the contract of a court referred case is violated, the case is referred back to the court.

appearance rate, as opposed to three percent for federal defendants who made bail.[50]

Despite such proof that the system of bail is unnecessary to assure court appearances, the holding of hostages continues. The cost of their incarceration both in economic and human terms is staggering. Half or more of accused persons are detained in jail pending trial.[51] On a single day, if the system of bail were abolished, upwards of 50,000 pretrial detainees could be released from jail and thousands in the arrest and arraignment stage would avoid the cage entirely.[52]

Costs to the hostages

Though all pretrial detainees are legally presumed innocent, and many are in fact innocent as charged, they are imprisoned before trial, for months and sometimes for years, in facilities as bad as or worse than prisons used for convicted felons. Employment and earning power are interrupted or lost, which results in suffering for their families. Ties to the family and community are broken. Worst of all, they are all but incapacitated in gathering economic resources and the preparation of their defense. They cannot earn funds to retain a lawyer, and must depend on the services of assigned counsel or public defenders who are overworked and sometimes indifferent, hostile or incompetent. The quality of their legal representation is further damaged by infrequent and brief consultations conducted in the jail environment, under conditions unfavorable to privacy and mutual dignity. They cannot participate in investigating facts relevant to their defense-facts that often can be investigated best, or investigated only, by themselves.

> "Oh, things that happened the week after next," the Queen replied in a careless tone.
>
> "For instance, now," she went on. "There's the King's Messenger. He's in prison now, being

punished: and the trial doesn't even begin until Wednesday, and of course the crime comes last of all."

"Suppose he never commits the crime?" said Alice.

"That would be all the better, wouldn't it'?" said the Queen.

Alice felt there was no denying that. "Of course, it would be all the better," she said: "but it wouldn't be all the better his being punished."

"You're wrong there, at any rate," said the Queen: "Were you ever punished?"

"Only for faults," said Alice.

"And you were all the better for it, I know!" the Queen said triumphantly.

"Yes, but then I had done the things I was punished for," said Alice: "that makes all the difference."

"But if you hadn't done them," the Queen said, "that would have been better still; better, and better, and better!" Her voice went higher with each "better," till it got quite to a squeak at last.

Alice was just beginning to say, "There's a mistake somewhere-," when the Queen began screaming, so loud that she had to leave the sentence unfinished.

—Lewis Carroll, Alice Thru the Looking Glass.

Under these and other pressures they are frequently influenced or coerced into foregoing adequate defense preparations. Many are led by sheer helplessness and misery to plead guilty to charges pending or to accept a plea bargain, merely to escape from the intolerable conditions of pretrial detention.

conflicts to CAP. They view CAP as friends and neighbors. Because such interventions had proved successful, in 1973 a formal arrangement of referring certain kinds of disputes to CAP was decided upon with the court.

The process of mediation is quite uncomplicated:

- Each party is met with separately to hear his/her views of the problem. During this meeting the person is asked what, if anything, s/he is willing to do to resolve the problem.
- All parties are brought together. During this meeting they are reminded that this is an alternative to the court process. If one or both parties is unwilling to cooperate in meaningful dialogue, and the case has been referred by the court, CAP is obligated to refer the case back to the court.
- Agreements are signed and notarized. If the contending parties arrive at a settlement, each signs an agreement outlining terms dictated by them. Copies are given to the disputants, and if court referred, a copy is sent to the referring judge.
- The community mediator will check periodically with the disputants to see if they are keeping their agreements.

In addition to court referrals, CAP receives referrals from the police station at time of arrest. Other referrals are made by schools. In 1973, nearly 70 percent of the total referred cases originated in the courts. Since then, as their services have become better known, referrals have come increasingly from the community.

The conflicts most frequently handled by CAP include the family and neighborhood disputes common to such centers,

Community Assistance Project

An excellent example of community mediation is furnished by CAP, Community Assistance Project, in Chester, Pennsylvania, which stresses deep community involvement and indigenous leadership.[73] It demonstrates how a community group can develop services to include conflict resolution and community mediation.

CAP, organized to provide equal protection under the law for poor and minority persons, includes in its purposes:

- Enabling the people in the community to understand the criminal (in)justice systems.
- Encouraging citizen involvement in effective crime prevention efforts.
- Assisting the community in taking more responsibility for those who are presently caught up in the systems.
- Diverting from the systems potential offenders and those who have committed minor offenses.

In addition to mediation services, CAP supervises persons released on bail or ROR, provides paralegal assistance in preparation of cases, sponsors parolees and supportive services to ex-prisoners.

CAP developed in 1970 thru the impetus of Laurice Miller, a community member active in the tenants movement. Credibility both in the community and among court personnel was quickly established and continues. Because the present all Black staff knows the problems of this poor, deteriorating area outside Philadelphia, people of their own accord bring various

[73] Material in this section is based on CAP literature and on interviews by PREAP March 8, 1976 with Frank Saunders, supervisor, and Barbara Argo, director.

In the event that any are stubborn or strong enough to hold out for trial, the fact that they were pretrial detainees results in a greater likelihood of conviction and a greater likelihood of a more severe sentence if convicted.[53]

In contrast, those free on bail suffer few of these drastic punishments, but the system of ransom imposes financial hardship. The funds diverted for bail may strain their resources and weaken their ability to secure a competent defense, and those not wealthy enough to make bail themselves pay a non recoverable bondsman's fee. But for them, comparatively, the presumption of innocence seems a reality. They are free to participate in their own defense, and they stand a substantially greater chance of avoiding conviction, or of avoiding prison if convicted.

Costs to the taxpayer

Data compiled from the 1970 National Jail Census shows a national total of over $330 million spent for operating costs, and over $178 million projected for planned construction of local jails, half or more of whose populations are pretrial detainees.[54]

[53] A landmark study of the effect of pretrial detention on disposition of cases in Manhattan's Magistrate's Felony Court, indicates that even where an individual has characteristics which should mitigate sentence (no previous record, employment, family stability), the fact of pretrial detention has an adverse effect. With one such characteristic, 81 percent of jailed defendants were convicted and 73 went to prison, vs. 68 percent convicted and 26 sent to prison for bailed defendants. With two favorable characteristics, the percentages were 76 percent convicted and 52 percent sent to prison for jailed defendants, vs. 61 percent convicted and only 17 percent sent to prison for bailed defendants. With three favorable characteristics, only two defendants did not make bail. Of 67 who did, 54 percent were convicted but only 6 percent went to prison. Anne Rankin, "The Effects of Pretrial Detention," **New York University Law Review**, 39 (1964), p. 654.

[54] Compiled from **Local Jails**. This census entirely omits three states (Connecticut, Delaware and Rhode Island) where pretrial detention facilities are operated by state rather than local governments.

More illuminating is the following rough cost estimate for a large state, New York.[55] Excluding its megalopolis, New York City, this is a fairly typical state, with a number of medium-sized cities and extensive rural areas dotted with small towns. Including its megalopolis, its various jurisdictions exhibit demographic and social characteristics of all the basic types to be found in the United States.

Excluding the five counties of New York City, 1974 state figures reveal that on an average day, there were 4,359 inmates in local and county jails, of whom 2,880, or about 66 percent, were pretrial detainees. The cost of county jail incarceration in Monroe County (a representative urbanized upstate county which includes the city of Rochester) was $27 per day ($9,855 per year) per inmate. Taking this cost as average, and multiplying the average daily number of pretrial detainees, we find a cost to New York taxpayers of about $28 million in one year for pretrial detention alone.[56]

Costs for New York City are substantially higher. There in 1974 average daily population awaiting disposition was 4,906. Cost of incarceration was in excess of $60 per day ($21,900 per year) per inmate. For 1974, therefore, estimated total cost of pretrial detention in New York City was over $107.5 million, and for the entire state including the city, over $136 million.

This was the tab picked up by the taxpayers of New York State in one year, as the cost of holding for ransom several hundred thousand poor people, all of whom were presumed

[55] Estimates based on figures provided by the New York State Commission of Corrections, April 14, 1976, by telephone.

[56] According to the New York State Commission of Correction, 1974 actual costs of incarceration in county and local jails, excluding New York City, came to $27,849,085 in county and local funds. This figure does not include sheriffs' salaries and does not include substantial but undetermined contributions from state and federal sources for operation of these jails. It does show an increase in cost of 187 percent over the year 1965.

to the court, then the potential for abusing due process rights is great.

- Underlying causes should always be sought. Full discussion of grievances by both conflicting parties, witnesses, or other friends or family should be encouraged for this purpose, as well as for empowering all community members with a process for reconciling differences.

- The mediator should assume the role of facilitator to this process of reconciliation. S/he should be seen as "an advocate for the process of discussion and bargaining rather than for a particular settlement."[72] Intervention with a solution should be done only reluctantly and only when discussion has reached an impasse.

- Mediators should be adequately prepared for the responsibility of this role. Careful training and evaluation of community volunteers should respect personal abilities to listen and facilitate discussion. Legal instruction should be avoided entirely or kept to a minimum. Instead, the law should be made comprehensible to all, rather than reserving that knowledge to professionals who administer it.

- Cooperation from the police and other facets of the system should be sought so that referrals can come from the scene or at the police station as an alternative to filing criminal charges. Ideally, mediation services should be so well publicized that persons in conflict will bring their disputes directly to the center without involving the police or court procedures.

[72] Danzig and Lowry, p. 689.

is a bias in assuming only highly paid individuals are competent,[70] but exploitation of volunteers should be avoided.

- Mediation sessions should take place in the disputants' community in familiar and informal surroundings, conducive to free communication. "Why should we equate holding court 'under a willow tree' with inferior justice? There is much to recommend a comfortable, easily accessible forum."[71]

- Consensual agreements should be sought. Proof of guilt or innocence is inappropriate.

- Whatever agreement is mutually reached should be made explicit thru a written contract. This should be developed by both parties and include terms of restitution or compensation or specific agreements on future behavior.

- Due process rights will not be jeopardized as long as the mediation center is true to the moot model. The mediator has no authority to impose sanctions and whatever agreement is signed cannot be legally enforced. If decisions are mutually agreed upon and both parties voluntarily express the intention to abide by the terms of their agreement, then there is little danger of violating individual rights. However, if a center assumes the power to impose and enforce sanctions or if written accounts of mediation sessions are kept on record and later available

and Criminal Justice, LEAA, United States Department of Justice, under section "Demo: Police/Family Crisis Intervention."

[70] Michael J. Lowry, "Justice Under a Willow Tree: South Carolina Magistrates.. A Comment." Pretrial Justice Quarterly, Vol. 4, No. 4, Summer 1975, p. 37.

[71] **Ibid.** , p. 37.

innocent and most of whom would have been released if they had been able to raise bail.[57]

Release on recognizance

In recent years, many communities have developed ROR programs, as an alternative to bail for selected defendants. In some programs, the defendant also benefits from help in finding employment or medical treatment or in meeting other needs.

But these programs tend to be a palliative and not a root solution to the problems they address. In the first place, there is no evidence that ROR programs contribute significantly to the reduction of jail populations. Jails, like nature, abhor a vacuum and if cages are available, there are always plenty of poor people to fill them. In the second place, the selection criteria for ROR (for example, first offense, ties to family and community, steady employment) tend to restrict its availability to those whose crimes are petty enough and whose resources are strong enough that they might have obtained pretrial release without ROR.

Even so, ROR can be an improvement. As an interim strategy, abolitionists in advocating ROR should press for judicial rules requiring its expanded use.

Pretrial diversion

Pretrial diversion programs resemble ROR in that they secure pretrial release without bail. They differ, however, in that they involve forms of social control that take them out of the class of alternatives to pretrial incarceration and place them in a class

[57] Patterns of time served in pretrial detention varied widely between New York City and the rest of the state. Outside metropolitan New York, only about five percent of detainees were jailed for more than two months before trial. In the City, the number of people detained per year had dropped drastically after the Tombs uprising of 1970, but the length of time served by those detained had risen drastically.

of alternative forms of prosecution. There is an implicit waiver of the presumption of innocence. The option of submitting to a program of supervision in the community is in return for a court's adjournment of his/her case in contemplation of dismissal. If s/he complies with the rules of supervision, the case will likely be dismissed; but if s/he does not, the adjournment may be revoked and the defendant remanded for conventional prosecution.

Such programs thus impose a series of social controls on non convicted defendants that normally attach only to the convicted. They involve the defendant in counseling and in programs designed to provide employment, health care and other services, but they also require him/her to submit to forms of supervision and regulation similar to those of probation and parole-regulation not imposed on defendants who make bail or ROR. Care should be taken therefore, in establishing or supporting these programs, to ensure that the accused fully understands the options and that excessive social controls are eliminated.[58]

Abolishing bail

In practice bail has more often been used as an instrument of preventive detention than as a constitutionally guaranteed avenue of pretrial release. The setting of criteria for preventive detention is a chancy business at best and will require a process of testing what affords maximum protection to society with minimum violence to the constitutional presumption of innocence.

[58] For thoughtful critiques of existing ROR diversion programs, see Joan Mullen, The Dilemma of Diversion, U.S. Department of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, Washington, D.C. and Michael R. Biel, Legal Issues and Characteristics of Pretrial Intervention Programs, National Pretrial Intervention Service Center of the American Bar Association Commission on Correctional Facilities and Services, Washington, D.C., April 1974.

The centers' scope could be considerably broadened to include many more serious crimes than they are presently handling. Communities need to decide which conflicts/crimes they can adequately handle.

Abolitionist criteria

Though the number of centers is comparatively small at this time, we can already learn a great deal from their experiences. Many models differ from the moot model and should be carefully evaluated.

For instance, some programs are legalistically oriented. Law students are the mediators. The surroundings are formalized and legal rules involving evidence are sometimes imposed. The education of litigants and their community supporters is frequently neglected. At times these centers appear to be established as a convenience for lawyers rather than the people, because lawyers no longer have to bother with trivial disputes. Such programs are a far cry from the community moot concept.

Based on the concept of the moot and abolitionist ideology, we recommend the following criteria for community mediation centers:

- Deep community involvement is essential to the processes of empowerment and education needed for mediation centers. Mediators should be drawn from the area and culture of the disputants. The conflicting parties might even mutually agree on the selection of the mediators.

- At least partial funding and support should come from community or local sources. Unpaid community mediators may well serve to diminish the need for funds. There

- Commercial bad check cases. (Shoplifting cases may be added.)
- Cases from the summons docket, such as traffic violations.

Additional kinds of cases which some mediation centers are handling include:

- Health code violations.
- Consumers claims for restitution from merchants concerning delivery, quality, service, warranties, misrepresentation, billing.
- Patient grievance procedures against doctors and hospitals.
- Citizen environmental complaints against industries.
- Small torts and breaches of contract involving community members.
- Bankruptcy disputes.

Police most often cite settling disputes between family and friends as an unrealistic and dangerous demand upon them. Mediation centers, by dealing with conflict before it escalates to violence, diminish the need for police to serve a mediation function. In 1972, according to the F.B.I., 7,000 murders stemmed from family conflicts and 13 percent of all police killed in the line of duty died while responding to disturbance complaints.[69] The presence of mediation centers in all communities would substantially reduce the potential for murder of both civilians and police.

[69] "Operation: Demonstration," National Institute of Law Enforcement

As long as bail is used to accomplish preventive detention in a disguised, arbitrary manner, there will be no pressure to establish fair and reasonable rules, and "dangerousness" will continue to be determined by the subjective viewpoints of individual judges. There is too much room in the bail system for, and no defense against, the administration of justice by personal prejudices from which no one, including the judge, is free. The abolition of bail would expose this hidden agenda and force the development of open and fair rules and judicial accountability.

Another hidden form of exploitation that would be eliminated by the abolition of bail is the bail bond business. Bondspersons collect a substantial fee for putting up collateral for those who cannot make bail with their own resources. The amount of the fee is regulated by law, but bondspersons are free to use wide discretion in their assumption of what is for them purely a business risk. The risk itself is frequently covered by collateral. The bondspersons' record of securing appearance for trial is no better than that of ROR programs, bail funds and other pretrial release programs. They perform no other service for their fee than the posting of collateral which would not be necessary if bail did not exist. The fee, tho substantial (usually ten percent of the bail), is in no part returnable to the defendant for *appearance*, and amounts to a tax on his/her inability to make bail. Abuses are rampant in the bail bond business, but *even where* bondspersons are honest, the business itself is inherently *exploitative*. This profitable industry feeds on the victims of the greater social injustice represented by the bail system.

Interim strategies

We recommend a series of interim strategies and programs. These actions are not ends in themselves, but vehicles to gradually move us toward our goal of abolition of bail.

- Organize court watching projects to create a constituency and gather data for abolition arguments and court reform. Reform should aim at relieving crowded dockets, ensuring speedy trials and limiting judicial discretion to hold defendants before trial. Court watchers should examine the incestuous relationships often found between judges, prosecutors, lawyers and bail bondspersons and measure their effects on pretrial release. Studies should be made on the number of pretrial detainees, the length of time imprisoned before disposition and the cost of such detention. Ethnic, racial and economic background of pretrial detainees should be included in a public education campaign to abolish bail and pretrial detention.

- Press for legislation to establish percentage cash bail bonds (as in Illinois) and bail remission rules (as in Pennsylvania) to make bail accessible to more people and to make forfeiture less onerous.

- Organize revolving bail funds, especially those based on church and private property bond rather than cash, as in the Philadelphia Peoples' Bail Fund, to expand capacity to bail more people. This is a first step in breaking into the system: anyone with enough property or cash can be bailed out.

- Organize programs for pretrial release with little or no bail. These should include: ROR programs with expanded eligibility thru established criteria and the goal of ensuring appearance for trial. Third party custody programs should be used for release of persons not eligible for ROR. Set up percentage cash bond programs (where defendants pay a percentage of their bail to the court, returnable to them upon appearance,

strangers, about one-third of the criminal cases in urban courts involve neighbors, family or friends. Half or more of all murders involve a close relationship between the victim and the wrongdoer.

A study in the Cleveland (Ohio) Municipal Court, for instance, illustrates the number of conflicts in which people know one another. Of 1,034 cases, at least 30 percent were in essence neighborhood dilemmas and could easily have been handled outside the court.[67]

Kinds of conflict/crimes

Presently the cases most frequently handled by community mediation centers are small interpersonal disputes between friends, relatives and neighbors. Usually these are civil matters or misdemeanors. Often they are marital or family disputes (including common law relationships), involving paternity, support or separation conflicts. Other frequent cases include neighborhood squabbles, fights or harassment, simple assault, complaints about noise or other disturbances and tenant/housing manager disputes.

The Columbus (Ohio) Night Prosecutor Program[68] works in three major areas:

- Minor interpersonal disputes resulting in an assault, menacing threats, telephone harassment, criminal mischief or larceny.

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ation in the United States," Law & Society, Summer 1975, p. 690.

[67] Paul Wahrhaftig in his review of Rough Justice: Perspectives on Lower Court Criminal Courts, **Pretrial Justice Quarterly**; Spring 1975, p. 22.

[68] "Citizen Dispute Settlement: The Night Prosecutor Program of Columbus, Ohio/An Exemplary Project." Prepared for the National Institute of Law Enforcement and Criminal Justice, LEAA, U.S. Department of Justice, Washington, D.C.

rather than a similar but non returnable percentage to a bondsperson as a fee for a surety bond.)

- Research your local bail industry and investigate the possibility of a taxpayer's challenge to the constitutionality of bail.

- Research your local jail industry and support moratorium on construction of new pretrial detention facilities or expansion of old ones. The more pretrial detention capacity exists, the more will be used and the less pressure will exist to develop more just alternatives and abolish bail.

Community dispute & mediation centers

Mediation centers present a unique opportunity for grass roots involvement in the process of justice and excarceration. Abolitionists advocate the establishment of such centers in every neighborhood or community. These centers are to be based on the "moot" model, allowing both wrongdoer and wronged to be restored to lives of integrity and responsibility in the community.

A large percentage of conflicts need never enter the realm of criminal court proceedings. The confusion and bitterness in court situations can be avoided, along with a possible criminal record and incarceration. Many disputes can be handled humanely in the community by the community, discarding the traditional adversarial approach of arrest/court/fine-or-prison approach.

Community dispute and mediation centers decrease the number of those imprisoned and empower communities to develop reconciliation skills. By becoming the milieu for resolution of disputes which rise within it and by taking the responsibility for healing the disruptions, the community is

is to avoid a right/wrong dichotomy. It is to compromise; it is to look to the future rather than the past. But most importantly, it is to eliminate the concept of guilt.[65] The model moves away from a factory like emphasis on producing results (termed "decisions," "decrees" or simply "justice") and towards an emphasis on having each disputant develop his/her own view of events, while recognizing the opponent's perspective. The emphasis is on the disputants educating each other.[66]

The moot model for settling disputes is an excellent example of abolition ideology in practice. A reconciliatory atmosphere is created in the setting where the conflict arose-the community-in order to encourage the disputants to express their differences, peacefully reaching a compromise. The focus is never to assign guilt to one party and innocence to the other. This "family" model of dispute settlement emphasizes the bonds existing between the disputants, the mediator and the community. It encourages expression of grievances and discussion leading to agreement by consensus. The process is not caught in the trappings of symbols of power-the courtroom, but in one's own community among equals.

The possibility of the moot model's extensive use in our highly mobile and complex society presents an exciting challenge. Tho ours is a technological society where alienation is common, neighborhoods still flourish and other social and peer networks are maintained. Opportunities for dispute settlement on the moot model abound within these linkages and contexts.

Many conflicting parties already know one another. Contrary to popular belief that most crime is committed by

[65] Michael J. Lowry, "Commentary-Mediation at the Police Station/A Dialogue on the Night Prosecutor Program: Columbus, Ohio." Pretrial Justice Quarterly, Fall 1974, Vol. 3, No. 4, pp. 37, 40. He quotes James Gibbs, "The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes," 1963, Africa, Vol. 33.

[66] Richard Danzig and Michael J. Lowry, "Everyday Disputes and Medi-

validated as the logical determiner and provider of support and services. Thus its members are more able to exert power over their own lives. The high costs of court can be eliminated and the savings funneled into contributing to the costs of mediation centers and other services.

Since economic limitations exclude the poor from many court options presently available to those with money, mediation centers situated in the midst of poor communities contribute to equalizing some of these inequities. They provide the alienated and the poor with a service which is a commonplace necessity for those who are wealthier. When disputants of high socioeconomic levels require mediation, it is provided by a highly paid psychotherapist, marriage counselor, attorney, family doctor or other advisors including ministers.[59]

Facilities such as small claims courts, better business bureaus and government sponsored legal aid are designed to fill mediation needs, but in general they do not do a good job for poor people. Some are so under funded and overburdened as to give poor service. Others favor the rich and powerful because they are so complicated that they're out of reach of the average person.[60]

Mediation & arbitration

In recent years, several dispute settlement programs have been developed, drawing upon models of conflict resolution from such fields as labor management, psychology and psychiatry, sensitivity and encounter approaches and international relations.[61]

[59] Richard Danzig, "Comments on the Columbus, Ohio Night Prosecutor Program," Pretrial Justice Quarterly, Winter 1975, p. 4.

[60] Lacey Fosburgh, "Bar is Told It Fails to Help in Settling Minor Disputes," NewYork Times, September 15, 1975.

[61] The American Arbitration Association (AAA) and the National Center for Dispute Settlement (NCDS) have been responsible for much of the intiative in developing community dispute centers. In criminal matters, the 4A programs (Arbitration as an Alternative) of the NCDS are perhaps the most established examples nationally.

Dispute settlement processes, which include mediation and arbitration, are "community oriented tools that will help people learn to help themselves and others in such a way that violent outbursts against people and property will be curtailed."[62]

Mediation—a process where the conflicting parties themselves agree on a mutually acceptable resolution with minimal intervention by a third person-seems more appropriate than arbitration to abolition principles of empowerment. In the latter, disputants give a neutral party legal authority to render a binding decision, after a full, fair private hearing.[63] However, both processes are far superior to the present criminal (in)justice systems in which the adversarial court model promotes conflict rather than settling it, creates injustice by ignoring the social context of behavior and allows manipulation and social control of the majority by the powerful minority.[64]

The moot model

Mediation, in contrast to the court model of adjudication, is based on the concept of a "moot." The moot is an informal airing of a dispute which takes place before neighbors and kin of the disputants. It is not coercive and allows the disputants to discuss their problems in an atmosphere free from the questions of past fact and guilt. The past is seen as a tool for the construction of future relationships. The very idea of the moot

[62] Betsy Leonard, "Citizen Dispute Centers-Especially Appropriate for Juveniles," Friendly Agitator, May/June 1975, p. 5.

[63] Other working definitions in dispute settlement include negotiation-a process whereby parties to a dispute settle issues themselves and conciliation, whereby a neutral party brings disputants together but plays no direct role in solving the dispute.

[64] "An Alternative to ARD," Pretrial Justice Quarterly, Fall 1972, p. 18.

define for themselves what is criminal, within and outside our communities. They must include not only the street corner mugger, the drug pusher and the rapist in the alley, but also the corrupt and brutal policeman, the greedy slum lord, the exploitive businessman, the oppressive employer, the racist school administrator, the fascist politician and the war mongering head of state. The Black media must isolate and focus attention upon all the forces which undermine the quality of our lives. They must be indicted, in print and over the airwaves.

—From a paper by Glen Ford, Mutual Black Network News.[88]

Street crime and its victims

SOURCE: Based on data in The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report, *Crime and Its Impact, pp. 44-49.*

Of the millions of crimes committed by all strata of society, comparatively little is committed in the streets. Middle class and upper class property crimes take place in the "suites" rather than in the streets, behind the closed doors of corporate presidents' offices or in the privacy of the home where income tax forms are filled out. Such crimes cost the public more than street crimes and crimes against property combined. In its 1974 publication, *White Collar Crime,* the U.S. Chamber of Commerce estimates that the yearly cost of embezzlement

[88] Reprinted in Synopsis of Workshop "Media Effect on Crime," October 1974. Conference on Crime and the Minority Community Commission on Racial Justice, United Church of Christ.

schizophrenic," "dangerous" and "not dangerous." We-slave traders and plantation owners, psychiatrists and judges-so label them.

—Thomas Szasz, "On Involuntary Psychiatry," *New York Times*, August 4, 1975

Prisons have been used to limit the movement of persons labeled as "dangerous," "psychotic" or "disturbed," a labeling process which began in the community, in the bad schools and continued thru each stage of the criminal justice system. The result has been the destruction of thousands of lives. We have been so concerned with containment, with limiting movement, that we haven't looked for the real troubles in people, in communities, in our social and economic system.

—John Boone, Former Director of Corrections, State of Massachusetts, *Fortune News*, May 1975

It is no wonder that today preventive detention proposals are so intensely opposed by Black organizations. They recognize correctly that their movement for freedom and self-determination is seen as "dangerous" by established white America. We approach the concept of "dangerousness" with considerable skepticism, for it has little meaning apart from its social and political concept.

—Struggle for Justice, p. 78

Men in prison are dangerous because they are threatened with sophisticated forms of extinction in the hands of simple minded wage earners who claim they are "only doing their duty" or "just following orders" as five or six of them are

wrestling you to the floor to stick a needle in your arm or ass.

—Howard A. Lund, prisoner, *NEPA News*, March 1974

The defenders of these treatment models refuse to acknowledge that society, thru its injustices which are magnified inside prison walls, remains the principle impetus to violent behavior. Almost inevitably, those prisoners who refuse to accept the authoritarian, dehumanizing conditions of prison and who organize disruptive political behavior, exhibit repeated, angry "acting out" behavior, and flood the courts with litigation are the prisoners deemed candidates for DSU (Departmental Segregation Unit) or other "special offender" programs.

