

Study of the Economic and Rehabilitative
Aspects of Prison Industry:
Vol V: Prison Industry - The State of the Art

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"In corrections, industries operations have remained relatively constant over the past twenty-five years. Their traditional role involves: (1) marketing a few products to other state agencies; (2) paying the inmates token wages; and (3) decision-making based on the premise that free labor is to be protected."

— Jude P. West, The Role of Correctional Industries, 1971.

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Preface

A state of the art document is difficult to write, but especially so in the instance of prison industry, which exists in different form in each of forty-eight of the United States. Each state has different legislation, political constraints, administrative policies, financial situations, and prison industry rationale. No report of this size can adequately document all of the variations and differences in all of the states. We have attempted to pull together in one place as many sources of information as we could acquire in order to produce an overview of what the "typical" prison industry looks like. Except for a few exceptions across the United States, the view is not outstanding. In general, the contribution of Prison Industries to the general welfare of the state, the prison institution and the inmate worker falls far short of its potential. The reasons underlying this state of affairs are many and complex; certainly many of the underlying causes are beyond the control of prison industry managers.

This volume is based on the experiences and observations of eleven staff members who have been involved in this study, and have observed the prison industries in Georgia, Pennsylvania, Connecticut, Colorado, Washington, Minnesota, Illinois, and Texas during this study. Also included in this document are the results of an extensive review of literature pertaining to prison industries.

Summary

Until only recently, prison industries was the poor stepchild of corrections. It was given little or no operating monies, rarely any capital expenditure funds, and those few profits which did accrue usually went to state coffers. Emphasis was placed on filling idle inmate time, and later, in trying to develop treatment modalities in order to accommodate the more current correctional concept of rehabilitation.

The history of prison industries is about 150 years old, beginning in Auburn where its goal was a self-supporting institution. Its full potential was more nearly realized in the late eighteen hundreds, but at a price: the enmity of free industry and labor. The result was a series of legislative restrictions, the most damaging of which are the Hawes-Cooper Act (1929) and the Ashurst-Somers Act (1935), which basically divest prison-made goods of interstate character and prohibit the interstate transportation of such goods. In addition, most states passed statutes limiting the sale of prison-made products to state and local agencies, and restricting the entry of such goods from other states.

Studies undertaken in the last five years, particularly those by Jude West et al., the Institute of Criminal Law and Procedure at the Georgetown University Law Center,

the Battelle Institute, and the John R. Wald Company, Inc. have come to these basic conclusions:

- Industry personnel believe rehabilitation, not profit, should be the primary goal.
- Many constraints operate against prison industry, among them overemployment, low productivity levels, outdated machinery and techniques, lack of investment capital, lack of qualified staff, scarcity of skilled inmate employees and proper work habits, constant labor turnover, and restricted markets.
- The total value of prison manufactured products is a miniscule part of the value of private manufactured products (.027%).

A study by ECON, Inc. found the same problems as before, but recognized a hierarchical relationship among them:

- political realities,
- limited markets,
 - lack of defined goals and standards of accountability,
 - constraints of institutional routine,
 - industry management/operations problems.

In addition, it found a new and very important factor in the several states it visited: a realization that prison industry problems exist and a willingness to look at the problems--apart from any impetus to change the situation or analyze the forces pushing toward change.

The result of this study then has been a new prescription for prison industry change, the Free Venture Model for Correctional Industries, developed by ECON, Inc. The

model is designed to test varying types of organizational and wage structures and to operate under normal free enterprise conditions. It envisions the possibilities of inmate-owned industry, private industry, state run industry, joint state and privately run industry and/or state owned, but privately managed industry, with training, payment, and employment placement of inmates, in a manner which produces efficiency and cost effectiveness for the state and a coping, responsible citizen for the community.

I. INTRODUCTION

During the first few months of the Prison Industry Study, ECON, Inc. and The American Foundation, Inc. visited and examined the prison systems and prison industries of seven states--Colorado, Connecticut, Georgia, Illinois, Minnesota, Pennsylvania and Washington. Texas was also visited later in the study. The field visits had several purposes.

- to acquire an informed understanding of the nature and operations of "typical state prison industries" and to document the current state of the art of state prison industries;
- to develop and test data-gathering procedures and instruments that would be used to conduct an in-depth study of prison industry operations in a single state;
- to select a single state in which to conduct the in-depth study of prison industries, to develop recommendations for change aimed at improving the economic and rehabilitative aspects of prison industries and to provide technical assistance for implementing these recommendations.

Towards these ends, the study team visited and interviewed correctional administrators, central office staff, wardens, industry managers and foremen, and inmate workers in seven states. In addition, a literature review was undertaken in order to acquire a broader knowledge of prison industry operations and related subject areas. One major component of the literature review was a search of statutes and case law pertaining to prison labor and prison industries in the seven states visited by the study team.

The information gathered in the field visits did not reveal the existence of any "typical" state prison industry. It did show that state prison industries are commonly the victim of legislative constraints and the rehabilitative model of corrections. Typically, legislative and administrative actions taken to correct past abuses of inmate exploitation and to reduce the competition of prison-made products with free world products have created severe barriers to operating an effective Correctional Industries program.

While penologists argue about the goals and philosophies of incarceration, prison industries in most states have been pushed into a corner where they have little or no capital funds, obsolete equipment, poorly trained staffs, restricted markets and too many inefficient inmate workers. Even a standard definition of prison industries is difficult to obtain--does it include farming, and service oriented work programs, are inmate wages a distinguishing feature between prison industries and prison maintenance or prison operations work? Our study revealed no operational characteristic which distinguishes prison industries from other prison work programs; even the sale of goods and services is not exclusively the province of prison industries since there are non-prison industry related hobby shops which engage in this activity. Prison industries are whatever the State Legislature and administration define them to be.

The following chapters discuss briefly the state of prison industries today. Chapter II presents a history of prison industries, while Chapter III looks at the legal aspects of prison industry. Chapter IV is a view of prison industries presented by studies within the last five years. Chapter V describes the results of the ECON, Inc. look at prison industries, while Chapter VI discusses some interesting existing prison industries, selected state plans for the future, and the Free Venture Model.

II. HISTORY OF PRISON INDUSTRIES

Meaningful work in prisons began in the early house of corrections. The development of the prison factory at Auburn in 1824 established the goal of self-supporting institutions which became the paramount policy well into the 1900's. "The original aim of prison industries, which for many years overshadowed every other prison policy, was to make prisons self-supporting. In former times, the success or failure of many wardens depended on their ability to meet this test, and many of them met it successfully, even though they may have failed in all else."¹ By 1828, Auburn and Sing Sing had both realized this goal of self-sufficiency.

There were four open market systems for employing prisoners. In the lease system inmates were released to private contractors who provided food, clothing, shelter, and security for the inmates. The state, in return, received a specified amount for this labor. This system was terminated due to public outrage. The contract system originated and expanded from 1825 to 1840. Private industries contracted with institutions for the labor of the inmates and supplied the raw materials, machinery, and supervision. The state was remunerated per capita for the services of the worker. The

¹U.S. Department of Justice, The Attorney General's Survey of Release Procedures, Vol. V: Prisons, Federal Prison Industries, Inc. Press, Leavenworth, 1940, p. 210.

piece-price system as a variation of the contract system. Payment was contingent upon the quantity and quality of the products returned. The state-account system deviated from the contract system in that the state itself assumed the role of contractor. The state bought the required supplies and was responsible for the manufacture and sale of the products.

From 1870-1900 the full potential of prison industries was realized. Self-support and profitability, however, had not been developed without opposition. Almost from the beginning, meaningful productive prison labor was perceived as a threat to free industry. With the establishment of Auburn's prison factory, prison-made products had been introduced into the state, regional, and national markets. As early as 1801 restrictive legislation had been passed in New York, when the manufacturers of cabinets, shoes, and boots had rallied to protect their interests and markets.² By 1870, the resistance of free industry had taken the following forms: Wardens had been fired and replaced by men who would "establish a different industry;" the amount of a product a prison could produce had been limited; many prison industries had been prevented from acquiring modern equipment; and, in some instances, compulsory purchase laws had been passed."³

²Gill, Howard B., in Technical Proposal for a Study of the Economic and Rehabilitative Aspects of Prison Industries, Entropy Ltd., 1974, p. 5.

³Ibid., pp. 6-7.

Due to the perceived "growing menace" of prison production and the focus of many prison industries on a particular product, some manufacturers joined forces to seek legislative prohibition against prison industries.⁴ In 1925 the Cotton Garment Industry and the Cordage Industry were instrumental in influencing Secretary of Commerce Herbert Hoover to appoint a commission and conduct a national study "in the hope of proposing Federal restrictive legislation."⁵ The report proposed to establish "diversification, a fair price policy, wages for prisoners, promotion of sales to public agencies, and a sharing of the market in each field with free industry."⁶ The failure of direct action did not halt the labor unions' determination to curb prison industries. After years of resistance coupled with the beginning of the depression, restrictive legislation was finally passed in 1929. The Hawes-Cooper Act "divested prison-made goods of their interstate character and made them subject to the laws of several states."⁷

However, the threat of prison industries was more apparent than real (with the possible exception of small

⁴ Ibid., p. 6.