—Donna Parker, *NEPA News*, June 1974

"Dangerousness" and predictability

"Dangerousness" is difficult to define. Definitions always hinge on the unstated assumption that it is possible to predict which persons will commit violent acts in the future. The ability to make such predictions has not been demonstrated. Judges, parole board members, psychiatrists and others who attempt to predict "dangerousness" err grossly on the side of overprediction.[1] This results in the needless imprisonment of the many out of fear of the few.

> The label "dangerous" is increasingly used by the authorities to immure protesters and political militants in the dungeon recesses of prison. The case

[1] **Struggle for Justice**, pp. 77–82.

The damage wrought by these media manipulators is tremendous. As one newscaster points out:

> In essence, the media defines who and what is legitimate … What is good and right and safe for society … and what isn't. It is key to the whole process of identifying and isolating the people deemed dangerous or undesirable by those who control the media. In a society run by the very rich … it is the concerns of the poor that become somehow illegitimate, unimportant. To an overwhelmingly white nation, Blacks are outside the pall, darkly dangerous, those who threaten the structure, thru mass movement, individual action, or simply by their very existence, lose their right to be portrayed as human beings in the media. They become, in short, "criminals" of one degree or another. And criminals once labelled, have no rights that society is bound to respect. Hence, Attica.
>
> Who is, in fact, a criminal, then, depends upon your point of view or rather your position in society. More than five times as much money is embezzled from banks by executives, than is stolen by men with guns. Abuse of police power robs Blacks and poor people of their basic right to life and liberty. Billions of dollars in social welfare funds voted by Congress are withheld by the executive branch of government, in effect stealing bread from the mouths of children and shelter from entire families …
>
> The media is largely blind to these crimes. Preferring to vilify the "street criminal" and "welfare cheater." By so doing, the media becomes an accessory to the rape of the powerless. Blacks must

federal bailout, of payment over the last five years of $22 million in foreign bribes, or "kickbacks" as the company prefers to call them, is current news.

The harm to society from such wrongdoing is substantially less obvious than street crimes against people, but it is no less real and every bit as damaging. Massive, secret and illegal campaign contributions-seeking as they do, disproportionate impact on elections and bloated influence thereafter-distort the political process and dilute each citizen's political birthright. Similarly, the spectacle of the country's business elite buying up foreign officials in the name of profit undermines the moral foundations of the society.

Yet, wrist slapping is the usual and anticipated response to corporate criminality... In paying an average fine of $7,000, the firms prosecuted by the Special Prosecutor paid off their fines with about six seconds of corporate activity. Most of the executives prosecuted are either still presiding over their companies or are now living in extraordinarily comfortable semiretirement. And it is still not clear that foreign bribery even constitutes criminal conduct under the laws of the United States.

—Editorial, *New York Times,* September 9,1975

Anxiety about crime is an opportunity. Like most opportunities, it can be seized for good or for ill. It can be used, as it has been, for wind in the sails of those who would glide into power with meaningless promises.

—Gilbert M. Cantor, "An End to Crime and Punishment," The Shingle, p. 103

of George Jackson, who spent eleven years of his short life in prison—most of them in solitary-for the original offense of stealing $70, is now known the world over. His book Soledad Brother was hailed by distinguished critics here and abroad as "the voice of a free Black man in white America, letters that chart the spiritual and political growth of an extraordinary man" ... In contrast are the views of L.H. Fudge, associate superintendent of a California prison camp, who wrote in a confidential memorandum to his colleagues: "This book provides remarkable insight into the personality makeup of a highly dangerous sociopath, this type individual is not uncommon in several of our institutions. Because of his potential and the growing numbers, it is imperative that we in Corrections know as much as we can about his personality makeup and are able to correctly identify his kind ... this is one of the most self-revealing and insightful books I have ever read concerning a criminal personality."

—Jessica Mitford, Kind and Usual Punishment, p. 287

I charge that this so-called diagnostic study is a fraud, consisting of nothing more than the random and whimsical guesses and speculations of a team of men, most of whom know nothing at all about what they are doing. It would be just as valid to make judgements and assignments of prisoners on the basis of their astrological sign, their hat size or the last two digits of their social security number.

—Professor William Ryan, at hearings for the proposed Massachusetts Departmental

Segregation Unit and Classification Rules and Regulations, NEPA News, September 1974

The thing we have to get thru our skulls is that we cannot predict with any degree of accuracy who is going to be dangerous in the future. That is the one hang-up that the system has to get over. Every time they attempt to do this, it over-predicts to such a degree that the injustice practice far outweighs the protection gains.

—John Irwin, "Rehabilitation vs. Justice," Stanley L. Brodsky, ed., *Changing Correctional Systems*. Center for Correctional Psychology, University of Alabama, p. 57

Psychiatrists are rather inaccurate predictors—inaccurate in an absolute sense-and even less accurate when compared with other professionals such as psychologists, social workers, and correctional officials, and when compared to actuarial devices such as prediction or experience tables. Even more significant for legal purposes, it seems that psychiatrists are particularly prone to one type of error-overprediction. They tend to predict antisocial conduct in many instances where it would not, in fact, occur. Indeed, our research suggests that for every correct psychiatric prediction of violence, there are numerous erroneous predictions. That is, among every group of inmates presently confined on the basis of psychiatric predictions of violence, there are only a few who would, and many more who would not actually engage in such conduct if released.

- The law enforcement apparatus would purchase hardware to "combat" crimes of violence in the family.
- LEAA would commission studies to construct a profile of the family criminal.
- Political officeseekers would insist upon mandatory, lengthy sentences for family criminals and make political speeches declaring a war against all family criminals.
- Jails would be filledwith pretrial detained family criminals.
- Family criminal "treatment" programs would be measured for effectiveness based on recidivism.

It would not take long before exposure to such a daily media/law enforcement diet of violence in the home would raise the fears of the public to the extent that the family hearth would become as frightening a setting as the city street.

Or visualize the same media/law enforcement coalition zooming in on "crime in the suites" rather than "crime in the streets." The public would soon be clamoring for stiffer laws, penalties and controls on corporations if they digested a daily diet of corporate and collective crimes: overseas and domestic bribery; economic crimes; corporate pollution; unsafe conditions for workers and shoddy merchandise such as unsafe automobiles to name a few. But for obvious reasons of privilege and interests, the focus of the criminal (in)justice systems and the media is not on corporate crime.

> Each week brings a fresh disclosure of dubious corporate practice. The acknowledgement by Lockheed, a company operating by grace of a historic

the streets."

to a symbolic "war," then the transfer of the threat becomes all the more useful as a political strategy. Thus once again, we have a basis in fear which can be used for partisan purposes.[85]

Media manipulators

Abolitionists recognize that the public's image of what constitutes crime is grossly distorted by the powerful alliance between the criminal (in)justice apparatus and the media. Not only is it a major factor in shaping public views of crime, but it minimizes and deflects attention from the common kind of crimes one's neighbors commit and exaggerates and spotlights another less common kind"crime-in-the-streets "-which is presumably committed by "criminals."[86]

One can imagine the results, for instance, if that powerful media coalition chose to focus on the fact that in reality, *the level of physical violence is greater in the homes of America than on the streets:*[87]

- Child abuse, wife beating, father-rape of daughters, murder of spouses, murder of parents, murder of and by relatives and assault between family members would he front page headline news every day.
- Television news cameras would be trained on the family home instead of the street.
- Each year the F.B.I.would issue statistics indicating the highest family crime rate on record.

[86] William Ryan, **Blaming the Victim,** pp. 197-98.

[87] Murray A. Straus, "Sexual Inequality, Cultural Norms, and Wife Beating," paper prepared for International Institute on Victimology," Bellagio, Italy, July 1-12, 1975, p. 1: "I have documented the available knowledge which suggests, among other things… that if one is truly concerned with the level of violence in America, the place to look is in the home rather than on

—Alan Dershowitz, "The Psychiatrist's Power in Civil Commitments: A Knife that Cuts Both Ways," *Psychology Today*, February 1969, p. 47

Political considerations may also enter into the decision to overpredict dangerousness … If psychiatrists consistently erred in their judgement by predicting that patients would not become violent, when in fact some did, the psychiatrists would lose the power and right to exercise their expertise in court. By overpredicting they avert that tragedy, and no one pays any attention to the 20 or more harmless people locked up to prevent the 21st from committing violence.

—Henry J. Steadman and Joseph J. Cocozza, "We Can't Predict Who Is Dangerous," *Psychology Today*, January 1975, p. 35

The conclusion to emerge most strikingly from these studies [predicting violence] is the great degree to which violence is overpredicted… Of those predicted to be dangerous, between 65 percent and 95 percent are false positives-that is, people who will not, in fact, commit a dangerous act. Indeed, the literature has been consistent on this point ever since Pinel took the chains off the supposedly dangerous mental patients at La Bicetre in 1792, and the resulting lack of violence gave lie to the psychiatric predictions that had justified their restraint.

—John Monahan, "The Prediction of Violence," Duncan Chappell and John Monahan, eds., *Violence and Criminal Justice*, p. 20

> ... Our data while not conclusive, indicated that the "deviant offender" existed more in the minds of those responsible for labeling him as such than he does in the real world ... if anything [the data] indicated those labeled deviant by the prison staff were not significantly different than "normal" inmates in any respect except slightly more depressed. And one need not wonder why that should be the case ... In a statistical sense as far as the data showed the "deviant" shared no other characteristics with other "deviants" except the name and treatment afforded him by the prison staff ... it was my conclusion in looking at the data that far from being a group in any respect the "deviants" are as different from others in that group as they are the same. Obviously, a proposal to "treat" this group-since it is not a group in any meaningful respect-is nonsense, at least with regard to the inmates we saw.
>
> —Joan Smith, Dartmouth professor, letter to *NEPA News*, April/May 1974

Counteracting belief in predictability

It is clear after examining the data, that "experts" cannot predict dangerousness, either among prisoners or among the accused. In both cases, over-prediction means that untold numbers of innocent persons remain imprisoned, needlessly punished.

Despite our awareness of problems with predictability, the public's real emotional problem still remains. How can they be told that the "experts" they look to for protection cannot define

[2] Paul Warhaftig, "Prediction of Dangerousness-Does the Doctor Know Best? Or at All?" **Pretrial Justice Quarterly**, November 1975, p. 7.

> distrust of any "soft" policies that seem to imply concessions to, or appeasement of, the "other side." In each case, the very process of defining enemies seems to serve some important functions -psychological, social, or even economic—for the society confronting such wrongdoers.
>
> —Edwin M. Schur, *Our Criminal Society,* pp. 1-2

On some levels the war on crime can be viewed as a substitute for the struggle against internal communism during the 1950's. The same forces and interests in our society are ready to "do battle" with groups seen as "the enemy in our midst."

> If ever there is a heavy reduction in the expenditure on national armaments and the threat of external forces loses some power to persuade the public, it may be that this threat will be replaced by amplification of the threat of internal conflict ... It is not possible to make war on events, and crimes are events. It is possible to make wars on criminal or on "criminal classes" because criminals are persons. Further, criminals are a particular class of persons with whom no one would willingly identify ... They are anonymous; they are disorganized, they are a minority group which can be discriminated against without prejudice. They represent a very attractive group for powerful symbolic political propaganda and action ...The criminal is a "natural" outcast. If the analogy of the "war on crime" can suggest a transfer of focus from "real war" as the threat used to herd the public along,

[85] Leslie T. Wilkins, "Directions for Corrections," from an address to the American Philosophical Society, November. 1973, quoted in Christianson, p. 266.

Street crime has been officially identified as the major crime problem in the United States. For victims and residents in areas plagued by purse snatchings, muggings and robberies, street crime is a fearsome problem: the anxieties it produces are real and legitimate. Nonetheless, with the influence of the media, fear has been raised to a frenzied pitch. The fear of street crime threatens to destroy basic human freedoms-including the freedom from fear itself. Office seekers exploit fear as a political issue without dealing with the economic and social conditions which spawn crime in the streets. And with the bulk of governmental crime control resources directed against the perpetrators of street crimes, citizens are programmed into believing that more military hardware and firepower, longer prison sentences and "law and order" rhetoric somehow offer them protection.

Constant bombardment by the media's portrayal of crime and criminals must not mesmerize us into forgetting that the overall crime picture reflects public problems requiring structural change and collective social solutions, not military maneuvers. The "war on crime," a relatively new term, reflects the military perspective of the law enforcement apparatus and the "weapons" and strategies they employ.[84] The war problem and the crime problem exhibit striking similarities:

> In each case, strong social sentiments develop to support differentiation between the wrongdoers and the wronged.. a conception ... of the "good guys" and the "bad guys." In the case of war, as in the case of crime, it is widely believed that high values will be served by rendering the "enemy" his due. And, correspondingly, there is widespread

New York Times, September 20, 1975.

[84] See Scott Christianson, "The War Model in Criminal Justice-No Substitue for Victory," **Criminal Justice and Behavior, 1,** No. 3, September 1974, pp. 247-77.

who needs to be kept off the streets? The burden falls on judges, mental health workers and prison changers to take the lead in dispelling the myths of predictability of dangerousness.[2]

In the short range, we suggest three ways to begin to dispel the myths and deal with the concrete realities of defining, categorizing and responding to violent behavior:

1. Encourage research to reveal statistics on overprediction of dangerousness. Utilize the findings for public education.

2. Limit discretion by shifting the emphasis from "dangerous people" to violent behavior. Raise consciousness about cultural and institutionalized violence and support statutes that categorize violent crimes on the basis of harm done, rather than the individual lawbreaker's personal characteristics.

3. Actively challenge the concept of "special prisons" and classification procedures in general, which label certain prisoners as "special offenders." Such labels focus on the individual as a predictable, unchanging, "sick" and dangerous object requiring treatment rather than as a human being exhibiting behavior generated in part by the violent society of prison.

Research challenging overprediction

Research can be cited which points to the myth of dangerousness. Many studies have established the lack of proof of predictive skills on the part of psychiatrists and others. In advocating decarceration and excarceration strategies, the following studies are useful:

- *The American Psychiatric Association Task Force on Clinical Aspects of the Violent Individual*.[3] This report, released in November 1974, concluded that predictions of dangerousness are fundamentally of very low reliability. With few exceptions they are predictions of rare or infrequent events.

  The likelihood of the expected behavior, such as violation of parole by a released prisoner whose previous crime was violent or the possibility of serious assault being committed by a released mental patient, would be very slight. Even if an index of violence proneness could be developed to correctly identify prior to release 50 percent of those individuals who will violate parole by committing violent offenses, the actual employment of such an index would identify eight times as many false positives as true positives. This means that eight of the nine persons retained in prison as a result of application of the index would not have committed such offenses if released.

- *The Research Center of the National Probation and Parole Institute*[4] of the National Council on Crime and Delinquency. A study released in October 1972 follows the success and failure of more than 50,000 men thruout the country who were paroled in 1969. The rate of return for major crimes is not nearly as high as commonly believed -somewhere between five and eight percent in the first year, and presumably less after that, since the recidivism rate declines the longer parolees are on the street. Offenses involving violence—homicide,

[3] John R. Lion and Donald P. Kenefick, et al., "Clinical Aspects of the Violent Individual," **American Psychiatric Association News**, November 20, 1974.

[4] David F. Greenberg, "How Dangerous is the Ex-offender?" **The Freeworld Times**, January 1973, p. 11.

phase-out of institutionalization as a response to the sexually violent.

- Establish hot-linesfor all sexual assaulters, including child sexual abusers.

- Form community action groups to campaign against the sexual exploitation of women and children in pornographic films and literature and the use of children as prostitutes.[83]

Street crimes

> Most of us are not telling the public that there is relatively little the police can do about crime. We are not letting the public in on our era's dirty little secret: that those who commit the crime which worries citizens most-violent street crime-are, for the most part, the products of poverty, unemployment, broken homes, rotten education, drug addiction and alcoholism, and other social and economic ills about which the police can do little, if anything.
>
> Rather than speaking up, most of us stand silent and let politicians get away with law and order rhetoric that reinforces the mistaken notion that police-in ever greater numbers and with more gadgetry-can alone control crime. The politicians, of course, end up perpetuating a system by which the rich get richer, the poor get poorer, and crime continues.
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> —Robert J. Di Grazia, Boston Police Commissioner, *Parade,* August 22, 1976

[83] See Charlayne Hunter, "Four Seized in Smut Involving Children,"

are processed thru the criminal (in)justice systems and educational information in schools, churches, YWCA's, etc. describing the advocacy services so children know where they can go for safety.[78]

- Implement and promote the use of nonsexist, nonviolent educational tools into school curricula:[79] sexual and interpersonal assertiveness training,[80] sex and sexuality education, verbal and physical self-defense, consciousness-raising about myths and realities of sexual assault and rape.[81]

- "Caution must also be taught to children in a violent society, especially since children are naturally less wary of strangers than adults and lack experience and judgment. To instill awareness of potential dangers without terrifying or overly alarming the child should be the aim of every parent and others charged with child guidance ignorance of the reality of rape is as harmful as too many warnings … Children should be taught caution, not fear."[82]

- Establish child sex abuser re-educationprograms in the community, in prisons and in mental institutions. Promote the use of community programs and the gradual

[78] See Richard S. Johnson, "The Child-Beaters: Sick, but Curable," **The National Observer,** March 24, 1973.

[79] See Feminists on Children's Media, "Little Miss Muffet Fights Back," KNOW, Inc., P.O. Box 86031, Pittsburgh. Pennsylvania 15221, 1974. Also Marcia Federbush, "An Action Proposal to Eliminate Sex Discrimination (… in Schools)," KNOW, Inc., 1974: a practical. step-by-step handbook.

[80] See Stanlee Phelps and Nancy Austin, **The Assertive Woman** (Fredericksburg, Virginia, Impact, Book Crafters, 1975).

[81] See Alyce McAdam, "Self-Defense for Children," mimeograph paper, available from Alyce McAdam, 204 SE. 4th Ave., Gainesville, Florida 32601.

[82] Gager and Schurr, pp. 61-62.

manslaughter, forcible rape and aggravated assault -accounted for less than one percent (.79 percent) of the men returned because of new commitment or allegation of violent offense. Another 1.1 percent were returned for potentially violent offenses (armed or unarmed robbery). The bulk of returns are for various forms of theft and violation of alcohol and narcotics laws.

- *The Baxstrom Studies*[5]. In 1966, the U.S. Supreme Court ruled in *Baxstrom v. Herold* that Johnnie K. Baxstrom, who was sent to an institution for second-degree assault, could not be held in a maximum-security hospital for the criminally insane without proper judicial review for a longer period than he would have served in prison for the same offense. The decision resulted in the transfer of 967 patients from New York's two hospitals for the criminally insane to regular civil hospitals. These patients had committed or allegedly committed crimes, were considered dangerous, and were widely feared by the hospital staffs who had to house them in regular security facilities. Mental health officials were convinced that most of them would be so dangerous they would have to be returned to maximum-security hospitals, and if released, would be a threat to the community.

These patients were followed for more than four years after their transfer. Only 26 of them became troublesome enough to be returned to hospitals for the criminally insane. In a sample of 98 patients who were released, 20 were arrested, 11 convicted, but only two of the offenses could be considered dangerous: a robbery and an assault. If it hadn't been for the *Baxstrom*

[5] Henry J. Steadman and Joseph J. Cocozza, "We Can't Predict Who's Dangerous," **Psychology Today**, January 1975, p. 33. Also Henry J. Steadman and Gary Keveles, "Community Adjustment and Criminal Activity of the Baxstrom Patients: 1966–1970," **American Journal of Psychiatry**, Vol.

decision, almost 1,000 persons would have spent another five, ten or more years in hospitals for the criminally insane while only a tiny minority of them would have exhibited dangerous behavior after release.

> It is unfortunate but true that there are violent people in this society. Some of them are in positions of authority and they don't get arrested. Others get into fights and end up in jail. For the latter sort of person we need an environment that provides a minimum of hassle ... We will never solve the problem of the "hardened criminal" until we stop believing that criminality resides within the individual. People's actions are a response to the situations in which they find themselves.
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> —Robert Sommer, The End of Imprisonment, pp. 180–81

Other studies on similar populations have also found low rates of dangerous behavior. In 1968 P.G. McGrath reported the results of his study of 293 murderers who were released from Broadmoor Hospital in England. Not one killed again. Four years later only one had killed again. Moreover, said McGrath, in the past 50 years about 140 patients were released each year from Broadmoor, and only two had been convicted of murder since release.[6]

- *Uniform Parole Report Studies of Murderers.*[7] Nationwide statistics on parole performance, compiled by National Council on Crime and Delinquency, consistently show that paroled murderers are the best parole risks. Because,

129, September 1972, pp. 304–310.

[6] Ibid.

[7] "Questions and Answers," **Crime and Delinquency Literature,**

is reinforced. No *recidivism has been reported in the more than 250 families receiving ten hours of treatment or more.*

- Other benefits of this program include: Children are returned to their families sooner-90 percent within the first month. Self-abusive behavior by the children, usually amplified after an abusive situation, has been reduced both in intensity and in duration. About 90 percent of the marriages have been saved; many clients confide that their relationships are better than they were before the crisis.

- Increasing recognition by judges of the effectiveness of this program is leading to its use as an alternative to imprisonment.

- Two voluntary groups within the community have been founded as spin-offs of this program. Parents United was formed by three mothers in 1972 for mutual support. A parallel group, Daughters United, composed of girls 9 to 18 who have been sexually molested by their fathers or stepfathers, also meets weekly.

Recommendations for action

- Formation of child-advocacy centers to provide all children with an outside-the-family protective authority mechanism. This service should provide: a harbor house for physically and sexually abused children; an adult health-care advocate who visits each family with children regularly to provide at-home medical services and to detect incidence of child abuse, as is presently one aspect of Scotland's socialized medical care plan; special advocate-counselors for children[77] who have been sexually assaulted, and particularly for those whose cases

[77] See footnote 28.

abused. It operates as a unit of the Juvenile Probation Department and in close coordination with other law enforcement and human service agencies. Program objectives include:

- Providing immediate counseling and practical assistance to sexually abused children, their abusers and the families of both. In particular, to victims of intrafamily sexual molestation. Some cases involve only fondling, but the majority include rape.
- Coordinating all official services responsible for the sexually abused child and family, as well as private resources.
- Encouraging expansionand autonomy of self-help groups for child victims and their families.
- Training in co-counseling,self-management, intrafarnily communication and in locating community resources (medical, legal, financial, educational, vocational).

Self-management. This program is unique in that it is the only substantive attempt to apply the principles and methods of humanistic psychology to a serious psycho-social problem. CSATP employs a model that fosters self-managed growth of individuals rather than a medical model. Therapy includes individual counseling for the child, mother and father; mother/daughter counseling; marital counseling. which becomes key if the family wishes to be reunited; father/daughter counseling; family counseling and group counseling.

- The therapeutic approach includes procedures designed to alleviate the emotional stresses of the experience and the resulting punitive actions of the community.
- The program stresses that by punishing the abuser in the dehumanizing setting of the prison or other institution, the low self-concept/high destructive energy syndrome

from the viewpoint of the general public, the murderer is perceived as the most dangerous type of offender, it might be supposed that murderers as a group present grave risks on parole. In fact, this is simply not the case. *Parole Risks of Convicted Murderers*, a special UPR study of 6,908 paroled murderers released during 1965–1969 across the nation, showed that 21 (0.3 percent) committed murder again during the first year of parole. A total of 122 (1.77 percent) were found guilty of new major offenses. Compare this failure rate with that of 9.03 percent for all other type of lawbreakers.

- *The Center for the Care and Treatment of Dangerous Persons.*[8] A team of five mental health professionals, including two psychiatrists, made clinical examinations of individuals who had been convicted of serious assaultive crimes, often sexual in nature. These lawbreakers were assigned to special treatment programs after conviction and, at the time of the study, were eligible for release. Based upon the examinations, extensive case histories and the results of psychological tests, the team attempted to predict which individuals would commit assaultive crimes if released. These predictions of dangerousness were made prior to the court hearings at which the ultimate release decisions were made. Of 49 patients considered by the evaluating team to be dangerous and therefore not recommended for release, but who nevertheless were released after a court hearing, 65 percent had not committed a violent crime within five years of returning

National Council on Crime and Delinquency, June 1974, p. 232.

[8] Bruce Ennis and Thomas Litwack, "Psychiatry and the Presumption of Expertise: Flipping Coins in the Court Room," **California Law Review**, 62 (1974) p. 693. Also Harry L. Kozol, Richard J. Boucher and Ralph F. Garofalo, "The Diagnosis and Treatment of Dangerousness," **Crime and Delinquency**, October 1972, pp. 37192.

to the community. In other words, two-thirds of those predicted to be dangerous by a team of professionals did not, in fact, turn out to be dangerous.

Shifting the emphasis

The media constantly reinforces the belief that crime is a symptom of underlying psychic disturbance. This view has bolstered the assumption that criminality lies mainly within the individual. One of the difficulties with this conception of crime is that it is almost impossible to prove or disprove, at least in a systematic way.[9]

A primary theme in the sociology of crime emphasizes the learned nature of criminal behavior. Learning includes not only direct instruction, but also the long term influences of the socialization process. These are often quite subtle. All human behavior significantly reflects such influences, and criminal behavior is no exception.[10]

As an example, learned behavior is particularly evident with the violent crime of rape (considered at length in the next chapter). A sexist culture which devalues and objectifies women is certainly instructing consumers of that culture in violent sexual behavior. The problem of violent behavior will not be decreased or controlled merely by locking up rapists individually labeled "dangerous" while such practices in one form or another continue to be glorified by the culture. We can challenge many other obvious examples of societal instruction in criminal violence, not least among them the daily instruction in murder and assault on t.v. Our energies must focus on changing the violent message emanating from the culture. Cultural values and behavioral patterns can be changed through broad, systematic public re-education and resocialization.

[9] Edwin M. Schur, **Our Criminal Society**, pp. 6667.

[10] **Ibid.** , pp. 96–97.

—*Yvonne M. Tormes Child Victims of Incest,* a pamphlet produced by the Children's Division of The American Humane Association

In order to promote sexual self-determination and to combat the "training in silence and fear, we advocate the following rights for children:

- Right to information about sex and sexuality-birth control, reproduction, pregnancy. venereal disease, sex roles, homosexuality, heterosexuality and bisexuality.
- Right to nonsexist child-rearing and education.
- Right to freedom from sexual exploitation and sexual abuse by adults, adolescents and other children.[76]

Few girls reach adulthood without being sexually victimized-and taught to tolerate it. These childhood molestations vary according to place, amount of force used and relation of the victim to the attacker. They include the "depantsing" rituals of young boys who attack a girl; the hostile attacks by men of all ages who corner children in movie theaters, parks and subways, selecting one victim after another; the more violent assaults of oral, anal and vaginal rape; the unwanted irritating and humiliating touching and fondling heaped on children by strangers, friends of the family, acquaintances, schoolmates, relatives.

Child Sexual Abuse Treatment Program

A constructive community service program in San Jose, California responds to the needs of both child sexual abusers and the

[76] See National Council on Crime and Delinquency, "Some Facts on Juvenile Crime." **Harper's Weekly,** May 9, 1975: Òin 1973... more than nine percent of rape arrests were youngsters under 16 years of age."

rare-based on evidence of studies of child sexual abuse-for a child to have a pleasurable, noncoercive, nonpressured sexual experience with a teenager or adult. Most children under 11 or 12 are not emotionally or intellectually equipped to make a decision to consent to a sexual relationship with an adult, stranger or family member.

Children generally are not educated about their own or adult sexuality. Neither are they provided with information on pregnancy, birth control, venereal disease, abortion, sexual arousal, homosexuality, heterosexuality, bisexuality, or their right to refuse advances from authority figures and their right to speak out against sexual abuse.

Fathers, brothers, uncles and grandfathers generally hold a position of power within the family. To many children within our patriarchal culture, such male authority appears absolute. In fact, father-rule, the taboo against interference with paternal authority, probably predates the incest taboo.[75]

Training in fear & silence

> ... (Child rape) is not, by any means, the only unacceptable household condition (apparent in incest families). Chronic brutality and alcoholism are the two most frequently cited complaints (from mothers and daughters). The home is portrayed as an abode of constant fear and friction All of the children in these families claimed to have submitted to the fathers' sexual demands either because of personal threats to them or fear of future violence. In the words of a twelve year old victim: "He is twice as big as I am ... I can't fight with him. I've seen him beat the hell out of my mother who's as big as he is! Why won't he beat the hell out of me?"

[75] See Reed, pp. 433-34, 447-64.

Prison: More dangerous than prisoners

There is little disagreement that for those very few people who exhibit continual violent and aggressive behavior in society, temporary restraint is not only indicated but demanded. Review and monitoring procedures can be designed with adequate due process safeguards.

We believe the public can be educated to recognize that dangerousness cannot he clearly predicted, but that violent acts, both individual and collective, can he enumerated. We believe also that most citizens will support the constitutional guarantees that people are innocent until proved guilty, and that no one can be deprived of freedom for what they might do in the future only because of what they have done in the past.

The danger of needlessly denying an individual his/her liberty is far greater than the risk of freeing certain individuals who may again commit violent acts. The dangerousness of prison exceeds that of the combined dangerousness of each and all of its prisoners.

We are clear that no one should ever be excluded from humane conditions or the opportunity for changing violent, physically harmful behavior. Prisoners speak clearly to this point:

> The guiding principles of the phaseout of the old] and introduction of the new but ever-adapting system are: No single individual must be excluded as an incorrigible problem. States must not ship out their "problem "prisoners to other places. That is not a solution; it is a cover-up for a fundamentally unworkable program.
>
> It is a social atomisni; it is a rat psychology; it is the first stages of '84 and Clockwork Orange; it is fascism, the expendability or final solution of human beings. The so-called incorrigible prisoner, or "completely" insane person is precisely the

measure of the depths of the challenge and must be faced and touched and transformed, no matter what the cost, for she or he is who we are in the furthest reaches of our humanity.

—The Action Committee, Walpole Prison, Massachusetts, NEPA NEWS, March! April 1975

- 97 percent of abusers were males. They ranged in age from 17 to 68. They tended to victimize children of their own race.

- In 75 percent of thecases the abuser was known to the child and/or to the child's family: 27 percent of abusers were members of the child's own household—a father, stepfather or mother's lover. 11 percent were related to the child by blood or marriage, but did not live in the child's household. 25 percent were strangers. Other abusers were friends or acquaintances.

- Victims ranged from infants to age 15. The median age was 11. Victims were on a ratio of ten girls to one boy.

- Two-thirds of the child victims were found to be emotionally damaged by the occurrence, with 14 percent severely disturbed. 29 of the 263 victims became pregnant as a result of the offense.

- The criminal code, which defines sexual abuse of children as a crime, is intended to act as a deterrent to the commission of such crimes by punishing violators. It is not its purpose or intent to protect the child victim from the consequences of such crimes.

Can a child consent?

The issue of age of consent is an extremely difficult one. Consent should be an issue only when a child repeatedly denies that s/he has been sexually abused. Even in such cases, children may be attempting to protect a family member or avoid further humiliation or parental anger.

Children, teenagers and adults are all sexual beings and should have the right to express their sexuality as they do other facets of their personalities. It is possible, tho probably

to those condoning and rationalizing rape of adult women. These myths imply that:

- Sexual assault of a child is akin to a "sexual relationship" with a child.
- Men who sexually abusechildren do so because they are sexually deprived; they are basically nonthreatening males who prefer children as sexual partners or who "can't find" an adult partner.
- Female children often"act out" their sexuality by "seducing" an older male (a myth which places the onus of guilt on the child).
- Early sexual victimization usually has no long-lasting physical or psychological effects on the child.

Child victimization study

A sample group of 263 cases in Brooklyn, N. Y. were studied by the American Humane Association.[74] Major findings include:

- Sexual abuse of children by adults knows no economic, social or racial boundaries. Middle class families, however, are usually shielded from the probings of social services agencies. They do not often appear in statistics.
- 60 percent of thechild victims studied were coerced by direct force or threat of bodily harm. In 25 percent the lure was based on the child's natural loyalty and affection for a friend or relative. 15 percent were based on tangible lures.
- In 41 percent of the cases the offenses were repeated, and were perpetrated over periods of time ranging from weeks to as long as seven years.

[74] The material in this section is excerpted from Dc Francis.

8. New Responses to Crimes with Victims

When abolitionists urge alternatives to imprisonment, invariably the cry is raised, "But what about the rapist? What about the street criminals? What would you do with them?"

Because prison abolitionists must face the challenge of finding nonincarcerative solutions to crimes that are brutal and damaging, we will consider them here. Our study convinces us that genuine solutions to the problem of rape and other violent crimes are in no way related to imprisonment of offenders. Prison merely punishes individual scapegoats but does not address the collective responsibility for culturally or economically induced behavior. Instead, efforts to prevent crimes with victims must be directed toward changing social conditions which foster criminality and empowering victims to resist victimization.

The majority of street crimes, for example, are committed by the poor against the poor—a powerless class. Street crimes are predominantly economic crimes rooted in the inequities of the system, and they will increase as unemployment and inflation rise. Solutions are bound up in systemic change: there will be no more crimes of the poor when there are no longer any poor.

Likewise, we have discovered that the roots of criminal violence toward women and children lie deep within the culture of this society. Thus, prevention of the crime of rape must be directed to changing social conditions which foster violence and sexism. Tho the victims of the crime of rape are justifiably angry, the focus of that righteous anger should not be dissipated

in pursuit of the (non)solution of caging rapists. Rather energies should be directed toward true solutions of this ugly community problem. These include changing values and attitudes about girls and women and creating the kinds of community alternatives that provide opportunities for re-educating and re-socializing rapists and other potential sexual aggressives.

All physical threats of violence must be dealt with seriously by both the community and individuals. It is unacceptable to be physically harmed by another person, whether that violence comes from the rapist, police officer, armed robber, organized crime or the government. Victims have been perceived as powerless beings waiting to be preyed upon. But slowly, this is changing: victims are refusing to be victims any longer. *Victims are bringing about the new response, not thru a law enforcement/war model, but thru a victim empowerment model—a liberation model.* Based on an authentic analysis of their circumstances and empowered by concrete nonviolent acts, victims are learning that *they* can change their situations.

Unprecedented victim-empowerment lessons can he learned from the development of the feminist rape crisis and child advocacy movements. This class of victims is gradually bringing about change. Because their experiences should set an example for new responses to other crimes with victims, we have chosen to examine the crime of rape in some depth. The analysis of rape and of street crimes on the following pages is from the victims' perspective—an angry perspective-one rarely heard publicly.

As we examine the crime of rape, we are overwhelmed by the diversity of our discoveries and how much they reveal about present realities and future hopes for justice. We discover the depth of violence in our culture. We discover the intricate web of myths surrounding the powerless. We discover the biases of penal codes and legal procedures that favor the powerful. We discover the ideology of "blaming the victim." We discover the beginnings of a movement for

> not reported; if reported, a larger percentage are dismissed for lack of proof, and when proof is established many are dropped because of the pressure and humiliation forced on the victim and family by the authorities.
>
> —Florence Rush, "The Sexual Abuse of Children: A Feminist Point of View," in Rape: The First Source book for Women, p. 70

Figures that are available, coupled with reports from women who are now beginning to speak out about childhood sexual victimizations, indicate that "the national annual occurrence of these crimes must reach an alarmingly large and unbelievable figure."[69]

Dr. Vincent De Francis, Director of the Children's Division of the American Humane Association, estimates that some 100,000 children are sexually abused each year.[70] Sociology professor Dr. John H. Gagnon, formerly of the Institute of Sex Research, calculated that as many as half a million girls are sexually victimized every year.[71]

A conservative estimate of the New York City incidence is approximately 3,000 cases per year.[72]

Myths of sexual abuse of children

In addition to the paucity of statistical data, there is little research and analysis of the circumstances, nature and after-effects of child sexual assault and rape. Where studies do exist they almost inevitably perpetuate myths[73] similar

[69] Ibid., p. 2.
[70] See Gager and Schurr, p. 30.
[71] **Ibid.**
[72] De Francis, p. 1.
[73] See Gager and Schurr, pp. 29-57.

own ward government apparatus. Dr. Boozer's only rules are "no violence and strict confidentiality."

Evaluation. Abolitionists may challenge Dr. Boozer's reliance on a medical model with all the psychological trappings of individualized treatment administered within the confines of a mental institution. Despite this, the program has many praiseworthy aspects: It serves as an alternative to prison caging. It is based on recognition that sexually aggressive behavior is socially and culturally learned. It seeks to re-educate and resocialize sex offenders, it is based on the concept of self-help. Rape victims and feminist anti-rape workers from the community take part in "rap" sessions. Additional community self-help programs have been generated by former residents.

New responses to sexual abuse of children

Information on the incidence of sexual abuse of children is almost nonexistant. The F.B.I. Annual U.C.R.s flow over with data about auto theft and larceny, but carry no breakdown of the total incidence of all crimes against children. "What makes an assessment more difficult is the fact that, except for the rare case or the particularly brutal attack, or the fatal situation, cases of sex offenses against children are not generally publicized by the press."[68]

> A sexual assault on a child constitutes a gross and devastating shock and insult sexual offenses are barely noticed except in the most violent and sensational instances. Most sex offenses are never revealed; when revealed, most are either ignored or

[68] Vincent De Francis, **Protecting the Child Victims of Sex Crimes Committed by Adults** (American Humane Association, P.O. Box 1226, Denver, Colorado, 1969) p. 37.

victims, self-empowered, self-defined. We discover responses that provide a whole new range of services to victims and victimizers. And we discover the enormity of the tasks before us.

Crimes against women & children

Rape: Myths & realities

The data in this section is based not only on research by scientists, but also on first-hand reports by rape victims and workers in rape crisis centers.

Myth: A rapist is a sexually unfulfilled man carried away by a sudden uncontrollable surge of sexual desire.

Reality: A rapist is a man whose sexuality finds its expression in domination, control and degradation of a victim. The majority of rapes are planned in advance.

This myth rationalizes rape and excuses the rapist by arguing that rape is an impulsive act, innate and universal-an aspect of "animal nature," motivated by sexual needs which cannot go unfulfilled. This is not borne out by cross-cultural studies; they suggest that male aggression and hostility expressed thru sexuality are culturally induced, learned behaviors rather than man's "natural" instinct.[1]

Both victims' experiences and independent interviews with rapists strongly suggest that the desire to control, humiliate and violate is a primary motivation in rape.[2]]This theory partially coincides with findings from limited studies conducted at

[1] Margaret Mead, **Sex and Temperament in Three Primitive Societies** (New York, Mentor, New American Library, 1935) pp. 23,80-81. The Arapesh tribe in New Guinea is a rape free society.

[2] See Andrea Medea and Kathleen Thompson, **Against Rape** (New York Farrar, Straus and Giroux, 1974) pp. 21-23. Also Diana E. H. Russell, ed., **The Politics of Rape: The Victim's Perspective** (New York, Stein and Day, 1975) pp. 71-116.

prisons and mental institutions. Of the convicted rapists studied, most seem to be motivated by feelings of contempt and hostility toward women and by a variety of rage-producing conditions in their lives.[3]

In a culture where masculinity is equated with control, force, dominance, power, strength and competitiveness, rape is an extreme acting out of these qualities. Insofar as sex is an area where these attitudes about masculinity are most intensely expressed, sexuality does play a part in the rapist's act of aggression.

Myth: Rape is impossible without the woman's consent.

Reality: Women do not consent to the act of rape.

This myth is one expressed by doctors, defense lawyers, police officers and district attorneys and perpetuated by the media. It is expressed in "jokes:" "a woman with her skirt up can run faster than a man with his pants down."

This myth is used to place the burden of guilt on the woman, by implying that she somehow agreed to or invited her victimization. Victims are knocked unconscious, they are attacked by surprise, they are threatened with death or serious physical harm, drugged, threatened with guns and knives, physically beaten into submission and psychologically terrorized into passivity. Frequently a rape victim's greatest fear is that she will be killed.

Myth: Women who are raped usually have provoked the attack.

Reality: A rape victim is not responsible for the fact that she is attacked.

"Blaming the victim" is used as an argument to shift blame from the rapist to the victim. It is often combined with moral judgments of the victim's character ("Are you a virgin?" "Do

[3] See Ann Wolbert Burgess and Linda Lytle Holmstrom, **Rape: Victims of Crisis** (Bowie, Maryland, Robert J. Brady Company, Prentice-Hall, 1974) pp. 21-33.

touch with the extent of the effect he has had on his victims and himself and by teaching positive social skills and techniques.

Program. Self-help. No drugs, no guards, no bars. A 24 hour a day, seven day a week, intensive self-operating group behavior modification therapy effort in which sex offenders work together, go to school together, counsel together and live together in a controlled therapeutic community. Minimum residence: two years.

This program is based on behavior modification learning theory and research. The basic assumption is that sexual deviations are learned behaviors. A change in social influences can result in changing behavior which is culturally developed. Sexual violence and aggression are viewed as habit-forming, similar to drug addiction.

Dr. Boozer believes that chemotherapy and aversive conditioning, such as imprisonment, reinforce the sex offender's avoidance patterns rather than producing an actual change in behavior. Thus they tend to increase the sex offender's problems. Her program stresses positive reinforcement.

Participants in the program include rapists, child molesters, men who have sexually assaulted their children, voyeurs and exhibitionists. Altho Dr. Boozer is hesitant to generalize about these men, she cites a few similarities: They are loners, unable to relate to other adults, especially women, in a socially acceptable manner. Most of them fear women and use forced sexual contact to hurt and degrade them. They also generally fear authority figures. They see sex not as an end but as a means to relieve feelings of frustration, anger and hostility.

From the outset the sex offenders helped develop their own program. They established guidelines, taking into account their own needs as well as the needs of others, with little guidance from staff. External security is minimal: The men police themselves, maintaining an around the clock "fire watch" to prevent escapes. Outside of regular hospital rules, participants vote on rules and settle infractions within their

my contacts with police, hospital, attorneys, court, family, friends? Is the act of rape motivated by sexual desire or anger? Is it mainly sexual or aggressive? Is rape an act against the victim, against women generally, against society or what? What motivates a man to rape?

After listening to victims discuss these topics, BEAD participants discuss their ideas on the subject. These discussions are taped for the victims who then tape their response and so on.

Treatment Program for Sex Offenders

Ten years ago Dr. Geraldine Boozer, clinical psychologist at South Florida State Hospital in Hollywood, Florida designed an innovative program for sex offenders.[67] The Treatment Program for Sex Offenders was developed in the belief that it is implausible to resocialize sex offenders when they are housed with "mental patients" and in an institution. Exhibitionists, voyeurs, child sexual abusers, men who have raped their daughters and multiple rapists are jumbled together with other "mental patients," both violent and unviolent, incarcerated for a variety of "problems." For the most part patients were warehoused and inappropriately drugged. Initially there was much resistance to the program by the administration, but in 1971 Dr. Boozer finally obtained separate physical facilities for the program, which now involves 30 men. She believes that the vast majority of sex offenders are not psychotic. Emotional difficulties experienced earlier in life manifest themselves in sexually deviant behavior.

Objectives. To serve as an alternative to prisons for apprehended sex offenders and as a community service to those willing to volunteer. To resocialize participants by increasing each man's sense of self-worth and self-esteem by putting him in

[67] Material in this section based on Geraldine Boozer, "Offender Treatment: Programming Ideas," in Walker, pp. 131-32.

you sleep with men other than your husband?") to claim that she should he denied legal rights, implying that she must have provoked the sexual encounter.[4]

From this viewpoint it is argued that there is something psychologically different about victims and nonvictims of rape. "Good girls don't get raped." "What were you wearing?" "Why did you get into his car/his apartment/walk home alone?" Essentially these questions establish victim guilt. "You were leading him on and asking for it."[5]

Children of all ages, men and boys in prisons and juvenile homes, babies, and pregnant or handicapped women have all been victims of rape as well as young women who may be "attractive" or "beautiful" by male definitions. Rapists themselves say that the victim's availability and vulnerability made her a prime target, not her individual "beauty" or "provocative" manner.[6]

Myth: Rapists are pathologically sick and perverted men.

[4] See Julia R. Schwendinger and Herman Schwendinger, "Rape Myths: In Legal, Theoretical and Everyday Practice," Crime and Social Justice, Spring/Summer 1974. See also, Cathie Woolner and Robin Rich, "Rape: Old Myths Endure," **Valley Advocate,** Northampton, Massachusetts, May 15, 1974: "According to a Missouri attorney who handled U. Missouri rape cases, 'Many juries will acquit a man for raping his date in a parked car-even when he admitted it was rape-maintaining that the girl shouldn't have put herself in the situation in the first place.'...In a New York City case where a woman had dinner with a man in his apartment and was later raped by him, the D.A. stated a woman can't go three steps and not expect to go the fourth.'"

[5] See Susan Brownmiller, **Against Our Will: Men, Women and Rape** (New York Simon and Schuster, 1975) pp. 312-13. "The popularity of the belief that a woman seduces... a man into rape, or precipitates a rape by incautious behavior, is part of the smoke screen that men throw up to obscure their actions. The insecurity of women runs so deep that many, possibly most, rape victims agonize afterward in an effort to uncover what it was in their behavior, their manner, their dress that triggered this awful act against them."

[6] See Medea and Thompson, p. 23. Also Russell, pp. 44-51.

Reality: Men who force a woman to have an unwanted sexual encounter are indistinguishable from the general male population.

This myth has been used to obscure the fact that our culture encourages aggression in males, especially sexual aggression. In addition, typing the rapist as a "murderous sex fiend" serves the function of keeping women frightened and submissive[7], yet unaware of the most common source of danger-the men in their neighborhoods and homes.

Until recently, sociological and psychological research conducted on convicted rapists tended to verify this myth, focusing on psychological characteristics, family background and "criminal subculture" of the rapist rather than dominant cultural factors and norms which might encourage sexual aggression against females.[8]

The scanty information we do have, however—F.B.I. U.C.R. statistics, recent sociological studies, statistics and information from rape crisis centers, and interviews with victims and rapists-all refute the myth of the psychologically deranged rapist. Altho the psychotic rapist does exist, as does the psychotic murderer, he is the extreme exception. Listening to victims and to the few rapists who have spoken out, we discover that there is no "typical" rapist but that he is less likely to be a "deviant sexual psychopath" than a married businessman, a street-wise teenager or a fraternity brother.

> Those men (rapists) were the most normal men there (San Luis Obispo prison). They had a lot

[7] See Lilia Melani and Linda Fodaski, "The Psychology of the Rapist and His Victim," in Noreen Connell and Cassandra Wilson, ed., **Rape: The First Sourcebook for Women** (New York, New American Library, 1974) pp. 82-93.

[8] See Murray L. Cohen, et al., "The Psychology of Rapists," **Seminars in Psychiatry,** August 1971. Also Gladys Denny Schultz, **How Many More Vic**tims? Society **and the Sex Criminal** (New York, J.B. Lippincott, 1965) pp. 138, 317.

SOANON weekly meetings are similar to those of Alcoholics Anonymous. Sex offenders' wives and women friends are encouraged to attend. The group has won court approval to work with sex offenders ranging from rapists to voyeurs. Of the approximately 50 members, the majority are referred from the criminal (in)justice systems, either as a condition of probation or parole.

Sexuality re-education: BEAD

BEAD-Behavioral, Emotional and Attitudinal Development-program was established in 1974 at the Minnesota Security Hospital. This trial program involves two 15-man groups of sex offenders. Crimes they have been convicted of range from aggravated rape to seduction of children.[66] In addition to group therapy and individual counseling, this program consists of two innovative reeducational projects: a comprehensive sex education program and a tape-exchange program with victims of rape.

All the men participate in sex education classes with an equal number of young women and men from the community. Starting with an information-giving approach to sexuality, the eight-week course stresses understanding and appreciating various behaviors, feelings and attitudes. Interpersonal affectionate relationships, the distinction between fantasy and action and the mutual responsibility sex partners have toward one another are examined.

Rape tapes. Four sessions focus on tape recorded discussions between BEAD participants and rape victims in Minneapolis. The tapes deal with victim topics: How do I feel personally about my rape experience? What experience did I have to go thru because of the rape? How did I feel about

[66] See "The Experimental Phase of the BEAD Program for Sex Offenders at the Minnesota Security Hospital, 1974–1975," mimeograph paper available from BEAD, MSH, St. Peter, Minnesota 56082.

profit corporation existing solely on donations and fund raising.

Objectives. To develop an analysis of the causes of rape. To re-educate the sexually violent with the goal of eliminating rape. To function as a re-education program within prisons, exchanging information and working with anticrime and feminist groups, rape crisis centers and sex offender programs in other prisons.

Activities. Weekly consciousness-raising sessions are held for interested prisoners. Collectively taught classes open to the public are held Friday nights at Lorton Prison. With the D.C. Rape Crisis Center, PAR worked on a curriculum for junior high and high school rape education seminars.

Sex Offenders Anonymous

In 1971, Richard Bryan, a former compulsive exhibitionist, and Rosemary Bryan, his wife, began to meet with other former sex offenders and founded a unique self-help nonprofit group in Los Angeles called Sex Offenders Anonymous, SOANON.[65]

> Our aim is to shut off the modus operandi of the sex offenders. We make sure they aren't left alone all day seven days a week. It's like baby-sitting. If a man has a wife or girl friend, she has to do the watching, but if it's a single guy the other members do it. We have a permanent crisis line to organization headquarters. If a single member calls and says he is ready to go out and commit a crime, we go over to stop him.
>
> —Richard Bryan, quoted in Gager and Schurr, p. 253

[65] See Gager and Schurr, pp. 253-54.

> of hang-ups, but they were the same hang-ups as men walking the street.
>
> —Alan Taylor, parole officer, quoted in Pat Miller and Joanne Parrent, "Some Factual Information," in Kathy Barry, *et al.,* ed., *Stop Rape* (Ann Arbor, Michigan, Women Against Rape, 1971) p. 2

Myth: Most rapes occur on the street or to women who hitchhike.

Reality: About half of reported rapes occur in the victim's home.

The Denver Anti-Crime Council study, "The Crime of Rape in Denver," revealed that in 41.2 percent of cases studied, the victim was either at home engaged in routine daily activities or sleeping when the rape was initiated; in 26 percent of cases she was attending a recreational or sports activity and in less than five percent she was hitchhiking.[9]

Myth: The typical rapist is a stranger to the victim.

Reality: Victims are raped by acquaintances, neighbors, family friends, dates, boyfriends, lovers, fathers, brothers and uncles as well as by strangers.

"Shadow" statistics, documenting cases which were not reported to police but to rape crisis centers, friends, private physicians, psychiatrists and mental health centers, are not included in official studies. Cases of wife-rape for instance, never appear in official statistics because by the legal definition of rape, a husband cannot rape his wife. Women who are raped by friends or ex-husbands are extremely reluctant to report due to widespread insensitivity and harassment by police and courts.

[9] Thomas A. Giacinti and Claus Tjaden, **The Crime of Rape in Denver: A Preliminary Report on the Findings of 965 Cases of Reported Rape in a Two Year Period** (Denver, Colorado, Denver Anti-Crime Council, 1313 Tremont Place, 1974) p. 3.

Despite these inhibitors, most studies on victim/rapist relationships indicate that the rapist is as likely to be a man known to the victim as he is to be a stranger.[10]

Myth: Most rapes are committed by Black men against white women.

Reality: Most rapes involve a man and woman of the same race.

In addition to the majority of rapes being intraracial,[11] Black women appear to be the victims of rape four times as often as white women.[12] Again, these statistics are based on cases of *reported rapes*.

Myth: An imbalance in the sex ratio causes rape; legalizing prostitution would reduce rape.

Reality: Rape is primarily motivated by the man's "need" to control and humiliate a victim, not by his "sexual need."

The sex ratio theory states that men resort to rape because they are unable to secure legitimate sexual partners. It goes

[10] See Joseph J. Peters, M.D., "Social Psychiatric Study of Victims Repotting Rape," American Psychiatric Association 128th Annual Meeting, Anaheim, California, May 7, 1975. This study conducted at the Philadelphia Center for Rape Concern in 1973 showed that of the sample group of 369 reported rape cases, 78 percent of the child victims and 62 percent of the adolescent victims knew their attackers. Only 29 percent of reported adult victims knew the man or men who raped them. Also Donald J. Mulvihill et al., **Crimes of Violence, A Staff Report to the National Commission on the Causes and Prevention of Violence** (Washington, DC., U.S. Government Printing Office, 1969) Vol. II, p. 217. This study showed that 46 percent of rapists knew or were related to their victims.

[11] See Mulvihill, et al, pp. 209-12. Also Susan Brownmiller, pp. 210-55, suggests that the incidence of Black on white rape may actually be up in the 1970's from the late 1950's due to increased racial hostility. Another possibility is the fact that Black women, especially those victimized by white men, are traditionally met with racist as well as sexist cruelties at the hands of police and the courts, and knowing this, they are extremely reluctant to report their victimizations to hospitals or police.

[12] See **Report of the National Advisory Commission on Civil Disorders** (New York, Bantam, 1968) p. 267.

gram can only focus on a highly select group of sex offenders. The clients are disproportionately Spanish-American.

Thus, such programs cannot have strong impact on the problem of sex offenses until ways are found to include the full range of persons needing their services. The overwhelming majority of sex offenders, white or Black, middle class or poor, college professor or teenage drop-out, will not easily admit they have a "problem" or that the "problem" is a brutal crime.

Despite this inherent limitation, as a community-based service to sex offenders, Alternative House is unprecedented in that it avoids the violent (non)solution of caging.

Prisoner self-help: PAR

Prisoners Against Rape, Inc. is a prison based anti-rape program. It was founded by two prisoners at Lorton Correctional Complex, Virginia in September 1973.[64] The group is composed of prisoners at Lorton and Occoquan, Virginia and the Washington, D. C. jail (some of whom are ex-sex offenders), feminists from anti-rape groups and other interested community members.

The first year of PAR was devoted to consciousness-raising by the imprisoned members. They dealt with their motivations for raping, the politics of rape, attitudes toward women and sexuality and myths and realities of rape. They believe that prisons don't prevent rape; at best they simply forestall heterosexual rape while fostering homosexual rape and enhancing existing perversions.

From the beginning PAR has functioned as a self-help group without support of the prison authorities. Today it is a non-

[64] Information on the origins and goals of PAR is drawn from "General Information Pamphlet," Prisoners Against Rape, Inc., P.O. Box 25, Lorton, Virginia, 22079. Also Larry Cannon and William Fuller, "Prisoners Against Rape," **Feminist Alliance against Rape Newsletter,** P.O. Box 20133, Washington, D.C. 20009, September/October 1974.

receive individual therapy. Half receive both individual and group therapy. One-third receive additional family or marital counseling, which is strongly encouraged when the family remains together.

The thrust of the counseling with nonaggressive offenders lies in getting them to examine their sexual and social roles. Group focus is generally in the area of sexist stereotypes and assumptions. Relating more fully and more openly to both women and men is encouraged, as well as asking them to empathize with victim reactions.