⁵ Ibid., p. 7.

⁶ Ibid.

⁷ Flynn, Frank T., "Employment and Labor," in Paul Tappan, ed., Contemporary Correction, McGraw Hill, New York, 1951, p. 239.

business firms). For the percentage of adult prisoners employed in productive work had declined from 75 percent in 1885 to 61 percent in 1923,⁸ and "the ratio of the value of prison-made goods to the value of those produced on the outside was very small, probably not more than 15/100 of 1 percent."⁹ While prison industries had "virtually monopolized" the cordage industry, and by 1923 their garment manufacturing accounted for "nearly one-half the value of all prison open-market production,"¹⁰ such cases were the exception rather than the rule.

In the early 1930's the severely depressed economy, soaring prison populations, federal and state laws restricting the sale of prison-made products on the open market, and the failure of prison administrators to reorganize their correctional programs in the face of these developments all contributed to the death of the industrial prison. By the early 1930's, idleness became the chief feature of prison life.

In 1935 the Attorney General's Survey identified forty state-use industries which had been "successfully established" in the various states.¹¹ While total prison

⁸ Robinson, Louis, Should Prisoners Work?, John C. Winston Co., Philadelphia, 1931, p. 6.

⁹ Ibid., p. 53.

¹⁰ Gill, Howard B., op. cit., p. 7.

¹¹ The Attorney General's Survey, op. cit.

industry production accounted for only a fraction of one percent of all the goods manufactured in the United States, the concentration of prison industrial activity in certain products (combined with the slackening economy) was enough to incur the wrath of organized labor and state legislators. The vigorous protests of those who campaigned against the "unfair competition" of prison labor led to the passage of a number of federal and state laws restricting open-market sales of prison-manufactured goods.

On January 19, 1929, Congress passed the Hawes-Cooper Act. It was to take effect five years later in 1934. The main thrust of the law was to strip prison-made products of their interstate character and to make them subject to the laws of the individual states.¹² On July 24, 1935, Congress passed an enforcement act (Ashurst-Somers Act) to strengthen the previous law. Its intent was to bar the transportation of prison-made goods into states prohibiting their entry, and to require that all prison-manufactured products be clearly labelled as such.¹³ After several court decisions upheld the constitutionality of Hawes-Cooper, a final federal act dealt the death blow to prison industrial activity. The Act of October 14, 1940, forbade the interstate transportation of all prison-made products except agricultural goods and goods

¹²U. S. Congress, Public No. 699, 70th Congress, 2nd Session.

¹³U. S. Congress, Public No. 215, 74th Congress, 2nd Session.

produced specifically for state-use.¹⁴

Two immediate effects of the passage of Hawes-Cooper were: (1) "the passage of restrictive legislation in many states, and (2) the consequent reduction of the future market for contract prison goods."¹⁵ Twenty-one states had passed new restrictive legislation by 1933. States which had depended heavily on the contract system (e.g., Kentucky, Maryland, Missouri) were severely affected by the restrictive legislation.

Table II-1 illustrates the decline of open-market systems, especially the contract system, between the turn of the century and the beginning of World War II.

The loss of a considerable number of contracts was an inevitable result of restrictive legislation, and idleness became the main problem of most wardens (with the exception of those who still operated "plantation-type" prisons in the South). As the Attorney General's Survey pointed out, the chief problem with the state-use system was "how to develop sufficient business under it to keep

¹⁴U. S. Congress, Public No. 851, 76th Congress, 3rd Session.

¹⁵Flynn, Frank T., op. cit., p. 22.

Table II-1 Per Cent of Prisoners Productively Employed Under Various Systems of Work in State and Federal Prisons, for Selected Years, 1905-1940.¹⁶

	Per Cent of Productively employed prisoners			
	1905	1923	1932	1940
Total	100	100	100	100
Open-market systems	74	45	35	12
Contract	36	12	5	0
Piece price	8	7	11	0
Lease	9			0
State account	21	26	19	12
Sheltered-market systems	26	55	65	88
State-use	18	36	42	59
Public works and ways	8	19	23	29

¹⁶U. S. Bureau of Labor Statistics, Prison Labor in the United States: 1940, p. 5.

prisoners employed."¹⁷ By 1940, the average number of prisoners in state institutions was 173,284, only 76,775 (or 44 percent) of whom were "productively employed,"¹⁸ and The Attorney General's Survey stated:

With the passage of these laws the Industrial Prison was eliminated. In 1935, for the great majority of prisoners the penitentiary system had again reverted to its original status: punishment and custody.¹⁹

Shrinking revenues, coupled with a dearth of dynamic leadership on the part of state prison administrators led to a policy of "correctional entrenchment" during the depression years. Many prison officials blamed the federal government (because of Congress's passage of restrictive legislation) for their problems, and, feeling that the federal government should play a major role in their solution, they turned toward the federal sector for aid.

The federal government's role in the prison labor crises of the 1930's was a limited one, but by 1934 the federal government had two separate commissions looking into the problems of state prison industries. The Prison Labor Authority was administering the codes negotiated in the Prison Labor Compact. The Authority, which was a branch of the National Recovery Administration attempted unsuccessfully

¹⁷ The Attorney General's Survey, op. cit., p. 188.

¹⁸ U. S. Bureau of Labor Statistics, op. cit., p. 8.

¹⁹ The Attorney General's Survey, op. cit., p. 34.

to mediate between prison industry representatives and private industry interests which were clamoring against the "unfair competition" of the prisons. The National Industrial Recovery Board appointed the "Ullman Committee" to deal with the specific charges of unfair competition brought by the garment industry. This committee recommended that the federal government provide the states with assistance in planning for (or reorganizing existing) prison industries which should operate within the restrictive state-use market.

As a direct result of the "Ullman Committee" recommendations, the President, by executive order, established The Prison Industries Reorganization Administration on September 26, 1935. P.I.R.A. was to be supervised by a five-member board (chaired throughout most of its three-year existence by Louis Robinson). The agency received a total of \$353,041 during its three-year tenure and was basically supported out of the President's pocket.

The basic purpose and functions of P.I.R.A., as outlined in the executive order, were to:

In cooperation with the proper authorities of the several states and their political subdivisions:

- (a) To conduct surveys, studies and investigations of the industrial operations and allied activities carried on by the several penal and correctional institutions of the states...

- (b) To initiate, formulate, and recommend for the approval of the President a program of projects with respect to replanning and reorganizing the existing prison industries systems and allied prison activities of the several states...
- (c) To recommend for the approval of the President loans or grants, or both, to the several states necessary to accomplish the purposes of this order.²⁰

Aware of the fact that precedents were lacking in this area of federal-state relations and being sensitive to the way in which states would perceive their actions, P.I.R.A. decided to work only in those states where invitations from the governors were extended. In a Bulletin issued in 1937, the P.I.R.A. stated:

The Board considers itself as primarily an agency established to provide means by which the states may avail themselves of the aid of the Federal Government in developing and putting into operation a program which will help to solve the problems of idleness in the prisons and of competition between prison industry and private industry.²¹

The P.I.R.A. recognized the need to study prison industry within the context of the entire corrections system. It decided to treat each state as a separate entity and issued a total of twenty-two surveys on the states which were studied.²²

²⁰ Executive Order 7194 - September 26, 1935

²¹ U. S. Prison Industries Reorganization Administration Bulletin, May 15, 1937, p. 13.

²² Surveys were completed on: Arkansas, California, Delaware, District of Columbia, Georgia, Indiana, Kentucky, Maryland, New Mexico, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, West Virginia, Wyoming, Kansas, Idaho, Nebraska and Missouri.

The main problem was for the states to find the revenue to implement the recommended changes. It was in this area that the most serious breakdown in federal/state relations took place.

The agency saw its main function as being one of service and "technical assistance" (rather than financial assistance) to the states. It was in the financial area that P.I.R.A. failed to live up to the states' expectations. They had viewed the agency as a pass-thru for sizable federal funds. The surveys were made available, but the funds were not. In 1938, P.I.R.A. became involved in a battle between the executive and legislative branches. It was seen as a symbol of presidential encroachment upon the powers of Congress because it had never received Congressional approval. It ceased to function on June 30, 1938, when both the House and Senate refused to appropriate funds for its existence.