The majority of nonaggressive clients during the past two years have responded positively to therapy. Approximately 85 percent leave the program with what staff considers "improved life styles." Unfortunately, due to lack of funding, Alternative House does not have sufficient staff to conduct systematic supportive follow-up of men who leave the program,[62] but clients are urged to continue to use the program as long as they need.

Since the program started, three clients have been charged with rape. However, one of the men had spent five and another 13 years in prison before coming to Alternative House. Community reaction to these charges is hard to determine, but the program did not receive negative press as a result of these incidents.[63]

Contradictions. As with most crimes, rape and other sex offenses are committed by men of all races, from all walks of life-rich men and poor men, well educated and illiterate. Yet those who are prosecuted for these offenses tend to be on the poor, non-white, poorly educated end of the spectrum. Since Alternative House is funded as an offender program, it offers services primarily to those channeled thru the criminal (in)justice systems. For this reason, the community-based pro-

[62] From telephone interview with Wally Crowe, coordinator Sex Offender Treatment, Alternative House, Inc., April 27, 1976.

[63] **Ibid.**

hand in hand with the theory that legalizing prostitution would decrease rape.

A variety of studies refute this myth. Three cities which allowed open prostitution experienced a decline in rape after prostitution was again prohibited.[13] Rapists include men who do not patronize prostitutes. Rapists include men who have "girlfriends," or are married, or living with women.[14] Statistical studies of reported rapes show that the majority of rapists are well below the age of males who most frequently use prostitutes. Finally, in Vietnam, brothels for the American military were officially sanctioned and incorporated into the base-camp recreation areas and yet G.I. rape and sexual abuse of Vietnamese women and girls is one of the most atrocious chapters of violence in U.S. history.[15]

Myth: A woman cannot be raped by her husband.

Reality: Women can be and frequently are raped by their husbands.

Any act of forced sexual penetration is rape, regardless of the victim's relationship to the attacker. The law of "spousal immunity" is a direct result of the patriarchal concept of woman as "the property" of her husband.

By defining rape as not possible within marriage, the law implies that the marriage contract involves blanket consent to sexual relations at all times, and that a husband has a lawful right to copulate with his wife against her will. Women, married or single, have the constitutional right to freedom and selfdetermination, but some penal codes deny these rights to married women and women "living with" men.

Myth: Women enjoy being raped.

Reality: Rape is a brutal act of violence in which the victim is humiliated, degraded, psychologically terrorized and of-

[13] See Schwendinger and Schwendinger.

[14] See "She Loves Rape," **Off Our Backs,** May 1975.

[15] See Brownmiller, pp. 86-113.

ten threatened with death.[16] No rape victim-woman, man or child-enjoys rape.

The concept that women enjoy sexual violence at the hands of men is a male concept of female sexuality. Freud was the first to theorize that rape is something women desire and that women are masochistic by nature.

The majority of rape victims express a primary feeling of fear-fear of physical injury, mutilation and death. They suffer a wide gamut of physical and emotional reactions. Rape severely disturbs the victim's normal lifestyle. Sleeplessness, nightmares, lack of appetite, fear of being alone, fear of leaving their homes, reliance on tranquilizers, physical soreness, broken ribs and internal injuries are some of the aftereffects following a rape.

The victimization of women

A renewed awareness of the social, economic arid political oppression of women occurred during the 1960's. This process took place largely thru women's consciousness-raising groups which met informally in homes from Miami to Seattle in what was part of the larger Women's Movement. Consciousness-raising is "the process of transforming the hidden, individual fears of women into a shared awareness of the meaning of them as social problems, the release of anger, anxiety, the struggle of proclaiming the painful and transforming it into the political ...[17]

Women began to realize that the threat of rape and sexual molestation had restricted their entire lifestyles. Further, they discovered that their personal victimizations were not examples of isolated social problems but part of a consistent pattern.

[16] See Metro's Rape Awareness Public Education Program, Miami, Florida, After the Rape: A Report Based on Responses from Victim of Sexual Assault, 1974, pp. 18-26.

[17] Juliet Mitchell, Woman's Estate (New York, Vintage, 1971) p. 61.

public defender's office, district court judges or the parole department. The next largest referral source is attorneys representing men arrested on sex crime charges.

When the program was initiated, it primarily served "nonaggressive" offenders such as exhibitionists, voyeurs and child sexual abusers who did not use physical violence against the child. However, as the staff gained experience and the program gained credibility, offenders who had engaged in rape, sodomy and sexual assault were channelled into Alternative House thru the parole board as a condition of release. By 1975, three-quarters of the clients were classified as "aggressive," tho classification is somewhat arbitrary and some of the staff question the labeling process. About 100 clients are served each year.

Alternative House has attempted to work with everyone referred, at least for an initial evaluation. About ten percent of those referred are turned down as not amenable to treatment in the community-based program. Judgment of the relative dangerousness of an individual is extremely difficult and perhaps impossible to determine. After consultation and testing, Wally Crowe, Alternative House Coordinator, makes the final decision on acceptability of clients.

Services. After initial evaluation, the next step is to draw up a contract, either verbally or in writing. This contract sets forth the type of services to be provided, required participation by the client, a time-line for implementation of specific services and the conditions under which the contract may be voided by either party. The contract is open-ended in that by mutual agreement the services may be changed or time limits altered.

Staff members devote a quarter of their time to diagnostic/evaluative procedures. These are conducted on about half of all sex offender referrals, primarily as pre-sentence evaluations or reports for probation or parole boards.

The majority of the staff's time is devoted to therapy, both individual and group. About 80 percent of sex offender clients

grams are consistent with abolitionist beliefs. Essentially they are rooted in the concept that sexual behavior and relationships are learned thru the process of socialization, and that new behavior patterns can be acquired. Responsibility rests with the individual to overcome cultural and social conditioning in sexual violence until those causal factors are changed.

Alternative House

Until recently, convicted sex offenders were routinely punished by incarceration in prisons or mental institutions. In almost every state no other options were available to sentencing judges.

A small community-based center for sex offenders was established in Albuquerque, New Mexico in 1972, a project of Bernalillo County Mental Health Center, part of the University of New Mexico School of Medicine.

As a preliminary step, the cooperation of 12 District Court judges had been solicited. These judges agreed on the difficulty in determining prison sentences for such crimes and expressed interest in alternatives to incarceration. A community program was designed to serve rapists, sexual abusers, incest offenders, exhibitionists and voyeurs.

First called Positive Approaches to Sex Offenders (PASO), the name was later changed to Sex Offender Program at Alternative House, Inc.[61] It is open to all sexual aggressives and potential aggressives, whether or not they've been discovered, reported, apprehended, tried or convicted of a sex crime. It also offers services to the victims of sex offenses as well as the families of both victims and offenders.

Clients. About 70 percent of the sex offenders in the program are referred by the police, the probation department, the

[61] From PREAP interview, June 6, 1975, with Dr. Joanne Sterling, Associate Director of the Bernalillo County Mental Health Center and Director of Positive Approaches to Sex Offenders at that time.

Many women had become so accustomed to sexual exploitation and abuse that they did not recognize themselves as victims of a crime.

On January 24, 1971 at the New York Radical Feminist Speak Out on Rape, in what was to precipitate the beginning of the rape prevention movement, women for the first time spoke publicly concerning acts of sexual violence against them. By 1972 rape crisis/prevention programs were functioning in numerous cities. Nationwide, consciousness-raising groups, crisis hotlines, selfdefense courses, anti-rape workshops, court watching and legislative action groups developed independently of one another. The purposes: to empower women and children so that they no longer could be victimized by rapists and police, medical and legal procedures; to educate the public on the issues of sexual assault and to precipitate fundamental changes in social institutions which either ignore, tolerate or implicitly encourage sexual exploitation of women and children.

Patriarchy

In order to understand the present practices of rape, sexual molestation, child and wife assault, it is essential to examine the historical and cultural context in which they occur. As with other modern cultures, the United States is patriarchal. It is a culture whose social organization is marked by the supremacy and domination of males over females:

> However muted its present appearance may be, sexual dominion obtains nevertheless as perhaps the most pervasive ideology of our culture and provides its most fundamental concept of power. This is so because our society … is a patriarchy. The fact is evident at once if one recalls that the military, industry, technology, universities,

> science, political office and finance-in short, every avenue of power within the society, including the coercive force of the police, is entirely in male hands. As the essence of politics is power, such realization cannot fail to carry impact.
>
> —Kate Millett, Sexual Politics, pp. 24-25

Historically, women in patriarchal societies have been property of the men: women were bought and. sold as merchandise—concubines, slaves, prostitutes, wives.[18]

> As the first permanent acquisition of man, his first piece of real property, woman was, in fact, the original building block, the cornerstone, of the "house of the father." Man's forcible extension of his boundaries to his mate and later to their offspring was the beginning of his concept of ownership. Concepts of hierarchy, slavery and private property flowed from, and could only be predicated upon the initial subjugation of women.
>
> —Susan Brownmiller, *Against Our Will, pp.*17–18

Husbands had exclusive rights to a wife's sexual organs and to her children; they were part and parcel of his property.

> Severe punishments were meted out to any man who tampered with these property rights, and in the case of infidelity the wife too was severely punished… a man could punish his wife by killing her or cutting off her nose, ears, or hair; and he could kill, emasculate, mutilate, or flog the man who invaded his rights of property. Thus with the full

[18] See Evelyn Reed, **Woman's Evolution** (New York Pathfinder Press,

return to society, he may channel his anger toward the most vulnerable, available victim: any woman.

- Approximately 40states have no type of sex offender programs of any kind, in or out of prisons. This is a reflection of the lack of seriousness with which sexual violence against women is regarded.

- Sex offender programs in prisons and mental hospitals are mainly controlled by men and rarely challenge the basic cultural causes of sexual violence. Rather, they often foster sexist biases, offering the sex offender further rationales for his violence against women.[60]

Breaking the cycle of violence

Not all sex offenders must be restrained during their re-education/resocialization process. Current alternatives to prison are proving this point and providing needed models. But many more community programs for sex offenders must be developed before belief in non-incarcerative alternatives is accepted.

For those sexual violents who do require temporary separation from society-repetitive rapists, those who physically brutalize or psychologically terrorize and men who repeatedly sexually assault children-places of restraint are needed while reeducation occurs. Unless these alternatives are developed, there may be no other choice but the prison or the asylum. Hence the urgency for abolitionists to create programs similar to those we shall cite.

Unfortunately, some worthy programs for sex offenders continue to use the language of the "medical model." For instance, re-education and resocialization processes are often referred to as "treatment." Despite the language orientation, these pro-

[60] See Gager and Schurr, pp. 235-36.

—Jackie MacMillan and Freada Klein, editorial,
Feminist Alliance Against Rape Newsletter,
September/October 1974

- The criminal (in)justice systems convict primarily poor, Black and Third World men for a crime that is committed by men of every race, class and social status. Thus, prisons are reserved for and used as weapons of control against the less powerful. The white, middle class rapist will rarely be caught in this selective process.

- When a sexually violent male is placed in a prison population he continues his aggressive actions inside the walls. This time his victims are younger, more vulnerable males. If the rapist is smaller, lighter of weight or younger than the general population, he himself can become the rape victim.[57]

- Newly emerging data indicate that a majority of imprisoned rapists were sexually assaulted as children and adolescents.[58] Prisons provide the opportunity to repeat the cycle of violence.

- When the sexually violent male is caught, convicted and imprisoned, he is on the street again in an average of 44 months.[59] In prison he has been dominated, degraded, humiliated and possibly sexually assaulted himself; his keepers have taken control of his body and his life. Upon

[57] See Alan J. Davis, "Sexual Assaults in the Philadelphia Prison System," Gagnon and Simons, eds., **The Sexual Scene** (Chicago, Transaction/Aldine, 1970) pp. 107-24.

[58] See "Rapists As Victims?" NEPA News, March 1975. Also David Rothenberg, "Punishment + Punishment = Crime," Fortune, December 1974. Also H. Jack Griswold, Mike Misenheimer, et al., An Eye for an Eye, pp. 142-43.

[59] U.S. Department of Justice, **National Prisoner Statistics: Prisoners Released from State and Federal Institutions,** 1960, Figure B.

development of private property and the patriarchal family, women lost control over their lives, their destinies and over their own bodies. Wives were reduced to economic dependency upon their husbands for support ... As the noose of marriage tightened around the necks of women, they were corralled like cattle in the homes of their husbands, under their full domination.

—Evelyn Reed, Woman's Evolution, p. 427

While in contemporary American society, the more blatant manifestations of patriarchal rule are less obvious, male supremacy and consent of the victims continues to be accomplished thru systems of punishment and reward, rigid sex role stereotyping and systematic, institutionalized physical and psychological force.

A variety of rewards and punishments, some subtle and some coercive, exist to socialize women into the "feminine," i.e., powerless, role. Women who do not conform to the accepted model are subject to a range of social punishments. These include ridicule, social ostracism, labeling and harassment, economic deprivation and in the extreme, incarceration in both mental asylums and prisons.

Sex-role socialization

Sex-role socialization, like sexual behavior, is learned behavior. In patriarchal societies a male learns that power, violence and aggression are linked with his sexuality. This is the stereotype of the "masculine" role. Victimization, powerlessness and submissiveness are stereotyped as the "feminine" role.

Sexualization programming in our society embraces the economic, the political and the cultural. Men and women learn

what it means to be masculine and what it means to be feminine thru t.v., textbooks, toys, fairy tales, legends, radio, advertising, magazines, music, novels, movies, cartoons, comic books, laws, jobs, curricula and pornography, thru constant subtle communications from parents and peers and thru the political and economic realities of our everyday lives.

A primary source of gender stereotyping is the media.[19] Media objectification of the female body and eroticization of violence constantly repeat the view that women are sexual objects for male gratification and that domination of a woman by a man, especially sexually, is a "turn on."

Male aggression and male sexual pleasure are inextricably combined and reinforced, generation after generation, as the masculine norm. "Our society expects the male to be the aggressor in heterosexual relationships, and a certain amount of physical force and duress is consequently acceptable and perhaps even socially necessary."[20]

Mary Daly, feminist philosopher and theologian, and other feminist theorists have exposed the direct connections between male sexual violence, war, race hatred and genocide. Daly has described American patriarchal culture as one exhibiting the "Most Unholy Trinity" of rape, genocide, and war.[21] Rapism, the psychology and politics of domination, results in the objectification, abuse, and exploitation of all powerless people.

1975) pp. 411-32. Also Kate Millett, **Sexual Politics (Garden** City, New York, Doubleday, 1970) pp. 33-35. Also Brownmiller, pp. 281-82.

[19] See Andrea Dworkin, **Woman Hating** (New York, Dutton, 1974) PP. 2990. Also Brownmiller, pp. 295-97, 444-46.

[20] Paul H. Gebhard, et al, **Sex Offenders: An Analysis of Types** (New York, Harper & Row, 1965) p. 196.

[21] See Mary Daly, **Beyond God the Father** (Boston, Beacon, 1973) pp. 114-22, 193-94.

New responses to the sexually violent

As abolitionists, we are confronted with the struggle between two conflicting forces for change. We are in total agreement with feminist anti-rape workers and other social changers that every effort should be made to apprehend and confront the sexually violent. We share the feelings of outrage experienced by rape victims; we believe that repetitive rapists must be restrained from committing further acts of violence. On the other hand, we do not support the response of imprisonment. We challenge the basic assumptions that punishment, harsh sentences and retributive attitudes will serve to lessen victims' pain, re-educate rapists or genuinely protect society.

> As rape is given more publicity, more money and energy is spent prosecuting and convicting rapists. How is this after-the-fact action helping us as women? The rape rate appears to be increasing. In fact, if all men who had ever raped were incarcerated tomorrow, rape would continue outside as well as inside prisons. Incarceration does not change the societal attitudes which promote rape. In a society that deals with symptoms rather than causes of problems, prisons make perfect sense. Confronting the causes of rape would threaten the basic structure of society…
>
> … prison is vindictive—it is not concerned with change but with punishment. And its real social function is similar to that of rape-it acts as a buffer, as an oppressive institution where a few scapegoats pay for the ills of society.

1976, pp. 29-30.

women, whistle, make obscene signs and sounds, or verbally annoy, abuse and patronize women passersby."[53]

- Because a man is most likely to hassle or attack a woman alone, Detroit WAR organized groups of four to eight women to patrol the streets, escort women who are alone to their destinations, watch for men behaving suspiciously, and intervene in situations of violence against women.[54]

They perform street theatre exposing myths about rape and rapists and portraying violence against women in the street, home and courtroom. They picket movies which portray rape as "entertainment," a "joke," a "turn on" for men or women.[55]

Men against rape

As a result of this newly emerging consciousness, a small but growing number of men's anti-rape groups have been formed.[56] These men believe that rape is not a "women's problem" but a community problem and one for which men must take responsibility. Many of the activities of these groups have been undertaken jointly with women's anti-rape groups.

[53] Joan Goldman, "Boys on the Street-Be Warned," Majority Report, July 20, 1975. Also "Campaign Against Street Harassment-To Whom It May Concern" mimeograph sheet. Available from Women's Center, 243 West 20th Street, New York, New York 10011.

[54] Kathy Barry, Debbie Frederick, et al., Stop Rape, pamphlet, Detroit Women Against Rape, 1971, pp. 43-44.

[55] From telephone interview with Andrea Ignatoff of ZAP Tactics, May 17, 1976.

[56] See Daly, pp. 169-70. Also Bob Lamm, "The Men's Movement Hype," Changing Men, newsletter of the Portland, Oregon Men's Resource Center, December 1975, pp. 16-19; Also Redstockings, "Feminist Revolution," 1975, P.O. Box 413, New Paltz, New York 12561; Also Los Angeles Men's Collective, "Statement of the Los Angeles Men's Collective," **Changing Men,** March

Wife assault

The same ideology of male domination and female inferiority present in the "psychology of rape" perpetuates and rationalizes the crime of wife assault in the home. Both rape and wife assault are traditionally thought of as "victim precipitated" that women somehow are "asking for it," in fact, may "deserve it."

As with rape, wife assault is a blatant example of a crime against women which previously was not acknowledged as a violent crime, despite the fact that millions of women are its victims.[22]

> Frequently, when a wife who has been beaten does call in the police, it's as a last desperate remedy when she fears for her life. The response of the police is usually to treat such a situation as comic or trifling. There is rarely an arrest made or any encouragement for the wife to press charges. The police seem to identify with the husband, and treat him in a chiding but sympathetic manner.
>
> —Betsy Warrior, "Battered Lives," in Betsy Warrior and Lisa Leghorn, ed., *House-worker's Handbook* (Cambridge, Massachusetts, Women's Center, 1974) pp. 27-28

> To get an idea of how large the problem of wife beating is, Sgt. Hubenette said about 100 police reports dealing with wife beating are written

[22] See Edward Schumacher, "Home Called More Violent Than Street," **Washington Post,** February 24, 1976: "No thoro national studies have been done... but according to accumulated scraps of data and a number of limited studies, the problem (violence within the home) is worse than crime on the streets...'We're talking about a couple of million wives getting beat up regularly and don't know what to do about it,' Gelles (researcher at the University of Rhode Island at the American Association for the Advancement of Science) said."

each week. And that's just the tip of the iceberg. That doesn't count the times the police are called to a domestic incident and the wife decides she doesn't really want to press charges. And that doesn't count the times a wife is beaten and the police are never called.

—Nancy Livingston, "Wife Beating Looms as Major City Crime," *St. Paul Sunday Pioneer Press,* December 1, 1974

Wife assault is estimated to be one of the least reported crimes in the nation and it is probable that wives and children form "the largest single class of criminal victims in the United States."[23] The appalling lack of research on crimes against women and children is linked to the legal system's continual reinforcement of the idea that a man has the right to "discipline" his wife and children, with force if necessary. It is practically impossible for a wife to secure legal protection from a brutal husband."[24]

Altho the role of submissive victim is one which most girls are socialized into from the time of birth, many women and girls are now refusing to take part in their own victimizations. They are leaving brutal marriages and home situations and seeking help from other women. In England, France, Scotland, the Netherlands and the United States, women and girls are organizing harbor houses for the victims of wife assault, rape, and child beating; they are counselling and supporting each other."[25]

[23] Murray A. Straus, Richard J. Gelles, and Suzanne K. Steinmetz, "Violence in the Family: An Assessment of Knowledge and Research Needs," American Association for the Advancement of Science, Boston, Massachusetts, February 23, 1976.

[24] See Karen DeCrow, **Sexist Justice** (New York, Vintage, 1974) pp. 176-207.

[25] See Susan Ozzanna, "The Battered Woman's Only Solution," **Major-**

suggested that the contributions would serve to "raise the rapists' consciousness."[49]

Innovative action projects

- Women from NashvilleRape Prevention arid Crisis Center made a survey of pornography sold in local bookstores. They found that 80 percent of the subject matter represented some form of violence against women: rape, sadism or murder. They use the results of their survey in speaking engagements to show how violence against women is encouraged in society, holding special lectures right in the pornography bookstores.[50]

- A group of about 70community and Rutgers University women marched at night thru New Brunswick, New Jersey, chanting slogans and carrying banners proclaiming their right for safety in the streets.[51]

- Santa Cruz WAR publishes a monthly "descriptions list," including all available information of men who have recently been reported as rapists and other men who harass women-names, addresses, licenses and details of incidents. Women in New York, thru *Majority Report,* and women in Los Angeles, thru *Sister,* also publish descriptions and modes of operation of rapists.[52]

- The Campaign Against Street Harassment in New York City distributes to women a form letter threatening boycott to be sent to businesses whose employees "call after

[50] From "National News Notes Tennessee," **Feminist Alliance against Rape Newsletter,** September/October 1974.

[51] From "March on Safety," **Majority Report,** November 29-December 13, 1975.

[52] **Ibid.** Also Kathleen Hendrix, "Women Take the Offensive on Rapists," Los Angeles Times, December 8, 1974. Also "Know Your Local Rapist," **Majority Report,** regular column.

In Philadelphia all rape victims who report the crime are taken to PGH. When a victim is brought to the hospital, WOAR is immediately notified and a counselor (available 24 hours) joins her to give whatever help is needed. The WOAR women are thus in the unprecedented position of being able to reach all women in Philadelphia who report their rapes. In the event (rare, as elsewhere) that the rapist is caught, charged and brought to trial, WOAR women provide emotional support and factual information to the victim in preparation for the court proceedings and accompany her to the trial. The presence of a large body of women in the courtroom serves notice on the predominantly male lawyers, judges and jurors that the rape victim is not alone and not afraid.

Rape Relief in Seattle offers the victim the opportunity to anonymously report the violence against her. A flyer circulated by the Rape Reduction Project states: "Rape Relief … can take information about the circumstance of the rape by phone or in person. We give the information to the police department, so that they may learn more about trends, locations and methods of rape-information that we believe will ultimately lead to a reduction in rape. The victim need not even tell us her name, so there will be no way she can become involved with the police or court unless she wants to. Third party reporting is one way to turn an ugly situation into something that can help other women."

A number of Superior Court judges have demanded that convicted rapists make contributions to Rape Relief along with their prison sentences. Judge Donald Horowitz says he regularly sentences individuals to make contributions rather than fining them and letting the money go to the "anonymous state." In the rape cases, he felt the crimes were "political acts against women and a product of institutionalized sexism." He

[49] "Rape Reparations," **Off Our Backs,** April 1976 (Reprinted from **Pandora).**

Rape & the criminal (in)justice systems

As with other categories of criminality, national statistics on reported rapes are merely a surface indication of the true rate of the crime. Only cases which fit the narrow legal and societal definitions of reported rape reach the F.B.I. U.C.R.s. Statutory rape cases, those in which the victim is under the legal age of consent, are not included. Rapes of wives by husbands, "date rapes," rapes of prostitutes and hitchhikers, and in many states, anal and oral rape and rape where the victim is male are not included.

Official estimates of rape generally range from five to ten times greater than the reported number; and some experts feel that only one in twenty sexual assaults is ever reported.[26] In 1968 the National Opinion Research Council victimization survey findings were used to conclude that over half a million women and children were victims of sexual assaults.[27]

The reasons for victim failure to report are many and varied. They may range from the more volatile feelings of fear and shame to the more practical feelings of futility. All, however, have a common theme in that they imply the absence of any personally compensatory reasons for reporting rape. Those victims who do choose to report cite only one compelling reason to do so—preventing the rapist from similarly assaulting other women and children.

The breakdown in our judicial services is more pronounced where sexual assault is concerned than for any other major

ity Report, February 7, 1976 and S. Harmony Ozzanna, "What's Red and Black and Harbors Women?" Majority Report, February 21, 1976. Also "Violence Against Women: Woman Battering" in Kirsten Grimsted and Susan Rennie, eds., **The New Woman's Survival Sourcebook** (New York, Knopf, 1976). Also Del Martin, **The Battered Wives of America** (San Francisco, Glide Publications, 1975).

[26] See F.B.I., U.C.R. 1973.

[27] "Police-Victim Relationships in Sex Crimes Investigation," **Police Chief,** January 1970.

crime of violence.[28] This is clearly seen in the incredibly low arrest, prosecution and conviction rate for rape.[29] Law enforcement officials point to the failure of victims to identify their assailant and the general lack of identifying witnesses at the rape scene as prime factors in the low apprehension rate. The inability of prosecutors to obtain convictions, however, is exceedingly more complicated.

Placing the victim on trial

> About a year ago I had the misfortune to find out just what police treatment is like in cases of rape. I was raped by a total stranger who hid himself in my car ... Arapahoe County (police) handled the case. First they took me to Swedish Hospital to determine if I had been raped (which I was billed for later). Then they took me to the police building for questioning. They asked me to write out a statement about what happened and then-The first question they asked ... "Was he Mexican?" Then, "Did you have an orgasm? Are you using birth control? Why are you using birth control? When did you start using it? Were you going with a guy at the time?" It seems to me that most of this is irrelevant to the fact of rape.
>
> —A Denver rape victim, quoted in June Bundy Csida and Joseph Csida, *Rape, How to Avoid It and What to Do About It If You Can't* (Chatsworth,

[28] See Carol Bohmer, "Judicial Attitudes Toward Rape Victims," **Judicature**, February 1974. Also "The Least Punished Crime," **National Affairs**, December 18, 1972.

[29] See Washington, D.C. Institute of Law & Social Research, 1974. Also D.C. City Council, "Report of the Public Safety Committee Task Force on Rape," 1973.

- BAWAR alerts potential victims by posting "street sheets" with a description of known rapists, their auto license numbers and modes of operation.

- BAWAR brought police, emergency room personnel and district attorneys together for the first time to discuss ways each agency could function for the benefit of the victim and her court case. Rape counselors now regularly train new police recruits and hospital personnel to sensitize them to the needs of rape victims.

Other rape crisis centers

Washington, D.C. Rape Crisis Center emphasizes community education and rape prevention above individual crisis counseling, hoping to reach potential victims before they are raped. Women speak to community groups, junior high, high school and college students and women at their workplace, stressing rape and woman's position in society, rape prevention, self-defense and how to deal with institutions if you are raped. Upon request from the D.C. School System, the center prepared a seventh grade curriculum unit which is used by the public schools for health and safety classes. The center does not advise a woman whether or not to report her rape. Rather, counselors attempt to offer realistic information on police and court treatment of rape victims in their area and to encourage the victim to make her own decision.

Women Organized Against Rape (WOAR) has been serving Philadelphia women since May 1973.[48] This unique volunteer crisis program has its headquarters in Philadelphia General Hospital (PGH). Noting that most hot-lines and crisis centers reach mostly middle class and movement women, WOAR determined to make services available to poor and Third World women.

[48] Grimsted and Rennie, p. 147.

crisis center or treatment program, the hot-line service may be the only resource available to victims.