On July 9, 1942, the President signed Executive Order 9196 which removed many of the restrictions on the sale and transport of prison-made goods, and prison industries became part of the large war production effort and were put under the control of the War Production Board. Between August 1942 and November 1943, state prison industries produced war materials valued at \$9,880,268. As in the past, garment manufacture was extremely impressive. Increased prison productivity (and decreasing populations) are generally credited with the vast improvements in prison morale during the war years. The War Production Board recognized that improvements in

prison industries were directly related to the war and that there was a need for rational planning to insure that gains made during the war did not lapse after its end. The contention that prison labor was a serious threat to private industry was dismissed as baseless, since in 1943 the ratio of prison production to free world production was only 1:2000.²³ The War Production Board endorsed recommendations calling for the removal of restrictive legislation, expansion of state-use markets, improved facilities and machinery, and improved educational and vocational training programs.

Finally, the Board argued that a prosperous prison industrial system "helps notably in the reformation of criminals", that improved prison production means "that prisons can be made more nearly self-supporting", and that "it is necessary to bear in mind that the right to work (emphasis added) is the right of all men, prisoners included."²⁴ However, the Board's beliefs did not prevail. When the war ended, the brief period of prosperity for prison industries also ended.

Prison industries for the most part continued to operate in the same low-profile mode that was cast for them, via federal legislation, in the late 1930's (with the World War II period a significant exception). By 1950, the

²³ U. S. War Production Board, State Prison Industries, Washington, D.C., 1943, p. 34.

²⁴ Ibid., pp. 35-36.

state-use marketing system was securely entrenched for practically all industrial prison shops, a fact which served to severely limit the shops' productivity requirements. State prison populations in the early 1950's began to approximate pre-war levels, and concern for prisoner idleness rose in direct proportion to these population increases; by the early 1960's prison populations had surpassed the figures for the late 1930's and idleness was clearly the dominant concern of prison administrators.

Overstaffing of prison industry shops, already a common occurrence before the outset of World War II, became a universal practice during the post-war period, often involving upwards of five times the number of workers necessary to maintain what minimum production expectations still existed. Given the rapid population increases, however, overstaffing of shops served merely to hold the line on the idleness problem; from 1950 to the present, industry shops in most states have rarely managed to employ more than twenty-five percent of the total prison population; often the percentage has been a good deal smaller than that. Most wardens do not view their industries program as the primary work environment for prisoners, nor is it the principal source for inmate training. Contemporary correctional administrators readily acknowledge that correctional industries do not constitute the central focus of institutional programs, as the increased popularity of individualized rehabilitation-oriented treatment programs progressively supplanted the work ethic in American prisons.

III. LEGAL ASPECTS OF PRISON INDUSTRIES

It must be recognized that any serious study of prison industry requires looking at the relevant federal and state statutes; for the current state of these industries is dictated by legislation decades old. The success of any effort to change the framework of prison industries is dependent upon the willingness of lawmakers, judges and society to modify or repeal a large number of current statutes and constitutional prohibitions which are designed to restrict the use of inmate labor and the disposition of prison-made products.

Restrictions on the use of prison labor and the sale of prison-made goods are found in both federal and state statutes, and in the constitutions of a number of states. Among these prohibitory laws, federal statutes and a Presidential executive order have had the most significant effect, although state statutory and constitutional prescriptions have also had an impact upon the employment status of prisoners.¹

Basic applicable federal statutes are: Title 49 U.S.C. §60, commonly known as the Hawes-Cooper Act (1929), which divests prison-made goods of interstate character;

¹Miller, Neil and Walter Jensen, Jr., Reform of Federal Prison Industries: New Opportunities for Public Offenders, 1974, p. 5.

the Ashurst-Somers Act of 1935, as amended and codified in Title 18 U.S.C., §1761 and §1762, which prohibits the interstate transportation of state prison-made goods with certain exceptions, and requires that any such goods validly transported be plainly marked as convict-made; and Executive Order #11755, issued by President Nixon on December 29, 1973, which alters and supercedes that issued by President Roosevelt in 1905, Order No. 325A.

Federally prohibitory legislation and the executive order can be categorized as follows: (1) Goods manufactured by prison labor cannot be sold or distributed in interstate commerce,² if the state of destination, by statute or constitutional provision, forbids their importation;³ (2) Prison

²Whoever transports or imports "any goods, wares or merchandise manufactured, produced or mined...by convicts or prisoners...shall be fined not more than \$1,000 or imprisoned not more than one year or, both." Agricultural commodities, parts for farm machinery, and commodities manufactured for the use of the federal government, states and political subdivisions thereof are excluded. Goods manufactured by prisoners on parole or probation are excluded from the proscriptions of this statute, 18 U.S.C. §1761 (1948). The constitutionality of this statute was upheld in Kentucky Whip and Collar Co. v. Illinois Central Railway Co., 299 U.S. 334 (1937).

³In effect, convict-made goods are subjected to the laws of the state to which they are transported by divesting these goods of their interstate character, the Hawes-Cooper Act, 49 U.S.C. §60 (1929). Congress has such authority over interstate commerce, State v. Whitfield, 216 Wis. 577, 257 N.W. 601 (1934).

labor cannot ordinarily be used to fulfill federal government contracts;⁴ (3) Inmate labor cannot be used as an integral part of highway⁵ or airport⁶ construction unless the offenders employed in such projects are on parole or probation; (4) The Postmaster General is forbidden by law to purchase supplies and equipment manufactured by inmate labor for use in the postal service;⁷ (5) With the exception of products manufactured by prisoners on parole or probation, all packages which contain goods produced by prison labor, if distributed through interstate commerce, must be clearly labelled as prison-made goods;⁸ (6) Prison-made goods are exempted from a wide range of products purchased pursuant to federal government procedure policies intended to encourage the employment of the blind and other handicapped persons;⁹

⁴The Walsh-Healey Act forbids the use of convict labor by contractors in the "manufacture...production or furnishing of any...materials, supplies, articles or equipment" used in government contracts where the amount thereof exceeds \$10,000", 41 U.S.C. §35-45 (1936). The act does not apply to industry in general but rather to contractors who voluntarily compete to obtain government business, Endicott Johnson v. Perkins, 317 U.S. 501 (1943) and it does not apply to contracts for war materials, 40 op. Att'y. Gen 207 (1942).

⁵23 U.S.C. §114 (s) (1958).

⁶49 U.S.C. §1722 (r) (1970).

⁷39 U.S.C. §2010 (1960); 39 U.S.C. §2201 (1970).

⁸18 U.S.C. §1762 (1948).

⁹41 U.S.C. §48 (1971).

(7) Foreign-made goods cannot be imported into the United States if they were manufactured by forced labor or by penal sanctions;¹⁰ (8) A Presidential executive order forbids the use of prison labor in all contracts made by or on behalf of the United States government;¹¹ (9) The Social Security Act defines employment to exclude prisoners in the District of Columbia and also excludes inmates in a federal penal institution from coverage as employees of a state;¹² Federal agencies are required to purchase prison-made goods from federal penal institutions for governmental use when the prices are comparable to those available on the free market.¹³

State restrictions on the sale and distribution of prison-made goods and on the employment of prison labor usually take the form of constitutional or statutory prohibitions designed to limit the sale of such products so that competition with privately manufactured goods and commodities can be minimized. State statutory restrictions follow diverse patterns, but in general they: (1) require that the origin of prison-made goods be clearly marked or labelled,

¹⁰ 19 U.S.C. §1307 (1930).

¹¹ Executive Order No. 325A (1905).

¹² 42 U.S.C. §410 (1950).

¹³ 18 U.S.C. §4124 (1951) and 18 U.S.C. §4161 (1970);
40 op. Att'y. Gen. 207 (1942).

(2) impose a duty on persons who buy and sell goods of prison origin to obtain a license to do business, (3) prescribe a special tax or duty for prison-made goods, (4) allow goods manufactured in penal institutions and commodities grown on prison farms to be sold to that state's institutions, agencies and governmental bodies, and (5) restrict the entry of prison-made goods from other states, while permitting the sale and use of goods made in local correctional or penal institutions.¹⁴ Statutes of the latter type have been declared to be an unconstitutional burden on interstate commerce. In enacting such prohibitory legislation, states typically relied on their police power, maintaining that the sale of prison-made goods and commodities in competition with goods manufactured by the free sector of the economy unlawfully infringed upon the health, safety or general welfare of its citizens.¹⁵

With few exceptions the states have restrictions prohibiting the sale of prison-made goods on the open market in free and open competition with goods manufactured in the private sector. Massachusetts has only recently repealed its state prohibitions.¹⁶

¹⁴ Miller and Jensen, op. cit., pp. 8-9.

¹⁵ Kentucky Whip and Collar Co. v. Illinois Central Railroad Co., 299 U.S. 334 (1937).

¹⁶ Massachusetts Gen. Laws, Correctional Reform Act, Sen. No. 1330, (1972).