Full service crisis centers might include: Telephone crisis counseling. Peer group counseling for victims. Family counseling. Legal services for victims. Temporary shelter for victims who live alone. Personal counselors to go to victim's home.

An empowerment model: BAWAR

- In 1970 a 13-year-oldBerkeley girl was raped at school. For nearly six hours, while she was questioned by school authorities and police and medically examined at a hospital, she was prevented from seeing her parents. Following this incident, the girl's mother and some friends met to discuss their anger. In November 1971, these women organized BAWAR, Bay Area Women Against Rape.[46]

- BAWAR emphasizes the political and ideological aspects of rape. Says one woman: "We discuss the definition of rape and oppression to prepare women for the phones and other BAWAR activities. Our training is done by women in the group. We do not support 'professional' approaches to dealing with rape."[47] BAWAR offers the victim a perspective on ways to gain power over her own life and challenge old myths which function to encourage her guilt feelings and fear.

[46] Material on BAWAR is from Grinsted and Rennie, p. 148; Gager and Schurr, p. 264; Csida and Csida, pp. 149-50; and telephone interview with staffperson Robin Wells, May 17, 1976. BAWAR publications, available from P.O. Box 240, Berkeley, California 94701 (phone 415 845-RAPE), include: "Medical Protocol for Emergency Room Treatment of Rape Victims," "Sisters: If you Sometimes Hitchhike, Please Read This," "Organize Your Neighborhood and Prevent Crime," "Hands Off: Rape Prevention and Survival."

[47] Gager and Schurr, p. 264.

California, Books for Better Living, 1974) pp. 97-98.

Despite governmental responsibility to protect the rights of both the victims and accused, it is clear that the concern of the judicial centers on the rights of the accused in rape trials. The rights of the rape victim have largely been ignored. This is clearly seen in rules of evidence which place the victim's past sexual and personal history on trial more than the accused: a rape trial becomes a test of endurance for the woman. Her credibility as a witness is challenged while her private sex life is openly questioned.

For nearly 100 years our rape laws have required corroborative "proof" and certainty for prosecution which is unequaled in any other area of criminal law.[30] Today 39 states do not require—by law—corroborative evidence to establish a case of rape. However, none of these states fails to recite a litany of corroborative facts to support the victim's testimony. In reality, "the fact remains that proof of rape in most cases is sufficient only when the evidence is corroborated."[31] Some legal statutes have been altered but sexist and prejudicial attitudes forcing the rape victim to prove her own victimization and implying that women are not to be believed persist in law schools, courtrooms and society.[32]

> ... as defense counsel we are not burdened with a lot of the obligations that prosecutors have. We have free reign to do practically anything we want, as long as it's legal. We will impugn the integrity

[30] See "Corroborating Charges of Rape," **Columbia Law Review,** June 1967. Also "Corroboration Rules & Crimes Accompanying a Rape," **University of Pennsylvania Law Review**, January 1970.

[31] Richard A. Hibey, "The Trial of a Rape Case: An Advocate's Analysis of Corroboration, Consent, and Character," **The American Criminal Law Review,** Vol. 11, 1973.

[32] Connell and Wilson, pp. 144-63.

of witnesses when we really don't have any justification for impugning their integrity ... We can accuse victims of being promiscuous and highly immoral ladies, when in fact there is no justification for doing that. It's unfair, but our system builds unfairness. As a defense attorney, it's my job to exploit every opportunity for the defense of my client (the rapist). I'm not involved with the moral issues involved ... It's the image of our client and the image of the woman that goes into the mind of the jury that's important. It's not what the actual facts are ...

—A defense attorney quoted in Csida and Csida, pp. 128-29

To demonstrate why most rape victims prefer not to press charges, let's imagine a robbery victim undergoing the same sort of cross-examination that a rape victim does:

"Mr Smith, you were held up at gunpoint on the corner of First and Main?"

"Yes."

"Did you struggle with the robber?"

"No.

"Why not?"

"He was armed."

"Then you made a conscious decision to comply with his demands rather than resist?"

"Yes."

counselors aware of and meeting victims' needs? To what extent are sex, race and class biases preventing the hospital and police experience from being positive and supportive to the victim? Are there in your community any alternatives to public institutions, such as free clinics, women's health centers?

- Establish contacts in hospitals, mental health agencies, police stations and prosecutor's offices: know who your allies are.

- Be aware that police, hospitals and mental health agencies may be defensive or even hostile to your questions, since they are allegedly offering the victims this supportive service. Know how to interview: ask the interviewee for her or his point of view. Attempt to make allies and at the same time find out what and how much education is needed.

- Services to victims should he open to every victim of sexual assault, whether or not she has reported the crime. Services to rapists, child sexual abusers, exhibitionists and voyeurs, should be open to all, whether or not he has been reported, apprehended or processed thru the criminal (in)justice systems.

Set short and long range goals for the rape crisis center and be realistic about them.

The hot-line is the life-line. Almost all centers provide one very basic and crucial service—a telephone counseling hot-line staffed by volunteers who provide empathy and information for callers. Information is given on post-rape emotional, medical and legal needs of victims. Hot-lines are generally staffed 24 hours a day, seven days a week where possible. In some communities without the facilities for a

- It is imperative to know how rape victims are treated by police and medical personnel so that you can offer realistic information to the victim, who must decide whether or not to report the crime. In addition, statistics are necessary in order to demonstrate to the community the need for a crisis center and, to potential volunteers, the need for their services.

- Conduct victim surveys in your community via women's newsletters, the YWCA, Church Women United, League of Women Voters, NOW, local papers, radio and t.v. Attempt to reach doctors, nurses, psychiatrists, mental health workers, welfare workers, teachers, guidance counselors, hot-line volunteers, youth workers and others who can distribute survey questionnaires to victims and their families. Keep in mind that the victim must contact you. Stress that all information is confidential. Ask only basic questions: Did the victim report the assault? If she did, what was her experience? If she did not, why not? What recommendations might she have for police and hospital procedures?

- Determine what services, if any, are already available to victims from local public and social service agencies. Do any agencies provide hot-line counseling? Escort services? Follow-up counseling? Walk-in emergency counseling?

- Investigate community institutional procedures. Become knowledgeable on the medical and psychological needs of sexual assault victims—adults, adolescents and children: Do local hospital procedures meet victims' needs? Are doctors, nurses, social workers and hot-line

tice Information Statistics Service, May 1975. Available from U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Reference Service, Washington, D.C. 20530

"Did you scream? Cry out?"

"No. I was afraid."

"I see. Have you ever given money away?" "Yes, of course."

"And you did so willingly?"

"What are you getting at?"

"Well, let's put it like this, Mr. Smith. You've given money away in the past. In fact you have quite a reputation for philanthropy. How can we be sure you weren't contriving to have your money taken by force'?"

"Listen, if I wanted-"

"Never mind. What time did this holdup take place?"

"About 11 p.m."

"You were out on the street at 11 p.m.'? Doing what?"

"Just walking."

"Just walking? You know that it is dangerous being out on the street that late at night. Weren't you aware that you could have been held up?"

"I hadn't thought about it."

"What were you wearing'?"

"Let's see—a suit. Yes a suit."

"An expensive suit?"

"Well-yes. I'm a successful lawyer, you know."

"In other words, Mr. Smith, you were walking around the streets late at night in a suit that practically advertised the fact that you might he

a good target for some easy money, isn't that so? I mean, if we didn't know better, Mr. Smith, we might even think that you were asking for this to happen, mightn't we?"

—*American Bar Association Journal* as quoted in *NEPA News,* November 1975

Rape law reform

Steps are slowly being taken in recognition of the rights of victims. As a direct result of women's experience with the sexist and racist legal system, a drive for rape law reform was initiated by the women's movement in the early 1970's.

An excellent model statute[33] was proposed by the New York University Law School Clinical Program in Women's Legal Rights, one of the first such programs in the country. As part of the research for this statute, law students and their professors counselled rape victims. The resulting proposed law is neutral in that it treats rape like any other crime. It corrects seven of of the most flagrant injustices now inherent in most rape laws:

1. Eliminates the need for corroboration.
2. Eliminates the need for a rape victim to be physically injured to prove rape.
3. Eliminates the need to prove lack of consent.
4. Lowers the age of consent to 12 in most cases.
5. Eliminates as admissible evidence the victim's prior sexual activity or previous consensual sex with the defendant.

[33] Connell and Wilson print the model statute in its entirety, pp. 164-69.

How to start a rape crisis center

The first step in organizing a rape crisis service[44] is to gather concerned women who are willing to donate time and energy to build this victim service.

Determine the needs of women in your community.

- Gather statistical data from local police, including the number of sexual assault cases reported during a particular time period, the number labeled "unfounded," those "not prosecutable" due to victim's relationship to the attacker (some grand juries will refuse to indict if the woman was a prostitute or was hitchhiking, or if she was attacked by her boyfriend), those cleared by arrest, those ending in conviction. Also check categories of assault, burglary, breaking and entering and homicide and ask the police or prosecutor's office how many cases involved rape. If the police have incomplete statistics, prosecutors are often able to supply them.
- Check to see if your city was one studied in the HEW-LEAA survey, "Non-Reported Crime in High Impact Crime Cities."[45]
- Check hospital emergency room records via the administrator, if possible, to determine the number of sexual assault victims treated.

[44] Material in this section based on Mary Ann Largen, et al., "How to Start A Rape Crisis Center," in Marcia J. Walker, ed., **Rape: Research, Action, Prevention,** Proceedings of the Sixth Alabama Symposium on Justice and the Behavioral Sciences (University of Alabama, Center for Correctional Psychology, May 1975) Report No. 29, pp. 127-31. Also Rape Center Women, "How to Start a Rape Crisis Center," P.O. Box 21005, Kalorama Street Station, Washington, D.C., August 1972. Also Women's Crisis Center, "How to Organize a Women's Crisis-Service Center," 306 North Division Street, Ann Arbor, Michigan 48108.

[45] Prepared by the National Crime Panel of the National Criminal Jus-

be designed to reach discovered and undiscovered rapists, child sexual abusers, including fathers who sexually assault their children, voyeurs and exhibitionists. Concerted campaigns would focus on victims—reported and unreported-children, adolescents and adults, and their families.

Grass-roots organizing & professionalism

Rape prevention centers take a variety of forms and work from differing philosophies. Some are self-supporting, grass-roots feminist centers whose political beliefs and autonomy are essential to the services they provide. Other centers are organized and run by professionals within police departments, prosecutors' offices, hospitals, churches, mental health clinics and other established organizations.[43]

The struggle, at any level, against sexual violence, is scattered and inadequate. Anti-rape groups, feminist or professional, barely scratch the surface in their attempts to bring aid to victims, change inhumane institutions and challenge and eradicate rape-promoting sexism in education, media and elsewhere.

While all efforts are vitally needed, abolitionists particularly encourage rape crisis and prevention programs initiated and directed by the affected people. In the long range, programs designed by "professionals" tend to serve the interests of the criminal (in)justice systems rather than the interests of victims and potential victims. Such programs do not empower a movement which can become the vehicle for the massive re-educational campaigns so urgently needed.

[43] See Gager and Schurr, pp. 271-72.

6. Eliminates the spousal exclusion in sexual offenses.

7. Defines rape in terms of degrees of serious injury.

Compensation

As restitution of the legal rights of rape victims is pursued from state to state, so is restitution for the physical and financial cost of the crime.

Since 1965 at least twelve states (Alaska, Illinois, California, Georgia, Hawaii, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island and Washington) have enacted victim compensation acts. Unfortunately, the provisions of these statutes make them of little use to rape victims. This is due to failure to address nonphysical injuries and pregnancies, as well as discrimination on the basis of financial status of the victim and the type of expenses covered.

Where the defendant is acquitted, there is usually no way for the rape victim to gain compensation, tho she may have suffered long-lasting physical or psychological injuries. Attacks by family members or lovers are usually excluded from compensatory legislation.

At present it appears unlikely that further development of victim compensation acts will benefit rape victims unless state criminal codes are revised and federal legislation enacted to fund state programs. Victim advocates should lobby for changes in the victim compensation laws which deny women the right to free and adequate medical care, legal advice and emotional counselling, the right to be compensated for loss of pay, lawyers' fees and other expenses incurred as a result of the sexual assault.

Restitution

Financial restitution by the victimizers is seldom made to rape victims. Successful civil suits against sex offenders are complex and rare.

One of the few awards on record recently went to a Maryland woman[34] whose attacker is presently serving time on multiple rape convictions. Unfortunately, the likelihood of the victim actually receiving the $350,000 judgment is slight.

More successful civil suits can usually be brought by complainants against the rapist's employers or the owners of the property on which the rape occurred. Charges of negligence against those individuals or companies apparently receive more favorable attention from the courts. In 1974-1975, civil suits succeeded in Washington, Philadelphia, New York City, Chicago and Los Angeles.[35]

Few women have the strength to undergo the ordeal of court even once. Fewer yet choose to repeat the trauma. It is clear that victim restitution via civil suit at present is not an entirely viable option for the majority of victims.

Until victim restitution becomes a reality, however, society owes the victims of sexual assault humane and just treatment thru the delivery of quality services in the medical, mental health, and law enforcement fields. Rape is a social problem and recovery from rape is a social process that is best handled when shared and assisted by others. For community institutions this requires sensitivity to the trauma of the victim, as well as a recognition of victims' rights.

[34] "Rape Victim Wins," **Danbury, Connecticut News-Times**, February 3, 1976.

[35] See Nancy Gager and Cathleen Schurr, **Sexual Assault: Confronting Rape in America** (New York, Grosset & Dunlap, 1976) pp. 190-96.

- Educating and sensitizing mass media personnel so that they will provide realistic information on rape.
- Producing handbooks, flyers and other rape education literature.
- Developing model procedures for police, prosecutors, private doctors and hospitals.
- Providing self-defense courses for women and children.
- Court watching at pretrial hearings and rape trials to support the victim and learn defense lawyers' tactics.
- Sensitizing institutions to the needs and rights of sexual assault victims.

Eliminating rape in a sexist society

The long range goal of anti-rape work is to eliminate rape from our society. Ultimately, this can only be accomplished thru the eradication of patriarchy and its bastion, sexism. Fundamental changes must take place in values, customs, mores and political, economic and social institutions, if women are to be free from sexual violation and exploitation. Massive re-educational campaigns are necessary to raise public consciousness.

The first step in changing public consciousness ties in the recognition of rape as a crime of violence. Rape prevention strategies must be related to changing social conditions which foster violence. The responsibility for changing violent attitudes and behavior should be acknowledged by all institutions which affect attitudes, knowledge and behavior—the home, schools and universities, media, social services, the legal system and governmental agencies.

Secondly, re-education campaigns should be directed at potential rapists-males socialized in a sexist culture-and potential victims-females socialized in sexist culture. Programs should

sue of sexual assault and how to work toward its prevention. Hospitals, police and the courts for the most part exhibit sexist and racist biases, often further traumatizing the sexual assault victim. Nor are relatives and friends always supportive; they frequently react with horror and disapproval of the victim, blaming her for the attack. Indeed, it often appears that that the victim herself is placed on trial. Until recently, the rape victim suffered her indignities and injuries alone.

Rape crisis centers

This situation has changed dramatically as a result of the blossoming of the feminist movement.[42] During the early 70's the establishment and maintenance of rape crisis centers was undertaken solely by concerned women, usually under the auspices of feminist groups or women's centers. Most of the early anti-rape workers were political activists, advocates or community organizers, and many were rape victims themselves. Today more than 200 rape crisis intervention programs are functioning primarily in urban and suburban areas.

The centers provide supportive services to victims of sexual assault while acting as buffers between victims and institutional sexist practices. Program activities include:

- Hotline counseling.
- Escort services to hospitals, police stations and courts.
- Educating the general public and professionals who deal with victims around the issues of rape.
- Reforming sexual assault laws.

[42] For a detailed account of the development of the anti-rape movement, see Gager and Schurr, pp. 257-75. Also June Bundy Csida and Joseph Csida, Rape, How to Avoid It and What to Do about It if You Can't (Chatsworth, California, Books for Better Living, 1974) pp.133-66.

Racist use of the rape charge

A further area of cultural distortion which has served to impede justice to both the victim and accused are the racist and sexist myths surrounding interracial rape. Black and Third World women are regularly met with societal attitudes of "deserved victimization" and disbelief at every level of the criminal (in)justice systems. Men of the same groups have historically been victimized by the white racist use of the concept of "virtuous white womanhood."

A highly disproportionate number of Black males are convicted of sex offense,[36] and Black men are seven times as likely as white men to receive the maximum penalty when convicted.[37] Government statistics further show that since 1930, 89 percent of the 455 men executed for rape have been Black. Today 26 of the 35 men on death row for rape convictions are Black.[38]

In a 1973 survey, Brenda A. Brown, of the Memphis, Tennessee police department found that only 16 percent of reported rapes in Memphis were Black on white. Brown's findings are supported by independent studies in Washington, D.C. and Baltimore, Maryland.[39]

Despite this evidence to the contrary, the myths of interracial rape persist, adding fuel to racial tension and ensuring the continued inequities in the treatment of both victims and rapists by our criminal (in)justice systems.

[36] F.B.I. U.C.R., 1973.

[37] Marvin E. Wolfgang and Anthony Amsterdam, "The Death Penalty," **New York Times Magazine,** October 28, 1973.

[38] "Death Row Census," American Civil Liberties Union Capital Punishment Memorandum, March 29, 1976.

[39] See U.S. Department of Justice, "Capital Punishment," **National Prisoner Statistics Bulletin** Number 46, August 1971.

Repeating the cycle of violence

Sexual assault of prisoners by guards and other prisoners has long been shrouded in secrecy and misinformation, but the jailing of political activists in the 1960's and the plight of women, like Joanne Little, who speak out, have now unlocked the door on what was once an "unmentionable" subject.

> Bob Martin was raped 60 times during one weekend in a Washington, D.C. jail.
>
> Ralph Gans was assaulted by 17 men during an inmates "political" riot. He was hospitalized for months.
>
> Tico Gonzalez was raped by three guards in a city jail on Christmas Eve.
>
> Harvey Masters was seven when he was sent to a home for unwanted boys and was jumped by four kids twice his age.
>
> Over a dozen inmates sexually abused a hated prison guard during a well-publicized prison uprising…
>
> Prison rape becomes the ultimate shame. It destroys the spirit and symbolically serves as the demasculinization of the victim.
>
> —David Rothenberg, "Group Rip-Off: The Prison Rape!" *The Advocate,* May 5, 1976

Public recognition of the epidemic proportions of sexual assault in prison, however, has not altered the situation and there are few statistics or studies on prison rape. The acting out

[40] See Carl Weiss and David James Friar, "Terror in the Prisons: A Report," Fortune News, April 1974. Also William Stanley Cape, "Prison Sex: Absence of Choice," Fortune News, April 1974.

of power roles in an authoritarian environment continues to thrive in keeping with punitive societal attitudes toward prisoners.[40] Sexual violence rampant in U.S. prisons and jails is inevitable. Sexual violence and abuse are the results of a violent and abusive system.

Empowering the victims of Rape

Rape is an assault on the victim's self-determination, sexuality, and psyche. Following a rape, victims experience:[41]

- Fear of the attacker's return.
- Fear of being alone.
- Fear of being attacked again.
- Fear of venereal disease and pregnancy.
- Fear of relatives and friends finding out.
- Fear of reporting to police or hospitals.
- Fear of what may happen if she does report.
- Fear of returning to work or school.
- Fear of resuming relationships with men.
- Fear of simply walking down the street.

Until recently, victims of sexual assault had no place to go to receive sympathetic understanding, to find help in dealing with medical and legal institutions or to be educated on the is-

[41] See Yolanda Bako, N.O.W. Rape Prevention Committee, "Consciousness Raising Topics on How the Fear of Rape Constricts Our Lives," mimeograph sheet. (Available from N.O.W. New York City Chapter. 47 East Nineteenth Street, New York, New York 10003.)

Prison Research Education Action Project
Instead of Prisons
A Handbook for Abolitionists
1976

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	Annual Economic Cost in Millions of Dollars
White Collar Crime	
Embezzlement	$200
Fraud	$1350
Tax Fraud	$100
Forgery	$80
Crimes of the Poor	
Robbery	$27
Burglary	$251
Auto theft	$140
Larceny, $50 and over	$190

The Economic Cost of Crime (1965)

and pilferage exceeds by several billion dollars the losses from burglary and robbery.[89]

Abolitionists are aware that poor peoples' crimes victimize mostly the poor and the Black, tho the media consistently bombards the American people with a set of false and racist myths about crime:

> Crime news plays a big role in forming public attitudes. A strong tendency to cover crimes with white victims and ignore those with Black victims distorts the broad picture the public gets on the subject-specifically by making whites feel especially threatened.
>
> In fact, when the Community Renewal Society recently issued a computerized study of homicide in Chicago during 1973, two key findings caused general public surprise: nearly 70 percent of the mur-

[89] U.S. Department of Justice, Prosecution of Economic Crime, LEAA, National Institute of Law Enforcement and Criminal Justice, 1975, p. 4.

der victims in the city were Blacks, and only 15 percent of all murders were across racial lines.

To compare the picture the public received about murders with what actually occurred, I checked Chicago police reports on homicides during the first three months of 1973 against coverage of the crimes in the final edition of the Chicago Tribune … During that period there were 215 murders in the city, and 51 got some coverage in the Tribune. Twelve were described in stories that ran on pages one thru five.

While only 20 percent of the murder victims during this period were white, nearly half of the 51 murder stories were about white victims. Up front in the paper, where readership is high, the imbalance was even stronger—two-thirds of the murder stories on pages one thru five involved white victims.

To state the statistics another way, a white person slain during this period had a one-in-two chance of being mentioned in the paper, and a one-in-seven chance of winding up on pages one thru five. But the chances of a Black victim making it into the paper was one in seven, and of winding up on pages one thru five, one in 100.

From this it would seem that the public could draw simple and erroneous conclusions about crime: middle class whites are the most frequent victims of murder. In fact, as the Community Renewal Society survey showed, most violent crime is confined to poor Blacks-poor Black victims attacked by other poor Blacks in their neighborhood.

—Phil Blake, "Race, Homicide and the News," *The Nation,* December 7, 1974, pp.592-93

The majority of all crimes of property committed on the street do not involve physical brutality. Violent crimes such as murder and aggravated assault, for instance, occur mainly indoors and the participants are usually acquainted or related.[90]

The risks of victimization from crimes of the poor-robbery, muggings and purse-snatchings which constitute the majority of street crimes-are concentrated in the lowest income group. Nonwhites are victimized disproportionately by all major crimes except larceny of $50 and over. A Black man in Chicago, for instance, runs the risk of being a victim nearly six times as often as a white man; a Black woman nearly eight times as often as a white woman. Additionally, Blacks are most likely to assault Blacks, and whites most likely to assault whites. Thus, while Black males account for two-thirds of all assaults, the person who victimizes a white person is most likely also to be white.[91]

> The overall impression created by the mass media is that (1) most victims of crime are white, (2) most criminals are Black and (3) the average murder occurs in the course of a mugging.
>
> Government statistics show that all three notions are false…
>
> A brief Columbia Journalism Review survey of t. v. news programs, the source of 70 percent of

[90] About 70 percent of all willful killings, nearly two-thirds of all aggravated assaults, and a high percentage of forcible rapes are committed by family members, friends or other persons previously know to their victims. See President's Commission on Law Enforcement and Administration of Justice, **Task Force Report: Crime and Its Impact-An Assessment** (Washington, D.C., Government Printing Office) especially Chapters, 2, 5 and 6.

[91] **Ibid.**

> the news diet of the average American, shows that during a one month period in New York, 44 percent of the reports on murders involved white victims of Blacks, while an even more misleading 86 percent were on murders committed in the course of a street robbery or mugging.
>
> In fact, only a tiny percentage of murders are committed in the course of a robbery. Murder is, in the vast majority of cases, a crime committed by a person who is related to or otherwise knows his victim intimately.
>
> —Benjamin Bedell, "Racist Myths on Crime Promoted by Media," *Guardian,* January 15, 1975, p. 8

For those who are cruelly victimized on the streets, even tho few in number compared to all criminal victims, statistics are of little solace. The experience of being robbed or mugged is frightening and damaging, particularly for the elderly poor already victimized by circumstance.

To a poor person, Black and ghetto-bound, it matters little that statistics tell us that chances of a victim being injured in an auto accident are 16 times greater than the probability of being a victim of crime on the street.[92] The poor do not have autos.

Of what use is the statistic that there is an infinitesimal one in *40,000* probability *of becom*ing involved in a felony resulting in death[93] when the media and the law enforcement apparatus has raised fears to such an extent that homes have literally become prisons?

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[92] **Ryan, p.** 198.

[93] **Maggi Scarf,** "The Anatomy of Fear," **New York Times**, June 16, 1974, p. 10.

Backmatter

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>
> —Dorothy Samuel, "Safe Passage," *Fellowship,* April 1975, p. 3

New responses to street crimes

Each community, given the proper resources and services could begin to effectively deal with problems of crime on the street. However, community members realize no program can be totally successful until the root problems of unemployment, powerlessness, racism and economic exploitation are remedied. These systemic failings are the root cause of poor peoples' economic crimes:

> Able bodied Black and Hispanic men stand in ever greater numbers on the street corners during these days of deepening recession. The unemployment rate for minority teenagers seeking work is now soaring toward an appalling 40 percent. The country at least flirted with these problems thru the Great Society programs of the mid-60's. When those programs were precipitately abandoned as utopian and fruitless, hundreds of thousands of citizens of this city—and millions elsewhere-were

doomed to an environment of futility, alienation and profound hostility. This severed the civilizing connection of hope for a decent life without which conventional appeals to law and order might just as well be issued in Urdu.

—Roger Wilkins, "Crime and the Streets," *New York Times,* February 18, 1975

If you walk a few blocks from my house in New York you will see that the seven percent unemployment we now have translates out to kids standing around the street corner with nothing to do. It translates out to 41 percent unemployment among Black teenagers … the source of a tremendous amount of street crime … Most of it is committed against themselves, against other Blacks. That is because they have the highest degree of unemployment, school drop outs and the least is done for those kids. They do not get unemployment compensation because they have never had a job. What is more, they are never going to have a job … It is just as predictable as that a candle will burn out that many of those kids will be lost to drug addiction, lost forever to the welfare system, and even more will be lost forever to crime.

—Tom Wicker, Remarks to Lehigh Valley Bail Fund, March 18, 1976, reprinted in *Pretrial Justice Quarterly,* Spring 1976, pp. 42-43

Crime & the Minority Community Conference

Despite awareness that poor peoples' economic crimes are rooted in the social structure, communities fear they will

SCAPEGOAT (Prostitute Empowerment), 1540 Broadway, Suite 300H, New York 10036, (212) PL 7-6300

Victim /Offender Reconciliation Program(VORP), 8 Water Street North, Kitchener, Ontario, Canada, (519)744-9041 or 745-4417

Alternative House, Inc., 109 Elm Street, Northeast, Albuquerque, New Mexico 87102, (505) 247-0173

Citizens' Inquiry on Parole and Criminal Justice, Inc., 84 Fifth Avenue, Room 307, New York 10011, (212) 929-2955

Citizens' Local Alliance for a Safer Philadelphia (CLASP), 1710 Spruce Street, Philadelphia, Pennsylvania 19103, (215) 732-4288

Community Assistance Project (CAP), 150 West 5th Street, Chester, Pennsylvania 19013, (215) 876-5571

COYOTE (Prostitute Empowerment), P.O. Box 26354, San Francisco, California 94126, (415) 441-8118

Delancey Street Foundation, 2563 Divisadero Street, San Francisco, California, (415) 563-5326

House of Umoja, 1436 North Frazier Street, Philadelphia, Pennsylvania, (215) 473-9977

National Coalition to Ban Handguns, 100 Maryland Avenue, N.E., Washington, D.C. 20002

National Council on Crime and Delinquency, Continental Plaza, 411 Hackensack Avenue, Hackensack, New Jersey 07601, (201) 488-0400

National Gay Task Force, Suite 506, 80 Fifth Avenue, New York 10011, (212) 741-1010

National Moratorium on Prison Construction, 3106 Mount Pleasant Street, N.W., Washington, D.C. 20010, (202) 483-7080

National Organization for the Reform of Marijuana Laws (NORML), 275 Madison Avenue, Suite 1033, New York 10016, (212) 683-6410

National Prison Project, American Civil Liberties Union, 1346 Connecticut Avenue, N.W., Suite 1031, Washington, D.C. 20036, (202) 331-0500

Philadelphia Peoples' Bail Fund, 1411 Walnut Street, Philadelphia, Pennsylvania 19102, (215) LO 4-1272

Prisoners' Union, 1315 18th Street, San Francisco, California 94107, (415) 648-2880

"water the seeds" of police repression if they do not engage forcefully in the struggle to make their communities safe.

As in other urban settings, street crime has become a major concern of urban Black community residents in recent years. A survey by Louis Harris in 1973 revealed that 77 percent of the residents of Harlem who were polled felt that "crime in the streets" was a "very serious problem."[94]

Concern about the escalating street crime rate in minority communities, led the Criminal Justice Priority Team of the United Church of Christ in conjunction with several national religious, civic and civil rights organizations to sponsor a national conference on "Crime and the Minority Community" in Washington, D.C., October 1974. The conference, attended by over 300 participants, brought together community activists from around the country to share insights and projects which could be useful in confronting crime and discovering causes in their communities.

During the three conference days, participants identified common community needs to respond to the problem of community crime. They included:

- Full employment.
- Elimination of economic, political and racial repression.
- Procedures to combat police brutality.
- Alternatives to incarceration.
- Eliminating discrimination against ex-prisoners.
- Organization of community pressure groups to improve services.

[94] **Crime and the Black Community,** United Church of Christ Commission for Racial Justice, Vol. 2, No. 1, Summer 1975. Material in this section abstracted from this report and the "Synopsis of Community Anti-Crime

Emphasizing that anticrime programs are designed to develop nonlethal and nonvigilante style programs to combat crime, they focused on methods to minimize the opportunity for crime to occur. Individual program goals for a community anticrime model included:

- Reduction of crime.
- Reduction of fear.
- Increased citizen confidence.
- Increased citizen participation.
- Deglorification of the Black "criminal."

The conference noted that almost every imaginable crime prevention program is in operation somewhere in New York, but very few exist in the minority community.

Innovative programs that could be duplicated were described:

- In Ohio, the East Cleveland Rent-a-Kid program, designed to provide employment for teenagers within their local communities, gives youngsters a chance to obtain money without resorting to criminal activities.
- In Chicago a women's coalition working without government or foundation funds, conducts community meetings and workshops to allow community residents to voice their problems, concerns and to devise preventative programs to deal with crime. The Coalition of Concerned Women in the War on Crime attempts to convey these concerns to the police department in an effort to open the lines of communication between the

Workshop," from the Conference on Crime and the Minority Community,

Toward a New Corrections Policy: Two Declarations of Principles, pamphlet, Group for the Advancement of Corrections and Statement of the Ex-Prisoners Advisory Group (Columbus, Ohio, The Academy for Contemporary Problems, 1974)
Tom Wicker, *A Time to Die* (New York, Ballantine, 1975)
Erik Olin Wright, *The Politics of Punishment, A Critical Analysis of Prisons in America* (New York, Harper & Row, 1973)
Women Behind Bars, An Organizing Tool, pamphlet, (Washington, D.C., Resources for Community Change, 1975)

Ex-Prisoner press

Fortune News, The Fortune Society, 29 East 22nd Street, New York, New York 10010
The Outlaw, Prisoners' Union, 1315 18th Street, San Francisco, California 94107

Periodicals

Corrections Magazine, Correctional Information Service, Inc., 801 Second Avenue, New York 10017
Crime and Social Justice, A Journal of Radical Criminology, Crime and Social Justice, 101 Haviland Hall, University of California, Berkeley, California 94720
Pretrial Justice Quarterly, American Friends Service Committee, 1300 Fifth Avenue, Pittsburgh, Pennsylvania 15219

Projects and organizations described

Richard Quinney, *Critique of Legal Order, Crime Control in Capitalist Society* (Boston, Little, Brown and Company, 1973)
David J. Rothman, *The Discovery of the Asylum* (Boston, Little, Brown and Company, 1971)
William Ryan, *Blaming the Victim* (New York, Vintage, 1971)
Theodore R. Sarbin, *They Myth of the Criminal Type,* pamphlet, Monday Evening Papers 18 (Middletown, Connecticut, Center for Advanced Studies, Wesleyan University, 1969)
Stephen Schafer, *Compensation and Restitution to Victims of Crime* (Montclair, New Jersey, Patterson Smith, 1970)
Stephen, Schafer, *The Victim and His Criminal* (New York, Random House, 1968)
Edwin M. Schur, *Crimes Without Victims, Deviant Behavior and Public Policy* (Englewood Cliffs, New Jersey, Prentice-Hall, 1965)
Edwin M. Schur, *Our Criminal Society, The Social and Legal Sources of Crime in America (Englewood Cliffs, New Jersey, Prentice-Hall, 1969)*
Edwin M. Schur, *Radical Nonintervention, re-thinking the delinquency problem* (Englewood Cliffs, New Jersey, Prentice-Hall, 1973)
Gene Sharp, *The Politics of Nonviolent Action* (Boston, Porter Sargent, 1973)
Joan Smith and William Fried, *The Uses of the American Prison* (Lexington, Massachusetts, Lexington Books, 1974)
Robert Sommer, *The End of Imprisonment* (New York, Oxford University, 1976)
Studies on Sentencing, pamphlet, (Ottawa, Canada, Law Reform Commission of Canada, 1974)
Struggle for Justice, A Report on Crime and Punishment in America Prepared for the American Friends Service Committee (New York, Hill & Wang, 1971)
Thomas A. Thurber, *There are Alternatives to Incarceration,* pamphlet, (Hartford, Connecticut, Connecticut Prison Association, 1973)

police and the community, while working with the local community to participate in anticrime efforts of its own. Over 1500 citizens have responded actively to the work of the coalition.

- In Washington, D.C. the Black Assembly worked with two Black police officers to set up citizens patrols (Uhuru Sasa Courtesy Patrol and the United Brothers Watchers) to help make the streets in Southeast D.C. free from crime. Regular cultural and history classes were set up for the teenagers in the community to instill pride and respect for the community. Voter registration and tutorial programs were also undertaken. Police officers who were working on this project, without police authority, were summarily transferred to another area and constantly harassed.

The effectiveness of the project decreased when city funding was obtained. Patrol leaders were harassed by the police until the project went out of existence. The program later re-emerged in an impotent form under the auspices of the Mayor. If kept from becoming "a political football," this project could be duplicated.

Because of widespread police brutality, corruption, abuse of power and other acts committed by members of the police department against minorities, many of the United Church of Christ's conference participants raised serious questions about the nature of cooperation with law enforcement agencies. Police departments tend to work with citizen groups only when the department is in control of the program, as opposed to working on an equal level. However, conferees agreed each community group should forge the alliances they see as beneficial and productive to their local efforts.

October 1974.

Participants took critical note of huge expenditures by LEAA to purchase guns, tanks, helicopters, submarines, boats, computers and other weapons from the U.S. military arsenal field-tested in Vietnam. Despite statistics that show increased use of hardware and patrols are not the answer to street crimes, LEAA continues a militarized response while paying mere lip service to minority citizen involvement and needs. The conference proposed an investigation be undertaken to examine the use of funds and effectiveness of LEAA programs to reduce crime in minority communities.

Finally, the conference cited specific program models which reflect some of the immediate needs of minority communities in anti-crime efforts. They included:

- Education programs to promote an understanding of the causes of crime and its minimization in minority communities.
- Two-waycommunication efforts with all segments of the community, as well as with the police department, particularly where minorities are in positions of power.
- Development of dispute settlement mechanisms in the community in an attempt to minimize conflict that may get out of hand.
- Increased citizen's development, control and participation in anticrime efforts on the local level.
- Pretrial diversion and release programs, particularly for juveniles.
- Neighborhood street and building patrols.
- Challenges to the excessive issuance of liquor licenses within minority communities.

Nora Klapmuts, *Community Alternatives to Prison,* pamphlet, (Hackensack, New Jersey, National Council on Crime and Delinquency, 1973)

Donal E. J. MacNamara and Edward Sagarin eds., *Perspectives on Correction* (New York, Thomas Y. Crowell Company, 1971)

Emanuel Margolis, "No More Prison Reform!" reprint, *Connecticut Bar Journal,* 46, No. 3 (September 1972)

Thomas Mathiesen, *The Politics of Abolition* (New York, John Wiley & Sons, 1974)

Karl Menninger, M.D., *The Crime of Punishment* (New York, Viking, 1966)

Karl Menninger, M.D., *Whatever Became of Sin?* (New York, Hawthorn Books, 1975)

Jessica Mitford, *Kind and Usual Punishment* (New York, Alfred A. Knopf, 1971)

Norval Morris, *The Future of Imprisonment* (Chicago, University of Chicago Press, 1974)

William G. Nagel, *The New Red Barn: A Critical Look at the Modern American Prison* (New York, Walker and Company, 1973)

Lloyd E. Ohlin ed., *Prisoners in America* (Englewood Cliffs, New Jersey, Prentice-Hall, 1973)

Leonard Orland, *Prisons: Houses of Darkness* (New York, The Free Press, 1975)

The Price of Punishment: Prisons in Massachusetts, Prison Research Project, (Cambridge, Massachusetts, Urban Planning Aid, Inc., 1974) available from the American Friends Service Committee, Cambridge, Massachusetts

Prison Construction Moratorium, Alternatives to Incarceration, pamphlet, (Pasadena, California, American Friends Service Committee, 1975)

A Program for Prison Reform, The Final Report Annual Chief Justice Earl Warren Conference, pamphlet, (Cambridge, Massachusetts, Roscoe PoundAmerican Trial Lawyers Foundation, 1972)

Depopulating the Prison, Steve Bagwell, ed., pamphlet, (Urban Studies Center, Portland State University, June 1972)
L. Harold DeWoif, *What Americans Should Do about Crime* (New York, Harper & Row, 1976)
L. Harold DeWolf, *Crime and Justice in America, A Paradox of Conscience* (New York, Harper & Row, 1976)
Eugene Doleschal and Nora Klapmuts, *Toward a New Criminology,* pamphlet, (1-lackensack, New Jersey, National Council on Crime and Delinquency, 1973)
Gertrude Ezorsky, ed., *Philosophical Perspectives on Punishment* (Albany, State University of New York Press, 1972)
Final Report to the Governor of the Citizen's Study Committee on Offender Rehabilitation (Madison, Wisconsin, Wisconsin Council on Criminal Justice, 1972)
Marvin E. Frankel, *Criminal Sentences, Law Without Order* (New York, Hill & Wang, 1972)
Willard Gaylin, *Partial Justice, A Study of Bias in Sentencing* (New York, Vintage, 1975)
Erving Goffman, *Asylums* (New York, Doubleday & Company, 1961)
Hugh Davis Graham and Ted Robert Gurr, Vio*lence in America: Historical and Comparative Perspectives* (New York, Bantam, 1969)
David S. Greenberg, *The Problem of Prisons,* pamphlet, (Philadelphia, American Friends Service Committee, 1970)
H. Jack Griswold, Mike Misenheimer, Art Powers and Ed Tromanhauser, *An Eye for An Eye* (New York, Pocket Books, 1971)
Alexander von Hirsch, *Doing Justice, The Choice of Punishments* (New York, Hill and Wang, 1976)
The Iron Fist and the Velvet Glove, an analysis of the U.S. police, Center for Research on Criminal Justice (2490 Charming Way, Berkeley, California 94704, 1975)

- Cultural programs that seek to enhance the positive values of the community.
- Monitoring incidents of crime to obtain a more accurate barometer of the crime crisis.
- Safety patrols in schools and campuses established by youth and student groups.
- Education of the community on law enforcement procedures and what their rights are when arrested or detained.

The military model for crime prevention should he abolished. It is clear that neither punishment by prison nor training police for a community combat role can solve the problem of street crime, in the long range, nothing less than social restructuring will accomplish the goal of greatly reducing poor peoples' economic crimes, but in the interim, communities must be made safe and the victims protected and cared for. This requires that funding be diverted to those services and resources communities identify as vital to their efforts to create a safer society and to bring relief to the victims.

Community people can empower themselves to turn away from their fortress existence and transform their streets into real neighborhoods where all are safe and welcome. In Philadelphia, a small number of concerned citizens have organized to make their streets safer from crime, building a sense of neighborhood at the same time. Its program. CLASP, provides an opportunity for communities to take more power over their own lives, and has significantly reduced crime.

CLASP

Four years ago, a group of concerned neighbors in a section of West Philadelphia came together to confront the fact that they

were living in the highest crime rate area of the highest crime rate district in their city. It is a mixed, Black and white, working class and middle income neighborhood. Muggings and burglaries were so prevalent that many people found themselves victimized more than once. A crisis came when three women were raped in a two block area within two weeks.

A friend of one of the rape victims called a block meeting. Expecting a small group from her own block to come to her home, she was surprised when people from five additional blocks responded, a total of 80 people.

After an evening of open discussion, it was decided that the most effective action would be community action. From this meeting grew the Block Association of West Philadelphia: neighborhood crime prevention based on self-management concepts.

Everyone wanted safer streets, streets that could be walked by day and by night, free from fear. All grew to realize that the only way to safety was thru linking neighbors together as friends instead of strangers.

Eventually, the Block Association of West Philadelphia aligned itself with CLASP, Citizens' Local Alliance for a Safer Philadelphia, an educational coalition working in community crime prevention. CLASP adopted the community action organizing model of the Block Association.[95]

Preventing burglary. Simple techniques to make apartments and houses safer from burglary were implemented. These included such obvious precautions as keeping windows locked, installing door locks that can't be jimmied, keeping porch lights blazing. Makeshift burglar alarms were created

[95] Material in this section is based on literature published by CLASP, and by the Block Association of West Philadelphia, 632 South 48th Street, Philadelphia, Pennsylvania 19143 (phone 215 GR4-3008). Also on interviews with David Sherman. CLASP staff person, June 8. 1976 and Margaret Bowman, block association participant. July 2, 1976.

Recommended Readings/Resources

Books and pamphlets

Benedict S. Alper, *Prisons Inside-Out, Alternatives in Correctional Reform* (Cambridge, Massachusetts, Ballinger, 1974)

Alternative Workshops, pamphlet, Judicial Process Commission (Genesee Ecumenical Ministries, 101 Plymouth Avenue, South, Rochester, New York 14608)

Am I My Brother's Keeper? pamphlet, Judicial Process Commission (Genesee Ecumenical Ministries, 101 Plymouth Avenue, South, Rochester, New York 14608)

Attica, New York State Special Commission on Attica (New York, Bantam, 1972)

Ben H. Bagdikan and Leon Dash, *The Shame of the Prisons* (New York, Pocket Book, 1972)

Gilbert M. Cantor, "A Proposal for Ending Crime and Punishment," *The Shingle* reprint, (Philadelphia Bar Association, May 1976)

Ramsey Clark, *Crime in America* (New York, Pocket book, 1971)

Corrections, National Advisory Commission on Criminal Justice Standards and Goals (Washington, D.C., U.S. Department of Justice, 1973)

Angela Y. Davis and others, *If They Come in the Morning, Voices of Resistance* (New York, Signet, 1971)

radical concept. But then, so is freedom. So is love. And so is peace.

Remember the words of Herbert Read: "What has been worthwhile in human history-the great achievements of physics and astronomy, of geographical discovery and of human healing, of philosophy and art-has been the work of extremists-of those who believed in the absurd, dared the impossible."

Remember, too, that less than two hundred years ago, slavery still was a fundamental institution, regarded as legitimate by church and state and accepted by the vast majority of people, including, perhaps, most slaves.

Imprisonment is slavery. Like slavery, it was imposed on a class of people by those on top. Prisons will fall when their foundation is exposed and destroyed by a movement surging from the bottom up.

This is an imperfect book, but it is a beginning. A friction to stop the momentum. Carry on. We love you all!

—Scott Christianson

simply and inexpensively by hanging strands of jinglebells on doors.

More important was the sharpened awareness of the need for neighbors to have ties with one another. At block association meetings, neighborliness grew. Telephone numbers were exchanged. People became conscious of who was customarily on the street.

Would-be burglars generally spend time "casing" a block. They study the habit of residents in order to know which houses and apartments are vacant and at what times. When people passing on the street know each other and when they speak a friendly "hello" to strangers, most burglars quickly disappear.

Another community crime prevention technique put into practice by CLASP is Operation I.D. An electric engraving machine is available to residents so that they can put their Social Security numbers on valuable personal property. Notices to this effect are posted on the doors of houses so protected. More than 50 electric engravers are now in use in Philadelphia.

Neighborhood walk. Block associations also addressed themselves to the problem of street crimes. Muggers and other street criminals nearly always choose as victims those who walk alone at night. People decided to walk in groups of two or more after dark. Here again, raising neighborhood illumination by leaving on porch lights was stressed.

Out of the basic concept of block organizing grew the idea of the neighborhood walk, an unarmed foot patrol. Two or more persons walk thru the neighborhood. The walkers wear no i.d. or armbands. The time and route of each walk are unpublicized. To the potential wrongdoer who has heard of this program, any two or more people walking together might be one of these patrols.

If walkers encounter a street crime in progress, they are prepared to take action. In addition to flashlights, walkers carry a freon horn—a loud signalling device. When people hear a horn

go off, they come out of their houses signalling with their own freon horns.

CLASP recommends that as many residents as possible of organized blocks own freon horns, it buys them at wholesale from the manufacturer and makes them available to the community at cost.

The organization of neighborhood walks varies because each block association is autonomous. The amount of time volunteered by an individual walker might vary from two hours per month to four hours each week, in addition to the monthly meeting of the block association.

Of the 30,000 blocks in the city of Philadelphia, CLASP has thus far organized about 600. These

block associations are scattered thruout the city in more than 20 neighborhoods, including some of the most blighted areas of the city. CLASP prefers not to discuss how many of the block associations have neighborhood walks. This is partly because the figure varies from month to month, as walks are started or dropped, according to conditions in specific neighborhoods. It is also because the very idea of neighborhood walks is thought to discourage street crime, whether or not the walks are actually taking place.

A most important side effect of the neighborhood, walk is that participants have gradually lost their fear of the streets. The streets have begun to fill up with people again—a bad situation for the mugger or rapist who must be alone on the street with his/her prospective victim.

Evaluation. According to a survey conducted by CLASP in spring 1976, 20 organized blocks had on the average only 25 percent as much crime as the police districts in which the blocks are located. A more intensive victimization survey of nine organized blocks in North Philadelphia shows that-with one exception-crime has been reduced on each block. The amounts of this reduction range from 11 percent to 79 percent, averaging 33 percent overall.

Epilog

Prison, we have been taught, is a necessary evil. This is wrong. Prison is an artificial, human invention, not a fact of life; a throwback to primitive times, and a blot upon the species. As such, it must be destroyed.

Prisons never have achieved their stated end. Constant revision of their official function—reformation, punishment, deterrence, rehabilitation, treatment, reintegration, to name a few-has failed to justify what they do. What they do can never be justified.

Nevertheless, the institution endures, its walls remain firmly rooted in the rich soil of remote places. Hundreds of thousands of men and women make their livelihood from it. The relic remains among us, flanked by newer models, because we instinctively shrink from the recognition of our worst failures as a society.

We say, "No more." Finally, after centuries of reform without change, a monumental conclusion has been reached: prison must be abolished! No matter how formidable the walls and sturdy the locks, how numerous the difficulties, regardless of the immensity of the power wielded by those it protects and preserves, the monster must be overcome.

Allowed to survive, it will prevail, over us all. At a time when prison populations across the United States are soaring to unprecedented levels, when more and more fortresses are springing up thruout the land, when crime and unemployment are up, and when the very world itself appears on the verge of one form of totalitarianism or another, of course abolition is a

- **The prisoner ally** understands the prisoner's experiences thru the prisoner's own words.
- **The charitable person** has easy access to the criminal (in)justice bureaucracies.
- **The prisoner ally** often has a stormy relationship with the bureaucracies, because s/he is perceived as threatening to persons who hold power in the system.

Note: Obviously, we are not proposing that the ally and charitable person are always so very opposite or that people ever actually fulfill either role in exactly the manner presented here. Rather, our purpose is simply to contrast the basic qualities of these two relationships. Learning how to become an ally is an abolitionist task.

A grant from the LEAA funds the training of neighborhood organizers from other high crime cities in the state-Pittsburgh, York, Harrisburg and Chester. Requests for information and resources have been received from many cities outside the state.

Block organizations have found ways of effectively reducing crime in their neighborhoods. It is worth noting that they have been able to do this nonviolently. CLASP strongly advises people to avoid the vigilanteism of privately owned guns, noting that having guns around often results in the injury or death of innocent persons; using a gun in response to a burglar or a street criminal escalates the likelihood of serious violence without assuring that innocent persons will not be hurt.

Block organizing, based on self-managing, nonviolent principles, clearly demonstrates an alternative to the war model employed elsewhere-the proliferation of lethal weapons and military tactics. However, when suspected lawbreakers are apprehended, they are turned over to the police and the criminal (in)justice systems' punitive institutions and procedures.

Until real communities can be created-communities where poverty is eliminated and the commission of economic crimes is no longer an attractive option-the CLASP model is worth emulating. In many ways block organizations are a step toward the creation of true community. They empower neighborhoods and individuals to increase the safety of their homes and their streets.

9. Empowerment

> One of the few consistent trends over the past decades has been a slow, very painful, but steady increase in the rights of people formerly excluded from any decision making arena. Black people, women, Chicanos, industrial workers, farm workers, gay people; all have far to go before equality of opportunity and treatment is a reality, but all have come very far from where they were 40 years ago. The struggle is no less intense now; the outcome in any single situation is problematic, but overall the extension of power to more and more people cannot be stopped.
>
> —*The Outlaw,* January/ February 1976, P. 2

Empowering the community

Empowerment is more than a belief; it is a concept that governs the way we interact with people. It is also a method-one which reflects the values of human dignity, respect for growth of consciousness and the integrity of relationships. Empowerment means that people and communities have the ability to define and deal with their own problems. Successful self-management requires access to and control of proper resources, but lack of access in no way reduces the clarity with which affected people perceive their own problems and needs. Empowerment is essentially a political process-redistributing power among the heretofore powerless. Empowerment

lieves the sufferings of prisoners, but it does not alter the basic conditions responsible for the sufferings.

A third way of helping prisoners is to become their ally. These are some of the qualities of a prisoner ally as compared to those of the "charitable" person:

- **The charitable person** does not think of altering the prisoner's persistent need for help. The prisoner must always depend on the good will of the charitable.
- **The prisoner ally** helps the oppressed prisoner become empowered to change his/her situation.
- **The charitable person** often acts out of guilt and pities the prisoner who is seen as a "poor soul.
- **The prisoner ally** treats the prisoner as an ally in change, sharing anger about prison oppression.
- **The charitable person** might think the prisoner's situation comes from some fault within the prisoner.
- **The prisoner ally** identifies social and cultural forces that contribute to the cause of prisoners' oppression.
- **The charitable person** often has a plan for the prisoner, who is not regarded as a peer.
- **The prisoner ally** and the prisoner strategize together, mutually; no one must be "thanked."
- **The charitable person** expects the prisoner alone to change.
- **The prisoner ally** works with the prisoner and takes mutual risks, experiencing change also.
- **The charitable person** has his/her own view of what the prisoner must feel.

The Massachusetts pamphlet, *The Price of Punishment is* but one example of how research materials can be used to educate the public and bring about change. Materials can also be used in leaflets, articles, discussions, legislative testimony, television programs, letters to the editor and public conferences.

Most importantly, prison research/action collectives can form the hub around which prison moratorium groups can organize, new legislation can be drafted and abolition strategies and tactics can develop.

Empowered by our knowledge of the prison system and strengthened by our belief in the humanity of our goal, our movement to abolish cages can provide impetus for those who believe that change is possible, even tho the forces that oppose our struggle are powerful.

> Those who profess to love freedom and yet deprecate agitation are those who want crops without plowing. This struggle may be a moral one, it may be physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will.
>
> —Frederick Douglass, 1857

Qualities of a prisoner ally

There are many ways of "helping" prisoners. One is to impose what you think is "best" for them. This is the typical approach of well-meaning "experts" and "professionals" who are members of the criminal (in)justice bureaucracies.

Another way of "helping" prisoners is thru charity. We use charity in prison to provide relief of suffering and to express compassion. But there are problems with charity: Charity creates dependency. It communicates pity rather than shared outrage and can romanticize the prisoner. Charity sometimes reassumptions undergird and effect the quality of programs abolitionists support.

The empowerment models we advocate in this handbook are not to be confused with "community corrections" referred to by systems people. As abolitionists we essentially identify as community alternatives, those programs created by affected people: ex-, community workers, drug addicts, alcoholics, rape victims, street crime victims and others. These are programs and alternatives that evolve directly from experience and need and are controlled by participants.

Contrast this with the systems' definition of "community corrections." This term is applied to a wide variety of "correctional" activities for accused or convicted adults or juveniles, administered outside the jail, reformatory or prison. It includes traditional probation and parole, halfway houses, group homes, pretrial release and sometimes explicitly rehabilitative programs.[1] A common ingredient in all these programs is that decision-making power remains in the grip of the system.

Understandably, this concept of community "corrections" as an alternative to mass institutions appeals to a broad spectrum of prison changers.[2] Enlightened systems managers, professionals, exprisoners and abolitionists alike are united in the belief that a move from massive institutions toward the community is desirable:

- Most judges prefer sending younger lawbreakers to alternative programs to escape the damaging effects of prison.
- Some administrators use community "corrections" to provide a progressive facade which quiets reformist

[1] David Greenberg, "Problems in Community Corrections," **Issues in Criminology,** Spring 1975, P. 1.

[2] **Ibid.,** pp. 23-29.

critics, even tho community centers accommodate only a tiny fraction of the state's prison population.[3]

- Most prisoners regard any change that gets them outside prison walls as an improvement. Prison changers thus support community alternatives, even tho they are controlled by the system.

However compelling the move away from institutional punishment to community punishment, words of caution seep thru:

> As an ex-offender I will guarantee you that I will select prison over your community treatment. And the fact that you can give me evidence that the offenders constantly seek these doesn't mean anything to me, because we're all familiar with the bargain-with-the-devil kind of phenomenon in human history. Human beings are consistently willing to make bad bargains for immediate gain, and regret it later. And the convicts are included in this: You offer them a chance to avoid incarceration, and they will take the bad bargain of the community treatment. And many of them regret it.
>
> —John Irwin, "Rehabilitation Versus Justice," *Changing Correctional Systems,* First Alabama Symposium on Justice and the Behavioral Sciences, University of Alabama, 1973, P. 64

> A word of caution. The development of these alternatives, designed to divert offenders from institutions by means ofnbsp; community alternatives, should not be controlled by those presently in com-

[3] **Ibid.**

the inability of the state to offer them other employment, the state has encouraged guards to sabotage even small reforms in the system.