In 1973 the Minnesota legislature enacted a statute which authorized the establishment of private industry on the grounds of state correctional institutions for the manufacture and processing of products, goods and merchandise.¹⁷ Factories established pursuant to this statute are regarded by law as private corporations, and all products manufactured are exempted from other state provisions which forbid the sale of goods produced in whole or in part by inmate labor.¹⁸ Inmates conditionally released by the state Adult Corrections Commission and the Youth Conservation Commission for purposes of employment in private industry or to participate in community vocational programs¹⁹ and parolees²⁰ may be employed.

The recently modified correctional code in Illinois permits non-profit corporations to purchase Prison-made goods, but retains its general prohibitions against others

¹⁷ Minn. Stat., ch. 145, S.F. No. 197 (1973).

¹⁸ Minn. Stat., §243, 86 (1967).

¹⁹ Minn. Stat., §241, 26 (1971).

²⁰ Offenders designated "parolees" are persons within the review of 49 U.S.C. §60 (1929).

purchasing inmate-made goods.²¹ With these exceptions, states generally do not permit the sale of prison-made goods to outside purchasers, but rather restrict their sale to the use of state agencies and institutions and those of political subdivisions thereof.

²¹ Crushed limestone and lime dust for agricultural and horticulture purposes can, however, be purchased by the general public, Council on the Diagnosis and Evaluation of Criminal Defendants, Illinois Unified Code of Corrections, West Publishing Company, St. Paul, 1972, 1003-12-7.

*This chapter is based on an article by Neil Miller and Walter Jensen, Jr., Reform of Federal Prison Industries: New Opportunities for Public Offenders, 1974.

IV. PRISON INDUSTRY:
A REVIEW OF STUDIES IN THE LAST FIVE YEARS

While it is impossible to describe a "typical" prison industry, it is possible and instructive to examine prison industries in a broad perspective and to describe some of the general characteristics and problems found in most such industries.

The principles by which the traditional state prison industry operates can be stated in general terms:¹

1. Generally backed by legislative action.
2. No prison made goods can be sold on the open market.

a. Exceptions²

- (i) Minnesota--farm machinery and cordage sold on the open market.
- (ii) Arizona--with approval of the Department of Corrections.
- (iii) Maine--open to the general public.
- (iv) Massachusetts--open to the general public.
- (v) Montana--in case of emergency with approval of the board. Sell agriculture products and livestock on the open market.
- (vi) South Dakota--permitted to sell to public.

¹State Use Prison Industries, John R. Wald Company, Inc., March 7, 1958.

²Directory of State and Federal Industries 1974-1975.

3. Quality products, especially designed for State, county and municipal needs shall be the products of such a program.

4. The products and industries shall be so diversified as to avoid affecting substantially any one business in the State.

5. The constructive employment of inmates is a positive disciplinary measure in conditioning the inmates in constructive habits towards the day of release.

6. Products of prison industries shall represent real savings to the consumer--the tax supported institutions--and thus, will positively and ultimately benefit the taxpayer.

Several studies and surveys have already been done, but probably the most exhaustive study of prison industries undertaken in recent years is The Role of Correctional Industries,³ edited by Jude West and John Stratton. Published in 1971, the survey attempted to gauge the attitudes of key correctional personnel toward various aspects of prison industries.

The major findings of this survey illustrate the strong emphasis which prison industry personnel place on

³West, Jude P. and John R. Stratton, The Role of Correctional Industries, University of Iowa, 1971.

rehabilitative goals for their programs. Some industry spokesmen assert that all prison industry policies should facilitate rehabilitation, and those that do not should be modified as necessary to further this goal. There appears to be continued support for State control of prison industries operations; very few survey respondents saw private ownership and management of prison industries as both sound and possible (although significantly more respondents saw the idea as either sound or possible). Concerning selection criteria for new industry programs, rehabilitative purposes again surface as a primary factor, with financial considerations considerably less important. The relative insignificance of financial considerations is also reflected in the attitudes of prison industry personnel toward the state-use system: there exists in most states a benign acceptance of this marketing system, and in some states there is active support for it, while at the same time most correctional personnel believe that state compulsory purchase laws are not enforceable. From this it seems obvious that profitability and productivity in prison industry operations are of minimal concern, if not by design, at least by default.

The National Institute of Law Enforcement and Criminal Justice depicted the constraints which operate to limit the effectiveness of prison industries. They found:

1. The employment of large numbers of persons in the production of a limited number of kinds of products.

2. Low levels of worker productivity due to the use of obsolescent equipment and outdated techniques, and the absence of investment capital and modern industrial and managerial expertise.

3. The employment of persons who lack ordinary job skills, training, education, proper work habits and motivation.

4. Constant labor turn-over due to release of persons from confinement.

5. Restricted markets for convict-made goods and prohibitions against the employment of inmate labor.⁴

In 1972 the Institute of Criminal Law and Procedure at the Georgetown University Law Center surveyed prison industries. The results are shown in Table IV-1 where 360 industries were reported by 48 states and the District of Columbia. Two states, Alaska and Arkansas, had no prison industries. Four states reported only one industry: Delaware, Mississippi, Nevada and North Dakota; while California reported 17. Manufacturing industries were reported far more often than were service industries.

A recent study was conducted by the Battelle

⁴ National Institute of Law Enforcement and Criminal Justice, The Role of Correctional Industries: A Summary Report, 1972, pp. 1-9.

Table IV-1 Prison Industries in 48 states and the District of Columbia*

INDUSTRIES		AL	AZ	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN
GENERAL MANUFACTURING	Auto License (Tag)	X	X	X	X			X	X	X		X		
	Signs		X			X				X		X	X	X
	Metal Working			X									X	
	Metal Furniture							X	X				X	
	Wood Furn./Repair & Refin.		X	X		X	X	X	X	X		X	X	X
Concrete/Brick Prods.	X							X	X			X	X	
GARMENTS	Clothing	X	X	X	X	X		X	X	X			X	X
	Mattress	X	X		X					X			X	X
	Knitting			X									X	
	Weaving			X									X	
	Shoes			X									X	X
FOOD	Agriculture			X		X			X				X	
	Canning	X	X						X	X				X
	Butchering			X	X				X					X
	Feed													
	Dairy Products			X		X								
SERVICE INDUSTRIES	Dental Lab								X					
	Printing		X	X	X			X		X	X			X
	Data Processing					X			X					
	Book Binding			X							X			
	Laundry/Dry Clean.			X		X		X						
Auto Repair					X									
MISC.	Soap & Deterg.			X	X								X	X
	Paint													X
	Tobacco Products			X					X				X	
	Paper Products			X										X
Misc. Others			X		X			X	X			X	X	
TOTAL:		5	7	17	6	9	1	6	12	9	2	3	14	13

*Alaska and Arkansas have no prison industries.

Table IV-1 cont'd.

INDUSTRIES		IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NB
GENERAL MANUFACTURING	Auto License (Tag)	X	X		X	X	X	X	X			X	X	X
	Signs	X	X		X	X	X	X	X			X		X
	Metal Working	X		X				X	X					X
	Metal Furniture											X		
	Wood Furn./Repair & Refin.	X	X	X		X		X	X			X		X
	Concrete/Brick Prods.		X				X					X		
GARMENTS	Clothing	X	X	X	X			X	X			X		X
	Mattress	X						X						X
	Knitting	X												X
	Weaving	X						X	X					
	Shoes	X						X	X			X		
FOOD	Agriculture									X				
	Canning		X		X									
	Butchering				X									
	Feed												X	
	Dairy Products											X	X	X
SERVICE INDUSTRIES	Dental Lab				X									
	Printing						X			X	X	X	X	X
	Data Processing			X		X								
	Book Binding	X										X		
	Laundry/Dry Clean.								X			X		X
Auto Repair												X		
MISC.	Soap & Deterg.	X	X	X	X				X			X		X
	Paint		X											
	Tobacco Products	X						X	X			X		
	Paper Products													X
Misc. Others	X			X				X	X		X	X		
TOTAL:		13	8	5	8	4	4	9	11	3	1	13	6	11

Table IV-1 cont'd.

INDUSTRIES		NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI
GENERAL MANUFACTURING	Auto License (Tag)	X	X	X	X			X	X	X		X	X
	Signs			X	X	X	X		X	X			X
	Metal Working				X	X					X	X	
	Metal Furniture			X	X	X							
	Wood Furn./Repair & Refin.	X			X	X				X	X	X	
	Concrete/Brick Prods.	X							X				
GARMENTS	Clothing			X		X	X		X	X		X	
	Mattress			X		X	X		X			X	
	Knitting			X		X						X	
	Weaving												
	Shoes			X					X				
FOOD	Agriculture			X									
	Canning								X			X	
	Butchering												
	Feed											X	
	Dairy Products												
SERVICE INDUSTRIES	Dental Lab					X	X						X
	Printing	X	X		X				X				X
	Data Processing										X		
	Book Binding								X				
	Laundry/Dry Clean.					X	X				X		X
	Auto Repair					X	X				X		
MISC.	Soap & Deterg.			X			X		X			X	X
	Paint												
	Tobacco Products											X	
	Paper Products					X						X	
Misc. Others			X		X	X					X	X	
TOTAL:		1	4	11	4	13	9	1	10	4	4	12	7

Table IV-1 cont'd.

INDUSTRIES		SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TOTAL ALL STATES
GENERAL MANUFACTURING	Auto License (Tag)	X	X		X	X	X	X	X	X	X	X	37
	Signs.	X				X	X	X	X	X	X	X	30
	Metal Working	X		X					X		X		15
	Metal Furniture								X				8
	Wood Furn./Repair & Refin.	X		X	X	X		X	X	X	X		32
	Concrete/Brick Prods.			X	X					X			13
GARMENTS	Clothing	X		X	X			X			X	X	30
	Mattress				X				X				16
	Knitting												6
	Weaving				X			X					7
	Shoes		X	X	X			X					13
FOOD	Agriculture		X										7
	Canning	X			X	X							12
	Butchering					X							6
	Feed							X					3
	Dairy Products		X			X			X				7
SELECTED INDUSTRIES	Dental Lab				X								6
	Printing			X	X	X	X	X			X		24
	Data Processing												5
	Book Binding	X						X			X		8
	Laundry/Dry Clean.	X						X			X		13
	Auto Repair												5
MISC.	Soap & Deterg.			X	X					X			19
	Paint									X			3
	Tobacco Products												7
	Paper Products												5
	Misc. Others		XX	X	X		X		X				23
TOTAL:		8	6	8	12	7	4	10	8	6	8	3	360

Institute in Columbus, Ohio.⁵ It was part of a national survey of vocational training in federal and state correctional institutions, funded by the Department of Labor in 1974. It included a survey of prison industry directors in which they were asked for general information about each industry.

Of the total 560 institutions covered by the study, 424, or 76 percent, responded to the mail survey. One hundred forty-six (35 percent) of the 424 institutions reported having one or more industrial programs, but only 132 returned completed questionnaires.

The 132 institutions reported 407 industries, or an average of three per prison. The most common industry was garment-making (40), followed by furniture manufacture and repair (31), tag and sign making (29, but another 11 make license plates only), and printing (25). A number of industries were reported only once--basket-weaving, foundry, paint brush manufacture, plaster factory, and a quarry among them.

According to the Battelle study, the average state prison industry employs 42 inmates, but the number ranges from 1 to 475. Their average pay is \$.13 per hour, although prisoners in some states earn no pay. The Georgetown

⁵Levy, G.W., R.A. Abram, D. LaDow, "Vocational Preparation in U.S. Correctional Institutions: A 1974 Survey," report to U.S. Dept. of Labor (Columbus, Ohio: Battelle Columbus Laboratories, March 1975).

University Law Center in 1972 found that of a total inmate population of 208,618 in the State correctional systems, only 17,215, or 8.3 percent of the prison population, were employed in prison industries' programs. However, through assignment changes and admissions and releases, in the course of a year as many as three times that number may be exposed to prison industries work experience.

As for the extent of sales of State prison industry, the John R. Wald Company, Inc., which has for 50 years advised and supplied correctional industries around the country, has compiled some figures, which are found in Tables IV-2 and IV-3. In a 1971 report,⁶ the company compared private industries with correctional industries, defining "industry" as "an operation which serves at least one other institution in which it is located."⁷ In 1970, products manufactured by correctional state-use industries were valued at less than three hundredths of a percent of the value of all privately manufactured products. (See Table IV-3.)

In summary then, studies of the last five years show that the design of the typical prison industry system, which emphasizes low skill jobs, employs outdated equipment in labor intensive activities, and competes in a limited

⁶Correctional Industries, State-Use Sales, 1950-1960-1970, John R. Wald Company, Inc., 1971.

⁷Ibid, Preface.

Table IV-2
Comparison
Correctional Industries Sales and Employment

<u>Fiscal Period Ending:</u>	<u>1950</u>		<u>1960</u>		<u>1970</u>	
	STATE	Emp	Sales	Emp	Sales	Emp
Federal Government	3,134	17,457,621	4,122	28,600,708	3,698	48,280,798
Alabama	248	711,326	264	805,317	188	1,156,334
Alaska						
Arizona	32	44,477	190	276,493	243	720,716
Arkansas						
California	1,036	1,068,395	2,564	5,412,748	2,336	9,143,900
Colorado	126	392,752	269	807,029	7	1,679,646
Connecticut	133	211,272	270	397,883	347	1,024,500
Delaware					102	32,872
District of Columbia	543	662,477	726	1,016,884	212	1,044,834
Florida	135	190,251	555	1,338,808	797	2,309,263
Georgia	118	257,628	226	471,614	358	976,877
Hawaii			65	61,083	21	92,337
Idaho	35	54,764	58	125,171	37	127,400
Illinois	1,189	1,663,688	1,515	3,540,070	1,322	4,395,037

(cont'd.)

Table IV-2 cont'd.

Indiana	1,451	2,500,908	1,537	2,787,260		
Iowa	470	868,198	729	1,649,494	574	3,008,614
Kansas	210	78,355	170	298,000	210	1,543,000
Kentucky	55	168,379	271	645,856	309	794,688
Louisiana	42	224,963	192	1,024,457	269	1,478,981
Maine	192	93,195	137	101,500	125	361,413
Maryland	1,260	1,138,514	1,665	2,929,529	1,004	3,340,409
Massachusetts	1,138	1,693,636	714	1,880,420	682	2,020,097
Michigan	1,474	2,785,844	1,459	3,204,322	901	4,190,357
Minnesota	145	273,972	240	1,501,694	173	1,565,178
Mississippi					75	121,813
Missouri	92	332,405	758	1,015,851	650	1,704,000
Montana	30	44,000	107	81,876	20	278,034
Nebraska	248	304,185	361	537,337	191	778,553
Nevada					15	N/A
New Hampshire	123	140,006	95	209,726	75	281,062
New Jersey	1,377	1,914,433	922	2,464,593	704	2,146,421
New Mexico	80	148,000	52	136,461	35	148,006

Table IV-2 cont'd.

New York	2,857	3,061,858	3,785	4,577,922	2,249	5,779,089
North Carolina	155	1,368,584	605	4,820,779	557	7,122,580
North Dakota	25	41,617	24	119,908	200	469,363
Ohio	2,066	2,751,068	2,507	4,055,909	1,319	4,907,202
Oklahoma	426	421,053	437	576,750	517	1,186,711
Oregon	87	202,563	335	565,036	246	775,895
Pennsylvania	1,117	2,260,447	1,224	4,848,104	1,177	5,594,655
Rhode Island	165	100,569	130	212,610	89	240,904
South Carolina	150	200,000	180	546,311	711	1,867,929
South Dakota	14	39,299	105	182,416	53	329,856
Tennessee	428	780,132	593	1,958,000	757	3,017,660
Texas	324	1,292,946	856	2,752,321	1,259	6,044,000
Utah	80	459,356	82	60,131	71	449,000
Vermont	46	85,062	87	174,675	32	151,801
Virginia	768	1,374,551	1,160	2,633,302	834	2,875,958
Washington	421	521,450	291	424,916	278	1,675,000
West Virginia	145	330,720	318	646,220	133	5,702,284

Table IV-2 cont'd.

Wisconsin	349	675,754	624	1,691,707	664	2,488,000
Wyoming	50	65,000	80	29,806	39	121,785

Table IV-3
COMPARISON
CORRECTIONAL AND PRIVATE INDUSTRIES

<u>FISCAL PERIOD ENDING</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>
TOTAL U.S. POPULATION	151,325,798	179,323,175	204,765,770
TOTAL U.S. WARD POPULATION	925,000	1,160,000	1,024,420
TOTAL CORR. INMATES IN STATE AND FEDERAL INSTITUTIONS.	187,000	264,000	260,013
NO. INMATES EMPLOYED BY CORR. INDS.	25,000	37,000	29,550
NO. WORKERS EMPLOYED BY PRIVATE CONCERNS.	14,770,000	16,025,000	19,587,000
CORR. IND. WORKERS/PRIVATE INDUSTRY WORKERS.	1/590	1/433	1/662
VALUE OF CORR. MFG'D. PRODUCTS. . . \$	52,000,000.	\$ 101,000,000.	\$ 165,157,000.
VALUE OF PRODUCTS/CORRECTIONAL INDUSTRY WORKER \$	2,080.	\$ 2,740.	\$ 5,589.
VALUE OF PRIVATE MFG'D PRODUCTS . .	N/A	N/A	\$605,714,000,000*
VALUE OF PRODUCTS/PRIVATE INDUSTRY WORKER	N/A	N/A	\$ 42,892.
$\frac{\text{VALUE OF CORR. MFG'D PROD'S.}}{\text{VALUE OF PRIVATE MFG'D PROD'S.}} \times 100$	N/A	N/A	.027%

* FROM STATISTICAL ABSTRACT OF THE U.S. 1970.
INCLUDES EXTENSIVE AND UNMEASURABLE DUPLICATION
FROM SHIPMENTS BETWEEN ESTABLISHMENTS IN THE
SAME INDUSTRY CLASSIFICATION.

market, produces an operating environment whose hallmarks are a short work day, chronic excused absences, routine overstaffing, and low wages for workers. The system's structural constraints make profitability an unrealistic focus; however, the operating environment created by these structural characteristics make rehabilitation, as defined by correctional personnel, an illusory goal as well. Possessing neither the structure for profitability nor the environment for rehabilitation, the typical prison industry system as presently constituted can realistically hope to address only that problem that has been the overriding concern of prison administrators for at least the past thirty years, namely, the reduction of idleness.