Research/action as organizing

We've particularly called your attention to a method of data gathering we call advocacy research. As advocates of prison abolition our goal is to gradually decrease and limit the functions of prisons in our society. The research we chose to undertake and the data we chose to gather support this long range goal.

As advocacy researchers, our first task is to identify the *central and most compelling situation*we wish to change thru our research/action strategies. For instance, to use a chilling metaphor: If we were researching Auschwitz concentration camp, we would not in good conscience choose to do a study on air pollution. That was not the central problem there. The central issue was the fact that millions of bodies were burning in those furnaces.

Likewise in prisons, abolition research/action advocates have a central task: To end the system of caging which is cruel, inhuman and wasteful of human potential. We do not go into prisons or the power structure to measure the efficacy of caging or rehabilitation. All our research/action strategies are rooted in ending the system.

While local designs for research/action projects will vary, all serious prison abolition groups require a research/action component. By creating research/action collectives, both state and local, expertise can be developed in a short period of time, isolation can be overcome and members will benefit from each other's accumulated experiences. Researchers will be surprised to discover how much important information about the prison system they can uncover, particularly with the cooperation of prisoners inside the walls.

Street, Hartford, Conn. 06115 for a copy of Public Act No. 75-342. Not a perfect bill, but a very good beginning.

If legal help is needed on your right to information, contact the closest American Civil Liberties Union office. The Connecticut Civil Liberties Union, 57 Pratt Street, Hartford, Conn. 06103, has a handy brochure entitled, "Your Right To Government Information: Questions and Answers on Connecticut's Freedom of Information Act."

Educating the public

A primary purpose of your prison research is public education. One good example of how prison research has been pulled together into an effective educational piece is found in an abolitionist pamphlet, *The Price of Punishment: Prisons in Massachusetts,* written by Prison Research Project. (See resource section). Information is made interesting and understandable by the use of attractive lay-out and graphics.

While continually focussing on the oppressive role of guards, the pamphlet separates the role of guards from the human beings serving in those roles. They remind us that part of the job of abolishing prisons is to overcome the opposition of the men and women who run them and make a living off the system. Most guards come from the same class background as prisoners, and they end up in prison for much the same reason: they have little chance of finding other employment. A guard learns no skills that would lead to better opportunities. Also like prisoners, guards graduate from prison to prison and then to the forestry camps. A few guards become wardens, but for most the job is a dead end.

They hope guards may come to realize that they are prisoners of the system and themselves rebel against its inhumanity. But right now guards are struggling to keep their livelihood, just as prisoners are struggling for the right to earn one. The guards too must be offered a way out of the prisons. Because of

> mand of conventional correctional systems. Decisive participation by the private sector is indispensible. True alternatives are competing alternatives: the correctional establishment is poorly prepared, both by tradition and ideology to nurture its own replacement. The surest way to defeat such a program would be to place it under the control of those who have been unable either to acknowledge or to correct their own fundamental errors … The opposition of those presently in charge can be counted upon. That opposition must be resisted and overcome. A history of failure confers no credential for determining the future. The past can only reproduce itself: it cannot create something new.
>
> —Richard Korn, criminologist in *University of San Francisco Law Review,* October 1971, pp. 71-72

Paradoxically, abolitionists who support moving away from systems' control also support efforts to remove prisoners from closed, security-oriented institutions to the less restrictive setting of the community as quickly as possible. Some systems-controlled programs can be viewed as first steps along the way-from cage to street. Others might be perceived as interim strategies in our work toward more sweeping changes. At the least, systems alternatives provide an opportunity to educate the public about the concepts of decarceration and excarceration, and most importantly, in many instances they bring desired relief to the caged. Prison changers will need to evaluate their local situations and decide where to place their energies.

Services needed

If researchers went from community to community in the poor urban centers of our nation, there is little doubt that the shopping lists for resources and services would be very similar. People know what they need to improve their lives. It is also clear that without a variety of services and resources being made available to all people, options for sentencing to community-controlled groups will be limited.

These alternatives have always been available for the rich, because they have access to the needed resources and services. Dr. Richard Korn, formerly director of education and counselling in New Jersey State Prison, points out that innovative and sympathetic community treatment of lawbreakers is not radical or even new. They are no more than what is provided "by the well-to-do on behalf of their deviant members."

> In every middle class and upper class community there are psychiatrists specializing in the treatment of the errant youth of the well-heeled, frequently with the full approval of the police and judicial authorities. Should private out-patient treatment prove inadequate, there is a nationwide network of relatively exclusive residential facilities outside the home community. Every Sunday, The New York Times publishes two pages of detailed advertisements by private boarding schools catering to the needs of "exceptional youth" who are "unreachable" by means of "conventional educational methods." ... They reflect an honest recognition that the private, unofficial treatment of offenders is vastly superior to most available public programs. Keeping children out of reformatories is a widely approved and worthy objective, irrespective of whether the children are rich or poor. The scandal lies in the fact that

- Guards unions and their role in blocking prison change.

> With the exception of guards' unions, information can be found on all these issues in the documents mentioned above. Feedback from prisoners, ex-prisoners and prisoners' presses is essential in your research because they more than anyone know how the system really works.

Your right to public information

Remember that the information you seek from public agencies is essentially public information. Many states have fairly comprehensive public information laws which detail procedures for securing information from uncooperative bureaucracies. Withholding of information can and must be challenged.

In Connecticut, for instance, the Freedom of Information Act (Public Act 75-342) opens meetings of state and town agencies to the public and restricts the use of executive session when the public can be excluded. It also gives every person the right to inspect and copy most public records held by state and town agencies. A Freedom of Information Commission which can act on citizen complaints, has the power to investigate alleged violations of the act. It may hold hearings, examine witnesses, receive evidence, and may order public agencies to comply. The commission also has subpoena power and the power to fine an official. A decision of the commission may be appealed within 15 days to the Court of Common Pleas for the county in which the public agency or official is located. Such appeals have priority over most actions, so speedy resolution of differences is assured.

If your state doesn't have a Freedom of Information Act, and you would like to sponsor one, write the Freedom of Information Commission, Office of the Secretary of State, 30 Trinity

ation, bail status, length of pretrial confinement and sentence.

- *Prisoners in State and Federal Institutions.* Information on sentenced prisoners in federal and state prisons.
- Report on *Corrections.* One of six reports prepared by National Advisory Commission on Criminal Justice Standards and Goals, financed by LEAA, dealing with problems of "corrections" and proposing standards on rights of prisoners, diversion, pretrial release, community alternatives, etc. Appendix includes list of parent agencies responsible for administering "correctional" services by state.

A non-LEAA national source is *Directory: Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities of the U.S. and Canada,* published by the American Correctional Association.[20]

6. In addition to salaries and contracts for materials and services, crucial prison issues to research include:

   - Numbers of prison personnel in ratio to prisoners
   - Profiles of individual prisons.
   - Kinds of prison industries if any; postrelease skills they provide if any; wages paid to prisoners if any; wages paid to personnel in charge of programs; net amount of profit or loss to prison.
   - Medical and drug experimentation on prisoners.
   - How the "company store" or commissary is run and use of profits.

[20] Available from ACA, 4321 Hartwick Road, Suite L208, College Park, Maryland 20740.

> such alternatives are denied to the poor, thru nothing more deliberate than the incidental fact of their inferior economic position. The inequity of this situation provides one of the strongest moral grounds for overcoming it. Once it is recognized that the "new" approaches advocated for the correctional treatment of all are essentially similar to those already serving the well-to-do, the ethical argument for making these services universally available becomes unassailable.
>
> —Richard Korn, pp. 66-67

Needed services identified by the poorer communities, then, are requisites for alternatives to prison for the poor. This realization provides an important linkage between prison change groups and grass roots community organizations. The list of needed services and resources is very long.

Community solutions

Two examples of community self-management present fresh solutions to problems most communities have not dealt with, and which systems people cannot deal with: street gangs and ex-prisoners who are former drug addicts. Both groups have been labelled "incorrigible" and "dangerous" and would probably be defined by system managers as people who present a danger to society. Both projects, "The House of Umoja" and "Delancey Street" are true alternatives to "community corrections." Both demonstrate the concept of empowerment within a caring community.

[4] This section is based on "Philadelphia's House of Umoja," **New York Times**, February 23, 1976 and an article in **Corrections Magazine,** May/June 1975, pp. 45-47, as well as an interview by PREAP with Sister Falaka Fattah, June 8, 1976.

House of Umoja

The House of Umoja (Swahili for "unity") is a small project in Philadelphia focused on helping young Black gang members.[4] It is "controversial" because its leaders lack formal social work training and because it approaches residential living in an unorthodox way.

Sister Falaka Fattah and her husband, Black David, supervise several two-story row houses on a narrow street in West Philadelphia. The project began in 1969 after Black David—a former gang member—made a three month study of Black youth. To gather information he frequented "bars, pool rooms, attended a lot of funerals and went to hospital emergency rooms-just hung out on the corner mainly."

Black David attributes the gang problem largely to the fact that the needs of young people are not being met by their families.

The Fattahs decided what was needed was the re-creation of the family—giving those without a family, or with a fragmented family, a place to feel wanted. Sister Falaka began to see possible solutions to the violence of street gangs in "the strength of the family, tribal concepts, and African value systems." A far cry from "correctional" systems solutions!

Adaptation of the African "extended family" concept plus speaking Swahili provide gang members with alternatives to their street-life culture.

Altho they had no source of funding, the Fattahs invited 15 members of the South Philadelphia Clymer Street gang to live with them and their six sons in a row house on North Frazier Street. All gang members were between the ages of 15 and 17-an age when "it's difficult to stay alive and out of jail," as Sister Falaka points out. The leader of the gang, or "runner," had had his life threatened by another gang and the police were after him.

probably not have accurate information. For that reason, any complete study should involve cross-checking several sources.

5. National sources of information can also be helpful in your research. In particular, LEAA thru the National Criminal Justice Information Service has published a series of invaluable studies. Here are some that we have found most useful:

    - *Expenditure and Employment Data for the Criminal Justice System.* Includes data for the federal government, each state government and local governments within each state in six sectors of activity: police protection, judicial, legal services and prosecution, indigent defense, "correction" and "other criminal justice."
    - *Sourcebook of Criminal Justice Statistics.* Focuses on state and local data in six categories: Characteristics of the "Criminal Justice" Systems, Public Attitudes toward Crime and "Criminal Justice"—Related Topics; Nature and Distribution of Known Offenses; Characteristics and Distribution of Persons Arrested; Judicial Processing of Defendants; Persons under "Correctional" Supervision.
    - *The Nation's Jails.* Information in jail facilities, service and programs including location and size, physical facilities, separation of inmates, meal services, medical and recreational facilities, employees, social and "rehabilitative" programs.
    - *Survey of Inmates of Local Jails-Advance Report.* The first nationwide attempt to assess the socioeconomic characteristics of the jail population, including demographic data, reason for incarcer-

of information you must know precisely what you are looking for: names, dates, specific companies, etc.

By law, the *State Purchasing Agent's* office either approves in advance or actually purchases all supplies for every state agency. This law is often broken, but the records of every transaction still must be filed with the purchasing agent. Most comptroller's offices have duplicates of the purchasing agent's records, and are most often more cooperative, so scout the purchasing agent's office as a last resort.

In New York, for example, the State Division of Standards and Purchase handles all contracts, materials, equipments and supplies and arranges yearly open contracts, against which institutions write individual contracts. Specifications for services such as laundry, elevator repair, etc., are determined by local institutions which prepare contracts and go thru bidding procedures. Contracts up to $500 require three to five bidders. The Department of Audit and Control and the Attorney General's office have responsibility for overseeing this process.

The offices of the *State Department of "Corrections",* depending on what type of information you want and what you want it for, vary in their cooperative spirit. If you lack inside sources in the agency, go directly to the director's office, to the business agent, the treasurer or the public relations' office with your request.

It is necessary to be extremely persistent when asking state officials for financial information. Just about every financial document put out by state officials is inherently political, so some are reluctant to give out information without knowing how it is going to be used. If you rely on any one source of information, you will

After a year in which Sister Falaka and Black David tutored them in English, mathematics and economics, along with such things as preparations for job interviews, Sister Falaka recalled, "we were all alive, no one was in jail and no one wanted to go home-and in the meantime, we had picked up seven more from other gangs."

Of the original group, seven are now in college, seven have regular jobs and one is in jail. Members of the Clymer Street gang who did not come to the House of Umoja are now among the leaders of organized Black crime in Philadelphia, according to Sister Falaka.

Altho the city's Department of Public Welfare initially objected to a request by probation officers that boys be placed there, on the ground that the house was too unorthodox, the department eventually came to see the value of the House of Umoja. The Welfare Department, along with other city agencies, now contributes funds for placements.

Since its beginning, the House of Umoja has sheltered more than 300 boys and young men, belonging to 73 different street gangs. Only ten are known to have been arrested since leaving the house.

For the past decade gang wars killed about 30 persons a year in Philadelphia, nearly all of them Black, but in 1975 the toll dropped by half. Criminal justice experts believe that the House of Umoja had a considerable role in this. Agreement has been reached among gangs from all parts of the city that the House of Umoja is neutral territory. No one who lives there is to be harmed. The House serves as a crisis intervention center to help avoid gang wars and to try to prevent killings if quarrels do erupt.

Sister Falaka's formula is based on the perception that a street gang provides the same emotional and material security for its members that an extended family would. The House of Umoja tries to do the same thing, but it forbids destructive

behavior. "The House of Umoja is not about breaking up gangs," Sister Falaka says, "It's about stopping killing."

But the House also makes sure its members know how to fight with their hands and teaches members to recognize other kinds of gangs-the kind Sister Falaka calls "the gang in city hall and the gang in Washington that pulled off Watergate."

All the brothers, as members of the House are called, earn money from odd jobs for carfare, pocket money and nominal House dues. Something more important than money in the House of Umoja is the African names that the brothers earn-for their efforts to master the House's philosophy, for the help they give each other, for work they do to improve the House and for community service. Brothers must earn an African first name, and they then go thru seven stages to earn full membership in the extended family. At that point they are given the family name, Fattah.

The brothers attend classes in the African component of their program at the House. They go to regular Philadelphia schools for academic or vocational education. The current group of brothers includes seven students at a Philadelphia community college, all of whom earned their high school equivalency certificates while living at the House.

Sister Falaka does not think it would be easy to replicate the House of Umoja in other cities, but she says it is not impossible. If two brothers from another city come to live in the House for several months, and then went back and took some brothers with them, particularly those who have earned their Fattah names, it might work. "But we cannot write down a manual," she says. "The House is a family, not a social agency..."

Sister Falaka acknowledges several "negatives" about the operation. One is the image of the House in the community. Altho a public opinion survey taken two years ago found that 70 percent of the persons polled supported the House, Sister Falaka says, "We want it to be more. People avoid Frazier Street. We want (the community) not to be afraid of kids who look

mental budget bills, since special appropriations are often passed well after the annual budget is appropriated. Keep in mind that the legislative budget will not include federal funding figures.

Each agency's budget must first be approved by the legislative committees in charge of that agency before being approved by the legislature as a whole. Particular committees might be the source of budget data, but before contacting a committee office, it is a good idea to sound out a Senator or Representative on the committee who might be sympathetic to your cause.

The Budget Bureau has copies of the complete budget for the current fiscal year for every state agency and is perhaps the best place for getting a full breakdown of an agency's planned expenditures on staff, supplies, etc. Federal funding data and supplemental budget information will not be included. Most importantly, it does not show what actually will be spent, only what is authorized.

The *State Comptroller's office* has a detailed breakdown of each agency's complete expenditures in the last fiscal year and in part of the current fiscal year. This information is the most complete you will be able to find, and probably will require the assistance of a clerk in the office.

Also available in the comptroller's office, but more difficult to get access to, are copies of the receipts for every transaction carried out by every state agency in the past year. This includes not only receipts for purchases of food, equipment, office supplies, but also receipts of hotel bills, expense accounts and mileage reports submitted by legislators and state officials. In obtaining this type

state and regional employees who received over $800,000 in salaries in the fiscal year 1975–1976.[18]

- Prison bureaucracy salary ranges are set by state personnel agencies. In the state of New York, for instance, salary scales are set by Civil Service with the Office of Employee Relations of the Executive Department. "Correctional" unions negotiate with that office.
- Breakdown on salaries paid to "correctional" personnel are available from many sources: State Auditor's Report, State Comptroller's Office, State Department of "Corrections," Department of Civil Service or the Legislative Budget.

4. State budgets and financial reports also reveal much that is important.[19] The most convenient source for examining these is the *State Auditor's Report* on a particular agency, available from the auditor's office, or for inspection in the state library. Unfortunately, the most recent report is likely to cover a period eight or ten months prior to the time of your research.

   A second source is the most recent *Annual Budget,* available from the Legislative Documents Room. The budget is a legislative bill like any other bill, which gives a brief listing for each agency and its subdivisions, showing how much money the agency is authorized to spend and how many staff it may hire. Don't neglect supple-

[18] **The Criminal Justice System in Connecticut,** Connecticut Planning Committee on Criminal Administration, Hartford, Connecticut, 1975. 1976 payroll figures secured by telephone conversation with Public Information Office, Connecticut Planning Committee on Criminal Administration, August 20, 1976.

[19] Original research on state budgets and funding sources by Robert Martin, Urban Planning Aid, Inc. 639 Massachusetts Avenue, Cambridge, Massachusetts 02139.

rough." The opinion survey was taken in a door-to-door canvass of the Frazier Street neighborhood by the House of Umoja brothers and other youngsters as a Neighborhood Youth Corps Project.

Continuing problems with the police pose another problem for the House of Umoja. If something is reported stolen in the neighborhood, Sister Falaka says, the police tend to assume that one of the brothers was responsible. Local police commanders, after meeting with the Sister, have agreed to call her in times of difficulty, instead of "kicking the doors in."

The House of Umoja should never again have to scramble for funds. It is a rare example of selfmanagement by community people and has met needs that were previously thought to be "unmeetable." It deserves wide support by the community and its funding agencies.

> If a group of addicts and convicts can organize, with no violence, along multi-racial lines, and produce an economically cooperative situation-health care, employment, education-without the endless "help" of professional social workers and the government this means that the myth of the impotence of the people has forever been put to rest.
>
> —John Maher as quoted in foreward to Grover Sales, *John Maher of Delancey Street*

Delancey Street Foundation

Delancey Street Foundation is a self-supporting family of ex-prisoners.[5] Its program is based on the proposition that the

[5] This section is based on Grover Sales, **John Maher of Delancey Street** (New York, Norton, 1976); "Alternatives to Prison: Delancey Street Foundation," **Fortune News,** June 1974; articles in Corrections Magazine, September 1974, July/August 1975; as well as the group's promotional literature.

best people to resocialize drug addicts and lawbreakers are their peers. Within this context, Delancey Street provides food, housing, medical and dental care, education, entertainment and job training for its family members. A large portion of its success is due to the unbounded energy and charisma of John Maher and Dr. Mimi Silbert. Tho based in San Francisco, it is named for the street where Maher grew up in New York City.

Maher was a small-time hood and dope addict who spent eight years at Synanon. He became critical of Synanon because of its insulation from the social upheavals going on around it. Maher felt that former addicts could and should be able to make it in the larger society. In 1970 he left Synanon to found Delancey Street.

The new project was started with virtually no money. In just a few years it has built itself into a "million dollar foundation." From the beginning it has been financed by the work of members and by voluntary contributions, mostly small. It has never received federal aid, welfare funds or large foundation grants.

The project's first home was a mansion that had been the consulate of the United Arab Republic, located in an elegant San Francisco neighborhood, Pacific Heights. Tho eventually they lost this house after a zoning battle, the struggle brought them much community support.

Convinced that people with problems should not allow themselves to be made invisible, Delancey Street members proclaim their right to live in Pacific Heights. They have built strong working ties with a variety of community organizations, including labor unions, feminist groups, gay liberationists, senior citizens' groups, the Prisoners' Union, United Farmworkers Union, the Black community and sympathetic politicians. They now have a dynamic, economically self-fueling community of over 350 people occupying two large buildings and an apartment complex in and around Pacific Heights.

- Middle level people, particularly Jay Cees, are often listed in *Outstanding Young Men of America.*
- The one best source on women is Who's *Who of American Women.*
- The most important business source is *Poor's Register of Corporations, Directories, and Executives* which lists alphabetically about 27,000 banks and industrials, along with their directors, officers and a little business information.
- The New York Times Index is a gold mine on names and subjects of interest to power structure research, as are local newspaper "morgues."
- For further information in researching professionals and corporate people by affiliation, see NACLA Research Methodology Guide.[17]

3. While most states no longer profit from running prisons, those who run them do. One unstated function of federal, state and county prison systems is to provide thousands of employees and hundreds of contractors with a living. The following sources focus on "correctional" salaries and contract procedures:

    - LEAA state and regional bureaucracies' salaries and budgets are published by each State Planning Agency and are available at state or regional offices. The numbers of people employed by this bureaucracy is startling. In the small state of Connecticut, for instance, there are over 70 LEAA

[17] **NACLA Research Methodology Guide,** North American Congress on Latin America, P.O. Box 226, Berkeley, California 94701, or Box 57, Cathedral Park Station, New York City, 10025.

- Or visit the Secretary of State's office or the public library for a copy of "State Legislative Manual," sometimes called the "Blue Book" (or "Red Book") which contains an outline of the responsibilities of state agencies, biographies of key state officials, plus other useful information.
- Most LEAA State Planning Agencies put out a comprehensive description of the entire state criminal (in)justice systems. In Connecticut, for instance, it is titled: *The Criminal Justice System in Connecticut* and contains salary ranges for personnel, categorized budgets and other interesting information.
- Libraries and League of Women Voters groups will be helpful in locating information you need for county and local levels of bureaucracies.

2. Fill in the charts with the names of persons appointed or hired to fill important organizational positions. Also list legislators who serve on the prison-related committees and the names of employees who fill the upper echelons of the state and regional planning agencies of the LEAA.
    - Check hiring practices and credentials of employees and appointees.
    - To check on conflicts of interest, find out the business, union, political and other affiliations of prison bureaucrats and managers. Check *Polks City Directory* which is developed for use by business and gives the address, occupation and business ownership (if any) of every person in the telephone book.
    - If you are checking prominent people, consuit *Who's Who in America* or various regional or state versions. Be particularly alert to any corporate connections.

John Maher and members of the family believe in self-management by people affected by social injustice. Maher maintains that the "primary thrust for the poor should be the development of their own capital and their own labor," so they can acquire real economic and political power. Delancey Street trains its people in real life skills so that they will have tools and resources to bring to the larger community; yet, in their quest for power, they always remain outside of the system and not dependent upon it.

Thru their philosophy of self-management and self-reliance, family members have created a network of businesses that support them and their work. Much of their food, clothing and furniture is donated. No one at Delancey Street receives a salary, either for work done at the residences or at the businesses. Each member is given approximately $20 a month walking-around money.

Delancey Street businesses include: A moving company with a fleet of more than 30 cars, trucks, busses and vans. An automotive repair shop that also restores antique vehicles. A construction business. A potted plant and terrarium business, started in the greenhouse on top of a Pacific Heights mansion. Delancey Street, A Family Style Restaurant, has become a fashionable place to eat; recently the California Liquor Control Board granted it a wine and beer license, despite the fact that it is staffed by ex-prisoners.

The family structure of Delancey Street is rigid and authoritarian. New members are required to show their obedience by men shaving their heads, women wearing no makeup or jewelry. Drugs and alcohol are prohibited, as are physical violence and "promiscuity." A commitment of at least two years is required, tho a family member may stay as long as s/he wants. Goods a newcomer brings are confiscated and redistributed within the community according to need.

All family members are required to participate in a game, which is based on the Synanon game. Encounter-like con-

frontations allow players to release repressed emotions. Arguments and disagreements that arise during the day are left to smolder till evening, when the parties involved can fight it out and work it out in the game. Newcomers must play at least three times a week; veterans less often. One family member puts it bluntly, "The games are our medicine."

Today more than half the referrals to Delancey Street are the result of official recommendations. Considerable effort is devoted to educating members of the criminal (in)justice systems, including twice weekly luncheons to which skeptical judges, probation officers and parole agents are invited.

Other outreach efforts include The Delancey Street Welcoming Committee which greets neighborhood newcomers with flowers and offers of help. A Crime School Clinic teaches Bay Area store managers and security officers how to defend against rip-off artists, shoplifters and pickpockets (for a $250 fee). Delancey Street people helped in the $2 million food giveaway which was part of the Patricia Hearst ransom.

Of the hundreds of men and women who have been Delancey Street members, only one has been arrested while a resident. The drop out rate is under 40 percent. Despite backgrounds of drug addiction and criminal activity, many who left Delancey Street without official sanction have been able to make it in the community on their own. One former family member, who came to Delancey Street in 1970 after persuading a judge not to sentence him to a long term for armed robbery and burglary, stayed for two years. He left before "graduating" because, as he said, he felt ready. After six months on his own, he was still "clean" and working in Menlo Park installing airplane interiors.

Whether Delancey-like projects can be created by others elsewhere remains to be seen. Dr. Donald Cressey of the University of California believes that the reason such self-help programs "work so much better than official programs is that they're *not really replicable." In fact, he has stated, the easiest*

To understand policy one should know the policy makers-the men of power-and define their ideological view and backgrounds.[14] Most of us believe that bureaucracies make decisions based on neutral, independent rationale, denying that people of power who comprise the bureaucracies are more than disinterested, perhaps misguided public servants. The fact, of course, is that people of power do come from specific class and business backgrounds and ultimately have a very tangible material interest in the larger contours of policy.[15]

Research methodology

To better perceive the nature of prison bureaucracies, how they are structured, the interests of those who comprise them and the power they wield, requires information about sources of relevant data:

1. First, it is a good idea to construct organizational charts for your state or local prison bureaucracies. Include charts for LEAA State and Regional Planning Agencies and prison-related legislative committees.

    - For the agency administering a prison see Sourcebook of Criminal Justice Statistics, Table 1.130, "Agency responsibility for administering correctional services, by state, January 1971," pp. 167-69.[16]

sors who deliver lectures on criminal law and write textbooks on criminal law, as well as the whole apparatus of police, detectives, judges, executioners, juries, etc.

[14] Gabriel Kolko, **The Roots of American Foreign Policy** (Boston, Beacon, 1969) p. xii.

[15] **Ibid.**

[16] **Sourcebook of Criminal Justice Statistics-1974,** U.S. Department of Justice, LEAA, National Criminal Justice Information and Statistice Service, Washington, D.C., July 1975.

Prisons are public places, paid for by the citizenry who have rightful access in terms of entree, as well as information. Education about the reality of prisons cannot come from the powerful front offices of those who are the keepers. Rather, the recipients of the system-the prisoners, in combination with their research allies on the outside, can authentically document the terrible costs and wastes of imprisonment.

Prisons as industry: Jobs

Abolitionists recognize that the economies of some localities are totally dependent on prisons and jails in much the same way that certain districts rely upon Pentagon contracts. Aside from other functions erroneously or correctly linked to prisons-they do provide jobs:

The prisons give employment to over 70,000 persons, many of whom would have difficulty procuring positions elsewhere. This is especially true of the custody staff, given their relatively low educational attainment and lack of skilled training. Many members of the treatment staff—counselors, sociologists, psychologists, and teachers-have no more than a bachelor's degree in subject matter, which, in today's job market, is a surplus commodity. At the administrative level, many of the positions are obtained thru political patronage as a reward for political loyalty, an element of no relevance in the nongovernmental job market. The penitentiary also gives employment to the paraprofessional whose skills are not well enough developed to be marketable in private employment.[13]

Breaking the cycle of economic dependence on prison industries is not an easy task, but we are convinced that the fantastic fiscal and social costs of prisons-when fully conveyed to the people-can act as a tool for change.