V. THE "TYPICAL" PRISON INDUSTRY:
ECON, INC. FINDINGS (1976)

To develop a broad understanding of how prison industries function, ECON, Inc. visited Colorado, Connecticut, Georgia, Illinois, Minnesota, Pennsylvania, and Washington. In addition, we later had an opportunity to visit and examine the prison industries in Texas. Our team inspected 34 prisons and 80 individual prison industry shops, where we reviewed their work/training programs, budgets, industry financial reports, institutional inmate records, post-release services, employment services, and information systems. We interviewed correctional department administrators, central office staff, wardens, institutional staff, prison industry directors, shop supervisors, and inmates. In addition, we spent several months conducting an in-depth review of prison industry in Connecticut.

We found that, with rare exceptions, prison industry contributions to the state, the prison and the inmate fall far short of their potential.

Table V-1 presents a possibly oversimplified yet useful taxonomy of the typical problems which we found to affect prison industry operations. The taxonomy is shown in a hierarchical form, which corresponds to cause and effect relationships that became apparent to us in the course of the study.

Table V-1 Typical Problems Affecting Prison Industry Operations

- Political realities
 - Limited markets--even where State-Use laws are present
 - Lack of well defined industry goals and standards of accountability to Commissioner of Correction
 - Constraints of institutional routine
 - Prison industry management/operations problems
 - low wages and productivity
 - short work days
 - overstaffing of shops
 - high overhead
 - poor financial records and controls
 - lack of transferrable skills
 - limited preparation for community release
 - limited marketing efforts
 - lack of accountability

At the lowest level of the hierarchy, there are two problem areas which interact and feed upon each other: prison industry management/operations problems, and institutional routine. The problems of prison industry management/operations have many manifestations. There is a lack of accountability within industry shops for both supervisors and inmate workers. For the latter group, there are often no records kept of time worked, nor time clocks available to provide such data, no job performance standards, nor any systematic performance appraisal reviews with the shop supervisor. For supervisors, there are usually no monthly or quarterly sales or production goals to be achieved, and no systematic performance appraisals of shop supervisors by the industry manager. In addition, the inmate workers are frequently assigned and reassigned by the warden or the prison classification committee, rather than the industry manager.

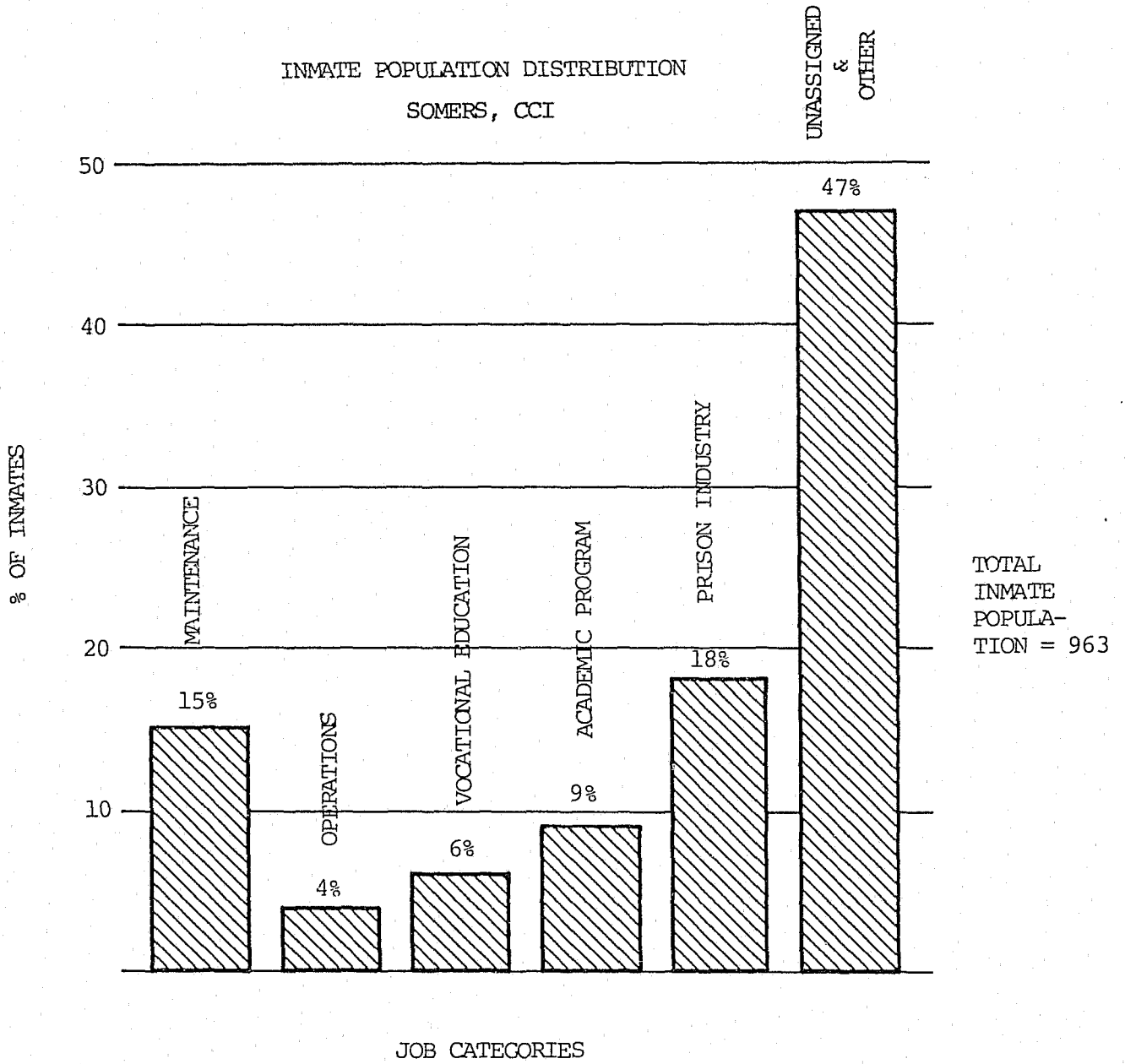
Marketing efforts of prison industries are often severely limited. Generally, there is one or no salesman and product catalogs are usually outdated or non-existent. Prison industry work generally provides very limited preparation for community release. This is due, in part, to the lack of transferrable skills available within industries (outmoded equipment and products usually being the culprits), and in part to limited assistance in job placement prior to release from the prison.

The financial records and controls for prison industry operations are generally poor. Often the industries do not know the true costs of operating a given shop, pricing of products and services often does not reflect (and sometimes does not cover) true costs; industries frequently incur financial losses due to poor to non-existent financial control systems. In addition, industries frequently suffer from high overhead charges, which usually can be traced to excessive supervisory time per man year of labor. This problem, in turn, can be traced to the over-staffing of shops (for a given volume of work per year there are typically twice as many inmate workers as necessary) which, in turn, is related to the short industrial work day of an inmate (typically 3-1/2 to 4 hours per day after allowing for institutional interruptions).

Lastly, there is the matter of low inmate wages and correspondingly low productivity. Typically, inmate industrial workers earn \$1.00 a day or less, with the daily wage for skilled, semi-skilled and unskilled workers often the same. Indeed, there is usually little incentive (other than escape from boredom) for an inmate to work in industry, since good time allowances are often more generous for institutional work and sustenance payments to inmates in educational programs frequently equal the wages earned by prison industry workers.

The constraints of institutional routine are closely related to prison industry operations problems, particularly those of low wages and short work days. The inflexibility of the institutional staff work shifts and the activity schedule of the prison severely limit the length of the prison industry work day. Security shakedowns, outside visitors, haircuts and numerous other activities of prison routine (over 20 types of excused absences in Connecticut) further cut into the already short work day. Concerns for institutional security and tranquility discourage industries from instituting a system of work incentives which would be better than those available to the general inmate population. On the other hand, it is equally true that prison industry management problems impact the constraints of the institutional routine, particularly the "hardness" of those constraints. In the main, prison industry management (or lack of management) encourages wardens and other prison administrators to view industries as one of many prison programs to reduce prison idleness. At the present time there is little justification for any rational prison administrator to disturb the cherished status quo. This is quite evident in Figure V-1 which shows the distribution of work assignments for the maximum security institution at Somers in Connecticut. It is obvious that the 18 percent of the inmate population which is involved with prison industry, (which incidentally is higher than in most

Figure V-1



prisons we have visited) is only slightly higher than those portions of the inmate population involved with educational programs or institutional work. Moreover, the size of these programs is dictated by the size of the unassigned/other labor force, which obviously is the predominant concern of institutional management.

To solve prison industry management operations problems and to alleviate the constraints of institutional routine, it is necessary to address a higher level problem, namely the lack of well defined industry goals and standards of accountability to the Commissioner of Correction. In a survey that we conducted in the prison systems of six states, industry managers were asked to rank from one to five a number of goals of prison industries, with five being the highest possible rank and one being the lowest possible rank. Table V-2 shows the results of that survey, and highlights the nature of the problems of goals and accountability.

Note that the two top ranked goals pertain to developing attitudes in inmate workers and, as such, are essentially non-measurable in any reliable way. The third and fourth ranked goals are reasonably viewed as necessary but insufficient objectives of industrial work programs. Finally, the five lowest ranked goals could all be characterized as relevant and measurable but also high risk for any industrial manager in a prison setting. It appears that either industry managers have little confidence in the industrial

Table V-2 Industry Management Ranking of Prison Industry Goals

<u>GOALS OF PRISON INDUSTRIES</u>	<u>RANKING</u>
To develop in each inmate employed in industries a set of attitudes favorable to work and the work situation	4.8
To develop in each inmate employed in industries attitudes favorable to living a law abiding life	4.6
To develop in each inmate employed in industries the minimum qualifications necessary to hold a job (i.e., <u>general</u> job skills, the ability to follow safety rules, etc.)	4.4
To constructively occupy the time of the inmate population	4.1
To provide quality goods for the available markets in the state	4.0
To provide each inmate employed in industries with a <u>high</u> level of vocational skill	3.8
To provide low cost goods for the available markets in the state	3.0
To make a profit	3.0
To help underwrite the cost of the total correctional program	2.2

NOTE: Rank of 5 means very important.

Rank of 1 means very unimportant.

capabilities of prison industries or they perceive little confidence in the industrial capabilities of prison industry on the part of the Commissioner of Correction. In any event, it is clear that if industries are to achieve their full potential, well defined and measureable industrial goals must be articulated by the Commissioner for the prison industry management, and standards of accountability must be defined along with a process for periodic review of prison industry performance by the Commissioner.

It does little good to formulate measureable industry goals which provide accountability without also furnishing the means to achieve these goals. This leads to a new problem area and one which, in our judgment, is responsible for the relaxed industrial goals which guide the operation of prison industry today: the problem of limited markets for products and services. Even in those states which have legislated "guaranteed" markets, our search of state statutes and case law revealed that there are many state limitations on inmate labor and the sale of inmate made goods and services within a state. Only a handful of states permit the sale of prison industry products or services on the open market within that state. Many state legislatures adopted laws which restrict the markets for prison industry goods and services to state agencies or agencies of political

subdivisions. Some states require their agencies to purchase products from prison industries as long as those items are of satisfactory quality and sell for a price at or below the market price. Such laws are viewed by many as a guarantee to state prison industry of a market well beyond its capacity. In practice, however, these guaranteed markets seldom materialize.

Table V-3 shows the results of a survey, conducted by ECON, Inc. of the state-use market in Connecticut for five specific prison industry shops.

While the state agency sales market was indeed quite large across all of these shops, in each case the record of annual sales shows that only a very small fraction of this potential market was captured. However, the production capacity of the various shops was most certainly not the limiting factor, since the production capacity of each shop could support at least a doubling, if not a tripling, of sales actually achieved and in the case of the last three shops shown in Table V-3, the production capacity could support a twenty-fold increase in annual sales.

The limited exploitation by prison industry of guaranteed state markets goods and services is a common phenomena across the United States. We do not know all of the contributing factors which are responsible for the limited markets reached by (or available to) prison industries. We do know that a host of contributing characteristics will

Table V-3 State-Use Prison Industry Market In Connecticut*

<u>Shop</u>	<u>Prison Industry Annual Sales</u>	<u>State-Use Market Potential</u>	<u>% Market Captured</u>
Print	\$200,000	\$8.3 Million	2.4%
Furniture	204,000	\$5-6 Million	3.4-4%
Typewriter Repair	4,000	\$700,000	.6%
Optical Shop	6,000	175,000	3.4%
Dental Labor- atory	16,000	700,000	2.3%

*Data for Fiscal Year ending 1975.

be eliminated once prison industry is given industrial goals and is made accountable to the Commissioner of Correction for attainment of these goals.

It is, at this point, that the major contributing problem remains to be resolved: that is, the political realities surrounding prison industry operations. Since the 1920s and, except for the period during World War II, prison industry has been forced to operate in a low profile mode. Federal Legislation, specifically the Hawes-Cooper Act (passed in 1929), played a major role in the decline of prison industry. Within four years of the passage of this Act, 21 states had passed more restrictive legislation concerning inmate labor and prison industry markets. Then, as now, there was legitimate political concern over the perceived threat which prison industry represented to organized labor and private industry. Our review of the historical trends of prison industry in the past 70 years provides ample documentation of the dominant role which these perceptions have exercised in limiting prison industry markets. Over the past five years, significant counter trends have emerged. Six states now have legislation which authorizes the sale of prison industry products on the open market within the state. The State of Minnesota has expanded its prison industry operations by inviting private industries into the prison to set up and run industrial operations. Both private industry and organized labor in the State of Minnesota were very receptive

to this program. In a recent study of prison industry in South Carolina, a number of private firms expressed interest in assisting in the development of an expanded, real world prison industry work program. In the State of Connecticut the Department of Labor has instituted an apprenticeship training program in connection with several prison industries.

The problems identified in our study which have been described above, and the recent trend among states to review their prison industries with an eye toward change, have led us to see the need for a new charter for Correctional Industries, and to propose the Free Venture Model for prison industries.

VI. FUTURE DIRECTIONS OF PRISON INDUSTRY

A. Recent Studies and Innovations

While prison industries have many problems, it is unfair to say that nothing is being done about them. Several states, including Georgia, Florida, Oklahoma, Illinois, Minnesota, Connecticut, South Carolina, and Maryland are looking at existing prison industries with an eye toward change; and in several states change is already underway.

Oklahoma, for instance, has developed a ten year plan, beginning in 1976, which is designed to produce enough profit from prison industries that by 1987 it will pay one-half of the correctional budget. The plan is geared toward four stated objectives: (1) provision of useful products and services to state and local government at a significant savings; (2) realization of a profit to defray incarceration costs; (3) reduction of idleness; (4) preparation for release through acquisition of skills and work habits. The plan calls for the reorganization of prison industry administration within the department, modifications in legislation to provide for the operation and marketing support of a modern program, and specific industries to be developed over the ten year period, including both new industries and the enhancement and modernization of existing industries. The ten year plan rests financially on an increase to prison industries of fifty cents per license tag, resulting in one to two million dollars per year in additional revenue, which will be applied to expansion, modernization, and creation of industries.

South Carolina, on the other hand, has completed a lengthy study aimed at bringing private industry into the prison. Officials have developed a systematic process of pinpointing specific types of industry which meet certain criteria developed by the state--security, raw materials, shipping, etc. A brochure has been developed and sent to private corporations in an attempt to interest them in locating a new factory in a prison. To date, this attempt has been thwarted by the economic climate in the United States.

In Minnesota there has been a real effort to move ahead in both the prison and the private industrial areas, and there are two industry directors, one whose responsibility is the traditional prison industry and one whose responsibility is to bring new private industry into the prison. The department goals state that an offender leaving the institution should possess saleable skills, have participated in the cost of incarceration, have experience in working an eight hour work day, have had an opportunity to develop a financial base for release, have maintained any dependent family, and have been assisted in acquiring a job when released from the institution.

The Minnesota Department of Corrections has invited private industry personnel to evaluate the existing prison work programs, and has made it possible for private companies to set up and operate a production or service component

within the confines of the institution. In 1975 state legislation was passed which allows private companies to operate on the grounds of correctional institutions and to hire offenders as their work force. Under this authority two companies are currently operating at the Minnesota State Prison. One company is providing food service and the other doing computer programming. Both companies are employing offenders and the workers are receiving above the minimum Federal wage scale. In addition, at the Minnesota Metropolitan Training Center at Lino Lakes, the Department is contracting and subcontracting with a number of private companies to produce or perform a process for which the offenders are paid on a piece work basis. This allows the offenders, both men and women to earn in direct proportion to their level of productivity.