[13] **Ibid.,** p. 367. Other unintended prison functions noted: Prisons serve as a training ground for criminals and help provide a supply of criminals sufficient to maintain the criminal justice system. Prisons also sustain profes-

way to destroy such a program would be to make it official and "bureaucratize" it. Successes such as Delancey Street support Dr. Cressey's thesis that the best resocialization programs are run not by professionals but by community people.

John Maher puts it this way: "The great myth of the last 20 years is that we are failing [to curb addiction and crime because of public apathy and lack of funds." He considers Delancey Street a thriving refutation of that myth and a reaffirmation of the axiom that hard work, self-sacrifice, and relating within a family-like situation are the best antidotes to antisocial activity.

People say that won't work with everybody. Of course not. Penicillin don't work with everybody, so what do you do, give it up? We are not a program whose responsibility is to cure everybody in the world. We are an access route for those people who are willing to make some sacrifice to dignify their lives.

> People must understand that power bases like Delancey Street and an economy that provides these small enclaves with its own self-fueling system, without help from the government and large foundations, are the only way that enough strength can be developed to make change.

> We are teaching legislators, criminal justice committees, and reform groups how to start Delancey Streets that take on the unique personalities of their leaders and their communities … The head of the French drug program … is sending French prisoners to Delancey Street … so that other countries can see how we've built, not just an alternative to the prison system, but a working model to improve the tenor of all society.

—John Maher, as quoted in Grover Sales, *John Maher of Delancey Street, p. 168*

Empowering Prisoners

People who support the prison movement still need to understand what self-help and self-determination are, because these are the basic philosophies we operate under. They simply mean that prisoners are helped by prisoners. And organizations concerned with prisoners should be run by and for prisoners.

—Russ Carmichael, *NEPA News,* April/May 1975

It seems strange to me that convicts or excon-victs are never consulted about prison matters, nor even considered for consultation, when they are what prison is all about and the only true professional.

—Robin E. Riggs, *The Outlaw,* March/April 1975

I think the prison leadership has to come from the people suffering from the serious plight of prison. There are many people in our ghettos thruout the country who are in minimum security type prisons where the walls are not visible. I think that a lot of people can support our movement, but I do definitely believe that the movement must be initiated by the people who are oppressed the most by those particular possibilities or plights.

—Arnold Coles, *NEPA News,* April/May1975

A national priority was discussed. The most obvious one came out-convicts speaking for themselves; not sociologists, counselors, administrators, etc., but convicts. The most important

comprise the prison/industrial complex, we begin to cast light on some hidden functions of prisons which serve particular interests.

Researching the prison power structure

Most traditional prison research studies captive prisoner populations rather than their slave environment and keepers. These studies often further the manipulation and control of prisoners, rather than addressing their real need for empowerment and voluntary social services. Most often, research is designed and information is categorized so that key connections between the oppressive institution and behavior are not made. Meanwhile, criminologists benefit financially from sizeable research grants handed out by those who have the power to decide who and what shall be studied.[12]

We have been socialized to believe that only a select few professionals and academics are competent enough to engage in serious prison research. But what if the machinery were reversed? What if abolitionists declared that pertinent prison research is of the variety that exposes the prisons' hidden functions and its waste of economic and human resources? Further, what if powerful prison bureaucrats and managers' affiliations, budgets, contracts and economic and political gains were pried into, analyzed, cross referenced and systematically scrutinized and the results published?

By engaging in prison research with the goal of systems change, we not only shatter the myths about who can competently conduct the research, but determine for ourselves which issues and situations require investigation and public exposure.

Prisons, even while their functions continue to diminish, must be made more open and accountable to the public. Closed institutions have no place in a democratic society.

[12] Charles E. Reasons and Russel L. Kaplan, "Tear Down the Walls? Some Functions of Prisons," **Crime and Delinquency,** October 1975, p. 369.

that affect them, the process of empowerment begins. Starting from this concept, one can foresee:

- Prisoners feeling part of the community.
- Community involvement with prisoner issues.
- Prisoner involvement with community concerns.
- The image of prisoners being humanized.
- Prisoners as a new constituency for political office-seekers.
- The legitimization of prisoners and ex-prisoners as an effective political force.
- Access to prisons for community people.

Empowering the movement

Closed and secretive prison hierarchies do everything in their power to preserve the myths they have woven and to discourage those outside its tight little circles from discovering the true nature of institutional violence carried on in the name of "corrections."

Fortunately, authentic information about the reality of prison oppression and its human costs have not been completely cut off from the public. From the inside, rebellions, uprisings and strikes at Attica, the Tombs, Rikers Island, Folsom and countless other prisons send loud, clear messages, shattering the myths concocted by prison managers.

Like our predecessors, the slavery abolitionists and the antiwar activists, we are committed to expose the immense economic and human costs of prison—its destruction, waste and exploitation. By identifying the structures and decision-making processes, the people and institutions that

national priority is the convict voice in their own destiny.

—Stephanie Riegel, "The National Prisoner Union Conference," *The Outlaw*, June/July 1975

Last spring when the guards went out on strike, the prisoners ran Walpole for nine weeks. Aside from the day to day running of the prison, including the kitchen, educational and vocational programs, prison industries and daily counts, the prisoners took care of their own internal problems. There were no rapes or killings.

The movie "3,000 Years and Life" was filmed at this time. It shows Jerry explaining how wrongdoers are corrected by persuasion and embarrassment in front of peers. He said that if one con steals from another, the men tell him, "You're a pig. Just like the System." The brother gets embarrassed. Then the men say, "It's no big deal, we know it won't happen again." Then they pat him on the back, give him a cigarette, and it's over.

When the guards returned exactly a year ago today, as I write, Jerry and Bobby Dellelo … were stripped, beaten, run naked across broken glass and thrown in the hole. The administration doesn't want the prisoners to exercise responsibility, but when the prisoners had the responsibility of running the prison, the prisoners virtually ended violence at Walpole, and generally ran the prison better than it had ever been run before.

Superintendant Vinzant has a different perspective on prisoner solidarity. "All prisoner solidarity does is to foster disrespect, tension, and abuse between the prisoners and the guards .

—Donna Parker, *NEPA News*, June 1974

Prisoners' demands are no secret. Whether prisoners are bursting from their cages in anger and frustration or coolly presenting carefully drawn manifestos, their message is the same:

> We are firm in our resolve and we demand, as human beings, the dignity and justice that is due to us by right of our birth. We do not know how the present system of brutality and dehumanization and injustice has been allowed to be perpetuated in this day of enlightenment, but we are the living proof of its existence and we cannot allow it to continue. The manner in which we chose to express our grievances is admittedly dramatic, but it is not as dramatic and shocking as the conditions under which society has forced us to live. We are indignant and so, too, should the people of society be indignant.
>
> The taxpayers, who just happen to be our mothers, fathers, sisters, brothers, sons and daughters, should be made aware of how their tax dollars are being spent to deny their sons, brothers, fathers and uncles justice, equality and dignity.
>
> —Respectfully submitted, ... Inmates of the 9th floor, Tombs Prison, August 11, 1970

The Attica demands presented in D Yard in September 1971 included an end to slave labor, constitutional rights to religious, political and other freedoms, full release without parole when conditional release is reached, educational and narcotic treatment programs, adequate legal assistance, healthy diet, more recreational facilities and time, and the establishment of inmate grievances committees as well as other procedures.

Tho a continuing battle against prisoner registration was waged in Concord, led by a prominent and vocal citizen, over 300 prisoners were registered (out of a prison population of 500) and were able to vote in the election. Others voted thru absentee ballots from the town where they had lived prior to their imprisonment.

Carl Velleca conducted, with the help of community supporters, a vital and instructive campaign. Coffees held by Velleca and his committee attracted sizeable groups of people each Sunday night. These meetings resulted in the setting up of a group to develop ways that prisoners could become involved in the community, contribute to the community, and gain, thereby, a new level of empowerment.

Velleca lost. But his campaign was effective: as many citizens voted for him as had had contact with him-he was able to reach the people. And support for his candidacy came from unexpected places. Local newspaper reporters gave their own money toward his campaign fund, Warden Genakos of Concord announced his intention to vote for Velleca, a vocal conservative in town completely reversed his position after contact with Velleca, and admitted publicly that it was "great" he was running and a good idea that prisoners vote.

And the prisoner vote? It answered the most frequent fear aroused by prisoner registration-no bloc vote could be discerned. Many prisoners voted for candidates other than Velleca.

Dave Collins says that thru the concept of prisoners sharing in the political process-voting, running for office-the inevitability of major changes within the prisons themselves, especially the larger ones, can be foreseen. A long range goal is education of the community to accept smaller, more open facilities and to substitute alternatives. A shorter range view sees an increase in the self-esteem of prisoners-and the right to vote is a big step in that direction. With prisoners involved in the community, influencing in a modest way the political actions

The project was initiated by Dave Collins. After his release from Norfolk prison, he and others did research on the financial and political relationships between prisons and the towns in which they are located. They discovered that agreements had been made between the Norfolk Board of Selectmen and prison administrators that affected prisoners negatively. Prisoners had no knowledge of these agreements and no input into them. Prison townships submitting requisitions for federal money—such as minority funding-include the largely Black prison population but when the money is spent, programs are unavailable to prisoners.

The group also studied the election statutes. They learned that in Massachusetts prisoners are not specifically excluded from eligibility to vote.

Prisoner voting rights in Massachusetts were strengthened by the *Evers* V. *Davoren* decision which extended absentee ballot voting rights to prisoners.

The project selected Concord for its first effort to register voters. It was chosen because the town is liberal and because it's less economically dependent on the prison than other Massachusetts prison towns. Keeping a low profile, the group began organizing for prisoner voter registration.

The project got a boost when, coincidentally, a prisoner named Carl Velleca announced his intention to run as a candidate for Selectman. Media attention to Velleca's campaign focussed also on the registration drive. It was simple to obtain the ten signatures of resident registered voters that required the town Registrar of Voters to go into the prison and register anyone who claimed to be a resident of Concord.

Because so many precedents have been set-women's suffrage, the voter registration struggle in the South-election laws are slanted in favor of the denied classes. Any citizen who wishes to challenge an individual's eligibility may do so, but the burden of proof rests with the challenger to show cause. The benefit of doubt is with the intended registrant.

The manifesto from the Folsom Prison strike is representative of the many documents carefully written and posted by prisoners all over America. These are the most authentic voices from prison: those on the receiving end of the system.

Folsom prison strike manifesto

1. *We demand* legal representation at the time of all Adult Authority hearings.

2. A change in medical staff and medical policy and procedure.

3. Adequate visiting conditions and facilities.

4. That each man presently held in the Adjustment Center be given a written notice with the Warden of Custody signature on it explaining the exact reason for his placement in the severely restrictive confines of the Adjustment Center.

5. An immediate end to indeterminate adjustment center terms.

6. An end to the segregation of prisoners from the mainline population because of their political beliefs.

7. An end to political persecution, racial persecution, and the denial of prisoners, to subscribe to political papers.

8. An end to the persecution and punishment of prisoners who practice the constitutional right of peaceful dissent.

9. An end to the tear-gassing of prisoners who are locked in their cells.

10. The passing of a minimum and maximum term bill which calls for an end to indeterminate sentences.

11. That industries be allowed to enter the institutions and employ inmates to work eight hours a day and fit into the category of workers for scale wages.

12. That inmates be allowed to form or join labor unions.

13. That inmates be granted the right to support their own families.

14. That correctional officers be prosecuted as a matter of law for shooting inmates.

15. That all institutions who use inmate labor be made to conform with the state and federal minimum wage laws.

16. An end to trials being held on the premises of San Quentin prison.

17. An end to the escalating practice of physical brutality.

18. Appointment of three lawyers from the California Bar Association to provide legal assistance for inmates seeking post-conviction relief.

19. Update of industry working conditions.

20. Establishment of inmate workers' insurance.

21. Establishment of unionized vocational training program comparable to that of the Federal Union System.

22. Annual accounting of Inmate Welfare Fund.

23. That the Adult Authority Board appointed by the governor be eradicated and replaced by a parole board elected by popular vote of the people. 24. A full time salaried board of overseers for the state prisons.

25. An immediate end to the agitation of race relations.

A similar case in 1974, *O'Brien v. Skinner,*[9] *was* brought before the U.S. Supreme Court. Here, the failure to include prisoners in an absentee voting scheme was challenged as a denial of equal protection of the laws under the 14th Amendment. The court held that prisoners who are otherwise legally qualified to vote cannot be denied the right solely because of incarceration.[10] If the state provides no other method of voting for prisoners, the statute which excludes them from absentee voting denies them the equal protection of the laws.

States which expressly prohibit convicted persons from voting by statute or constitutional amendment are not affected by either *Evers v. Davoren* or *O'Brien v. Skinner.* These cases only apply to states which have no laws against prisoners voting and where prisoners are not included in absentee voting schemes. People in states which expressly prohibit felons from voting have two options: They may bring a case to court to declare such laws unconstitutional under the 14th Amendment. Or they may try to amend the state constitution, a longer process taking two or three years, but worthy of the effort.

A prisoner voting rights project

The empowerment of prisoners thru involvement in the electoral process is beginning in Massachusetts.[11] A three-year-old project sponsored by the American Friends Service Committee (AFSC) has succeeded in making registered voters of several hundred prisoners in Massachusetts' institutions. The project is staffed by ex-prisoners and utilizes the support of volunteers within prisons and from surrounding communities.

[9] **O'Brien v. Skinner,** 94 Supreme Court 740 (1974).

[10] David Wm. T. Carroll, "The Voting Booth with Steel Bars: Prisoners' Voting Rights and O'Brien v. Skinner," **Capitol University Law Review** (Columbus, Ohio), Vol. 3 (1974), pp. 245-65.

[11] This section is based on an interview with Dave Collins by PREAP, May 27, 1976.

oners restores their civil life by recognizing them as citizens with the privileges and responsibilities of citizenship.

Two hundred years ago, the only people who could vote were white male landowners who were not in prison. The requirements that a person own property, be of a particular race or a favored sex have been dropped; only those classed as felons remain disenfranchised.

In most states, citizens convicted of felonies lose forever the right to vote, unless their citizenship rights are restored by some procedure. While in prison, few prisoners are allowed to exercise their constitutional right to vote.

Disenfranchisement may be a proper response in convictions for crimes directly related to the electoral process, such as treason, bribery or electoral fraud. However, the blanket denial of voting rights to *all* prisoners is unjustified.

Legal aspects. New laws make prisoner voting rights an attainable goal. For instance, in July 1976, a law became effective in California implementing a system of voter registration by mail. Vermont enacted a law making ballots available to all prisoners in 1972. Massachusetts is registering voters thru the efforts of a prison change group we describe below.

Among the many decisions on the question of voting rights, two cases are key precedents to cite when arguing for enfranchising prisoners. In *Evers v. Davoren,*[8] the Massachusetts Supreme Court extended absentee ballot voting rights to Massachusetts prisoners for the first time. In his decision, Justice Wilkins held that where the right to vote exists, that right may not be diminished by procedural obstacles. Since the Massachusetts Commonwealth had never expressly denied them the right to vote, prisoners were enabled to vote on absentee ballots.

[8] **Evers v. Davoren,** Massachusetts Supreme Court, October 19, 1974.

26. Ethnic counselors.
27. An end to the discrimination in the judgment and quota of parole for Black and Brown people.
28. That all prisoners be present at the time that their cells and property are being searched.

A bill of rights for prisoners

This composite bill of rights for prisoners has been assembled from various state prisoners' demands:

- Right to organize prisoner unions.
- Right to adequate diet, clothing and health care.
- Right to vote and end second-class citizenship.
- Right to furloughs or institutional accommodations to maintain social, sexual and familial ties.
- Right to noncensorship of mail, literature and law books.
- Right to access to the press and media.
- Right to procedural and substantive due process to guarantee rights.
- Right to personality; resistance to coercive attempts by "correctional" staff to change behavior thru brain surgery, electric stimulation of brain, aversion therapy, hormones or modification techniques.
- Right to properly trained counsel.
- Right to be free from racial, ethnic and sexist discrimination.
- Right to freedom from mental and physical brutality.

- Right to have the community come into the prison.
- Right to have surveillance teams in prisons to monitor rights, protect prisoners' due process and see that they have access to their own files.
- Right to make restitution in lieu of further incarceration.
- Right to know their release date at time of entry to the prison.

In all the demands that come out of America's prisons, and there are thousands, there has never been a mention of wall-to-wall carpet or color t.v. The demands have always been for the bare necessities of decent human existence, for constitutional rights and for changes in the judicial and penal systems. Yet prison managers are deaf to these demands and focus on pastel paint and modern architecture where the same indignities are perpetuated.

Prisoners' Union

> We are convinced that there will be no progress unless prisoners and ex-prisoners participate in shaping the solution. First, prisoners' and ex-prisoners' perspectives are absolutely necessary to define the problem and to construct solutions. If anything has been learned from the events of the last 20 years, it is that "outsiders" alone are unable to define a particular group's problems and work for their solution without the full participation, if not the leadership, of the target group. Secondly, by and large prisoners have come from social segments which have been denied participation in the society's political and economic institutions. Therefore, to solve their

Prisoners, organizing on the inside, need the help of all prison changers. Their message directed to other prisoners for unity and change also applies to those of us on the outside:

> Convicts are the real experts on prisons. And convicts, more than any other group of individuals, have a vested interest in achieving real prison change. There is only one thing that can stop Union representation and this is your silence. Your rights will never be returned as a gift. You must unite and collectively and peacefully bring about the changes. We want changes. Things are not going to work themselves out. Others will not do it for you. You need not stand alone.
>
> —"Don't Criticize, Organize," The Outlaw, January/ February 1976

Prison changers who advocate the empowerment of prisoners will find prisoners' unions a crucial issue to actively support by lending their skills, financial aid and public pressure and by subscribing to *The Outlaw.*

> Mr. Carlson director of the Federal Bureau of Prisons] adds that if prison authorities do not "go to hat" in state legislatures for prisoners, the prisoners themselves should not expect to have much influence with legislators. "As Louisiana's late Governor Huey Long used to say, 'There ain't any votes in prison,' " comments Mr. Carison.
>
> —U.S. News and World Report, March 1, 1976, p. 67

Prisoners' voting

Assuring prisoners their right to vote can help break down the walls between prisoners and communities. Enfranchising pris-

focuses on critical social and criminal justice issues. The Think Tank Concept has become an institution, providing vital and needed service to the New York State community.

—excerpted from Dasil Velez, "Think Tank Concept," 1976 Greenhaven Prison, Stormville,New York

Importance of prisoners' unions

To the "correctional" bureaucracy a union of prisoners is a contradiction of penal terms, for it is an affirmation of community and of rights, two attributes a prisoner is supposed to shed along with civilian clothes in the induction process. Since a prison regime is absolutist, and hence peculiarly susceptible to the absolute corruptions of power, a ruthless attempt to crush the incipient prison movement is a clear and present danger. Only informed, insistent, massive public support of the prisoners can counter this threat.

The union movement is no modest reform proposal, no effort to gild the cage. By striving to establish the rights of the prisoner as citizen and worker, it seeks to diminish the distinctions between [the prisoner] and those on the other side of the walls, in a profound sense the ultimate logic of such a movement is abolition, for to the degree that those distinctions are obliterated, to the same degree the prison is stripped of its vital function.

—Jessica Mitford, Kind and Usual Punishment, pp. 295-97

"problems," they must be allowed to develop skills in participation and to gain access to the society's political and economic arenas.

—Willie Holder, President of the Prisoners' Union, Fellowship, November 1975, p 7.

Labor unions in American prisons are in a place similar to conventional labor unions at the turn of the century: embryonic, strongly resisted, considered subversive, dedicated to participatory democracy and willing to make sacrifices. Unionization would be a major step in the empowerment of prisoners and it may contribute to lessening the violence in prisons.[6]

Prison labor unions are not an American invention. The first successful prisoner labor union was organized in Sweden. Since 1966, the union, which represents the vast majority of Swedish prisoners, has carried out a long series of successful negotiations with the government. Every effort has been made to make the prisoners' wages the same as free wages. Prisoners pay rent for their cells and board for their food. They are encouraged to pay their debts in the free community, including restitution to the victims of the crimes. They pay taxes and generally have enough left at the end of the month to save around $50.

Additional benefits from unionization have been a good working relationship with Swedish industry, widely available vocational training, safer prison factories, eligibility for workmen's compensation and, perhaps most important of all, the democratic involvement of prisoners in forming their own destiny.

[6] This section is based on "Stickin' with the Union: A Brief History of the Prisoners' Union," **NEPA News,** April/ May 1976; "History of the Prisoners' Union," **The Outlaw, January/** February 1973; "Right to Participate," **The Outlaw,** January/ February 1976; and Minnesota Prisoners Union Newsletter, October 1, 1974.

The union is credited with diminishing violence in prisons, lowering recidivism and making prisons more open institutions in Swedish society.

The strike at Folsom prison, California in spring 1970 gave birth to the U.S. prisoner union movement. This 19-day work stoppage was remarkable in that it was a nonviolent, non-rule-breaking event.

The following January ex-prisoners and parolees in California, some of them veterans of the Folsom strike, held a statewide convention to lay the foundation for forming the Prisoners' Union. By midsummer the union had been incorporated and its major objectives established for changing the condition of prisoners.

Goals of the union fall under three headings:

- Abolishing the indeterminate sentencing system and replacing it with short, fixed determinate sentencing.
- Establishing workers' rights for prisoners, including the right to organize collectively and to bargain over working and living conditions.
- Restoring civil and human rights for prisoners and ex-prisoners.

Underlying the basic goals is one theme: unity. Union people realize how prison guards and administrations use every means possible to fragment prison populations and prevent prisoners from reaching common grounds on common issues.

During its first two years the Prisoners' Union focused on California, publicly confronting the Department of "Correction" (CDC) at every turn. Class action suits were initiated on behalf of prisoners. The inner workings of the prison system were exposed to the public thru a basic education program.

[7] Subscriptions to **The Outlaw** are available from Prisoners' Union,

bringing about a needed change in the traditional policy of viewing prisons as private enclaves, operated as the sole responsibility and authority of the state. A series of small community-prisoner meetings followed, providing the structure for the Think Tank Concept: a highly active group of prisoners who work to bring forth changes in both the prison and the community.

Since its inception, in addition to creating the Malcolm-King Harlem College Extension and other prison-based degree courses, the group established a community re-entry agency field office within the prison (Project Second Chance); contributed to the development of a family counseling service in Harlem for the families of prisoners; developed a counseling and training program using prisoners on work release with the Division for Youth at the Goshen Center for Boys; did consultant work with over 50 agencies and organizations around the state; assisted in the development of a Health Assistant training program; established the Think Tank Concept Annual Awards Program for outstanding community leaders and sponsored numerous seminars and conferences on crime, education, "corrections" and juvenile justice.

In 1975 the Think Tank was awarded a national citation for voluntary service to the community from the National Center for Voluntary Action. Their president, Roger Namu Whitfield, was selected as one of the Outstanding Young Men of America for 1975 in spite of being a prisoner.

Presently the Think Tank publishes *Voices for New Justice,* a state-wide alternative newspaper which

Authorization for Representation by the Prisoners' Union

1315 18th St.

San Francisco, Calif. 94107

Having jurisdiction over the classification of work done by me.

Name _____ Address _____

Number _____ Prison _____

Class of Work Done _____

Witness

I hereby authorize the agents or representatives of said Union to represent me and to act as a collective bargaining agent in all matters pertaining to rates of pay, hours or employment and all other terms and conditions of incarceration.

Date _____ Signature _____

The Think Tank Concept

The Think Tank Concept evolved out of the People's Party and their efforts to establish the Green Haven Prisoner's Labor Union, which was eventually denied recognition as public employees by the Public Employees Relation Board in December 1972.

In September 1972 a dialogue was held at Green Haven Prison comprised of prisoners, prison administrators and thirty community representatives. This meeting was the first step towards

Publication of *The Outlaw* was started, a monthly journal in which prisoners express themselves and keep in touch with prison happenings across the country.[7]

Organizing was not without struggle. Known union representatives were barred from entering prisons in California and *The Outlaw* was contraband material inside.

A spring 1973 issue of *The Outlaw* included an "authorization slip" which designated the Prisoners' Union as the signer's official bargaining agent. Hundreds of slips were mailed in from prisons across the country.

This opened up the possibility of organizing Prisoners' Union affiliates in several other states, including Minnesota, Wisconsin, Michigan, Oklahoma, Ohio, North Carolina and New York. By the end of 1975, close to 23,000 men and women prisoners were members.

Struggle was a part of this phenomenal growth. California organizers were still locked out of the prisons. Possession of a union card was equivalent to possession of contraband. Inside unions in Ohio, Michigan and New York collapsed because of harassment by prison officials. Outside organizers in Minnesota were locked out of the prisons. Prison organizing was declared illegal in Wisconsin and outside organizers were threatened by police, inside organizers beaten or subjected to arbitrary disciplinary procedures.

The union has had to deal with intense opposition from prison administrations. Even unionized prison employees-who might have been expected to show some solidarity with prisoner unionizing efforts-have opposed the Prisoners' Union. The California Correctional Officers' Association threatened to strike, stalling at least temporarily an agreement between union members and top administrators of CDC.

A few victories-particularly in the area of court decisions-have helped keep the union alive. In California, prisoners have won the right to possess *The Outlaw* and union

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membership cards. In North Carolina prisoners now have the right to meet, circulate a newsletter and solicit memberships in prison.

Minimum wage. The struggle to bring prisoners' working conditions and wages up to those of free laborers will be a long and hard one. The struggle is aided by organizations such as The National Council on Crime and Delinquency, which advocates adequate compensation of prison labor. Recognizing the slave conditions to which prisoners are subjected, their Board of Directors' policy statement reads in part:

> The present condition of prison industries limits the value of [work programs]. The deficiencies vary from prison to prison … The pay for inmates employed in prison is too low to be regarded as wages. The average prison laborer receives from ten cents to 65 cents a day. Few institutions pay inmate workers for a day's work what the federal minimum wage law requires for an hour's work. The rate of pay … is only a token … a daily rebuke to the inmate, reminding him [her] of society's power to exploit at will.
>
> This counterproductive prison labor system must be changed. An inmate receiving equitable payment for work performed will be able to provide some support of his [her] family, continue payments on social security … make some payment for room and board, and save money to assist himself [herself] upon return to society.
>
> Therefore, the National Council on Crime and Delinquency urges the introduction of federal and state legislation requiring that an inmate employed at productive work in a federal, state, or local institution shall be paid no less than the minimum wage operative nationally or in his [her! state.

1315 18th Street, San Francisco, California 94107 at the following rates: free to prisoners; $4 students; $8 regular.

Advocacy lawyers are needed to assure the rights of prisoners to unionize:

> In theory, "a prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication, taken from him [her] by law." Consequently, the presence or absence of the "right" to unionize turns on both the possession of this right by the ordinary citizen and the constitutional, statutory and practical considerations which might specifically or by necessary implication withdraw this right from the inmate. The right of the ordinary citizen to form and participate in labor unions has been well established. However, there is some question as to whether this right has been specifically or impliedly withdrawn from inmates.
>
> If prisoners have a constitutionally protected right to engage in some form of labor unionization, it is important that this right be safeguarded and that its exercise be allowed to the fullest extent possible. In the absence of a "constitutional right," it might never the less be desirable to allow the formation of such organizations.
>
> —Paul R. Comeau, "Labor Unions for Prison Inmates: An Analysis of a Recent Proposal for the Organization of Inmate Labor," *Buffalo Law Review*, Spring 1972