To assist in bringing about the necessary changes and to insure that these industries continue to be competitive, an Industry Advisory Board is being established. It will be composed of personnel from all types of companies with individual expertise in management, marketing, engineering, personnel, legal matters, and finance.

In the developmental stages of involving private companies in industry operation, over 1,500 companies were directly contacted. Over twenty companies to date have been involved in either operating a work program within the institution or contracting or subcontracting with the Department

for production. The Department has taken a major role in attempting to change Federal restrictive legislation, and the result of that is a bill introduced by Representative Quie, H.R. 2715, which would allow the distribution in interstate commerce of goods produced by prison inmates who are paid not less than the prevailing minimum wage for similar work.

Mention should also be made of an outstanding traditional prison industry in Minnesota, the farm machinery industry. The farm machinery is sold by four state employees who travel the state selling to about 300 authorized MINNESOTA farm implement dealers. Total sales are approximately two million dollars annually. Wages have recently been raised to a minimum of \$1.50 per day and a maximum of \$3.50 per day. In addition, there is a bonus program whereby inmates can earn a bonus if production reaches or exceeds a breakeven point on a monthly basis. Inmates receive a bonus of \$7.50 for the first month, \$10 for the second consecutive month, \$15 for the third consecutive month and \$20 for the fourth and all following consecutive months.

The prison industries seen in Texas are notable for several reasons: they are large (may encompass an entire process from growing cotton to the manufacture of the finished clothing) and very efficient, the inmates work a full eight hour day producing quality goods, and result in a real saving to the state in the form of usable commodities and labor costs.

However, prison industries are also used as a vehicle to control the inmates. Inmates receive no monetary payment for prison industry work, but receive good time: sixty days good time for thirty days work time for trustees, and fifty days good time for thirty days work time for other workers. This good time is used both as a control device and as a motivational device, and is not vested. All accumulated good time can be lost for a disciplinary infraction.

Several interesting prison industries were viewed in Texas. The record conversion unit is located in a new, air-conditioned industrial building. It does work for the motor vehicle department, mental health agencies, and the school districts, in addition to all of corrections' work. The equipment was rented, resulting in low startup costs. About four hundred inmates work the day shift, three hundred the evening shift, and two hundred the night shift. Inmates go to a typing school until they can type forty words per minute with only three errors. Then they go to an advanced typing school a half day and work a half day. Finally, they work a full day in production. Production annually includes 17,500,000 data entries, 20,000,000 file sections, 41,470,000 pages of microfilm, and 8,000 pages of braille.

The school bus repair facility does work for all school districts, and completely rebuilds--inside and out--about one thousand buses per year. They also do work on fire engines, and state vehicles, especially those for resale. There are 180 inmates, learning and working in the areas of

body repair, welding, sheet metal, electrical and upholstery. Ford, GM, and other major corporations cooperate and send staff to train prison staff and inmates. The shoe shop and garment shop are unique in that they go out several times a year and purchase popular articles, then make patterns for their own use from these purchased articles. Shoes are made from their own leather which is sent to Milwaukee for tanning.

Illinois is already-experimenting with changes in their prison industries. Especially noteworthy is a small industry at the Sheridan Institution which is using a quasi-profit sharing program. At Menard and Dwight a bonus system in the industries is now three years old. The garment industry at Statesville has quadrupled production with the same staff by going to a second work shift. In addition, a garage is in operation which utilizes inmates as mechanics and which repairs and services state automobiles. The Model Ex-Offender Program (MEP) funded with CETA monies has proven quite successful in placing offenders in jobs, having placed one thousand offenders between October, 1974, and September, 1975. Prison industries in Illinois is currently in the process of centralizing fiscal controls, instituting quarterly financial reports and inventory charges, revising the price list, updating the product catalog, and expanding product lines.

In Maryland, a six month study of prison industries there has just been completed and the final report issued in April, 1976. The Division of Correction has decided to transform its State-use industries into an inmate skills training and work experience program, with the primary goals being inmate rehabilitation, revenue generation, and occupation of idle inmate time. The first phase of the new program will be implemented during the two year period beginning in fiscal year 1977. It is called the "CORE Program" and involves:

- the reorganization and linkage of existing skills training and industrial operations into a more effective and efficient goal oriented program,
- preparation for community reintegration and competitive job market entry,
- development of new inmate screening, needs assessment, and program assignment procedures,
- revision of internal business and production operations,
- private industry advisory boards for each shop,
- improved quality of industry products and services,
- product standardization,
- expansion of market base.

The second phase of the new program envisions a longer term of three to five years, and will seek to involve private industry in the development, financing, and/or management of State-use industries.

This Chapter would not be complete without mention of a study of the Georgia prison industry, undertaken in 1975 by the Committee on Correctional Facilities and Services, State Bar of Georgia. The Department of Corrections and Offender Rehabilitation of Georgia has had a management expert from the Office of Planning and Budget assigned to it for the past year, and new systems of cost accounting and inventory control, budgeting, order processing, and customer billing have been instituted. In addition, a Citizens' Advisory Board and Industry Resource Board have been established to advise the Department. The State Bar of Georgia, as a result of its two year study, has made recommendations in two areas: (1) what can be done for the present program; and (2) what alternative models can be developed. The Bar is especially interested in the payment of prevailing wages, changing the attitude of the public in the state, developing alternative prison industries, including both federally financed correctional industries and inmate enterprises and changing legislation to allow states to buy and sell prison made products from and to other states, in addition to looking into the market potential of exports to other countries. Since nearly ten percent of Georgia's prison inmates are honorably discharged veterans, they recommend that they enter into consultation with the Veterans Services Administration so that approved educational-vocational training programs can be developed for the veterans.

B. Looking To The Future: The Free Venture Model

The Free Venture Model for Correctional Industries was developed by ECON, Inc. as a result of its site visits to seven states. The dominant theme of this prison industries model is work--not busy work but productive labor with outside world efficiency, outside world wages, and outside world relevance--having, as its dual objective, financial self-sufficiency and success in the reintegration of ex-offenders into society. It was toward these ends that ECON, Inc. proposed that Correctional Industries adopt this fresh approach in its operations, the Free Venture Model for Correctional Industries, which is designed to emulate the outside world of work as closely as is possible within the prison setting. The broad goals of the Free Venture are:

- a realistic work environment, including:
 - a full work day
 - inmate wages based upon work output
 - productivity standards comparable to those of outside world business
 - hire and fire procedures, within the limits of due process rights
 - transferrable training and job skills
- partial reimbursement of the state by inmates for custody and welfare costs, as well as restitution payments to victims,
- graduated preparation of inmates for release into community,
- fixing responsibility--with financial incentives and penalties--for job placement of inmates upon release into the community,

- financial incentives to industry for successful reintegration of offenders into the community,
- self-supporting or profit-making business operations.

The Free Venture model is intended as an umbrella concept which, while defining a mode of Correctional Industries operations, is nonetheless broad enough to encompass a wide variety of business forms and operating procedures. For example, the business forms could include state-run prison industries, private industry managed prison shops (either on a contract basis for management service to operate a shop utilizing state-owned equipment and inmate labor, or by setting up a joint enterprise with the State such as a not-for-profit corporation with a sharing of capital investment, materials and labor costs, to leasing space from the Department of Correction and setting up a for profit production/service shop within the prison with a contract for inmate labor with the Department of Correction) and inmate owned and/or operated businesses under the supervision of State officials. The operating procedures of different Free Venture shops might differ widely in respect to inmate remuneration: some shops may lend themselves best to straight hourly wages, others to piece work rates, and still others to profit sharing and bonus arrangement plans. There is no single best combination of business form and operating procedure for which we can persuasively argue on an a priori basis; nor does the Free Venture model attempt to prejudge the issue. Rather, ECON, Inc. would prefer to have such issues decided by the market test. Which is to say, we would prefer to

encourage the Correctional Industries management to proceed in the implementation of the Free Venture model by testing several business forms and wage remuneration schemes in different institutional environments in the spirit of a willingness to innovate, monitor the program results and adjust shop operations in accordance with experience. The only "optimal" strategy that can be recommended a priori is to test several variations of business forms and business operations simultaneously, discarding those which do not work well, and pursuing vigorously those which do. This approach is, after all, the one by which the world of free ventures operates.

It is our earnest hope that the innovations demanded by the Free Venture Model, coupled with the recent trends in several states to look carefully at their industries with an eye toward change, will result in significant progress toward the transformation of prison industries into enterprises which more accurately mirror the outside world of work. We are confident that only through this process, will industries most effectively serve the interests of society, the prison, and the inmate worker.



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