

✓ HOW HOLLAND SUPPORTS ITS LOW INCARCERATION RATE:

The Lessons for Us

Netherlands Criminal Justice Investigative Seminar

April 13-28, 1978

} Proceedings?
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ACQUISITIONS

Foreword

We who participated in the Netherlands Criminal Justice Study Seminar wish to thank the many Dutch people who shared their thoughts and time with us. We are especially indebted to the Criminal Law faculty, staff and students at Erasmus University in Rotterdam for their assistance in organizing the Seminar; and to the German Marshall Fund, which provided necessary financial assistance.

This report was written by several members of the Seminar in consultation with all the participants. Lists of those who attended and the key meetings are found in the appendix.

I. INTRODUCTION The Dutch criminal justice system has been internationally acclaimed for its relatively low rate of imprisonment. In 1978 official figures set the Dutch incarceration rate at 24 prisoners per 100,000 population,¹ far below that of the United States which is conservatively estimated at 250.² Holland has the lowest imprisonment rate of all Western nations, and many people have wondered why. Based on the best available statistics, this incarceration rate cannot be explained by Holland's crime rate.³

In the spring of 1978, several people concerned about the American use of prisons initiated a Netherlands Criminal Justice Seminar⁴ as an on-site investigation of two questions: 1) What factors in the Dutch experience--its history, political, economic, social and justice systems--contribute to their relatively low incarceration rate? and 2) How might a study of the Dutch experience enhance the Americans' efforts to change our justice system?

The first question--accounting for their low incarceration rate--is straightforward, except as outsiders we were of course unable, in two weeks, to identify all contributing factors and their relative strengths. The second question--gauging the relevance of the Dutch practices for the United States--is formulated more cautiously to avoid the pitfalls of cross-cultural exchange. Given different social contexts, it would be a mistake to expect that simple importation of Dutch practices would produce similar results here. However, a cross-cultural exchange helps us to see what we are accustomed to do is not sacrosanct--that there are other possible "norms." Such an exchange stimulates creative thinking as to how one country can learn from another's experience.

1. Interview with Eric Besier, Ministry of Justice representative, April 18, 1978. This figure includes people sentenced on two-year renewable terms to psychiatric prisons (average of 450 prisoners) and pre-trial detainees (2,500 prisoners on average.)

2. Latest statistics available from the National Council on Crime and Delinquency, Hackensack, New Jersey. The total number of American persons sentenced to mental institutions in connection with a crime is unavailable. Thus, the precise American rate of incarceration would be even higher if our data was as comprehensive as that used by the Dutch. Neither country's figure includes juveniles incarcerated, although juveniles are included in the population figures.

3. Crime rates are regularly acknowledged to be unreliable statistics, especially for cross cultural analysis. But even differences in Dutch and American crime rates do not explain the variance in incarceration rates. The Dutch variant of the Index Crime Rate is half that of the United States whereas the Dutch incarceration rate is one-tenth that of the United States. (2,510 Dutch Index Crimes compared to 4,850 U.S. Index Crimes per 100,000 population in 1972. Figures taken from the Statistical Yearbook 1975, Netherlands Central Bureau of Statistics, p. 324, and from Source Book of Criminal Justice Statistics 1977, U.S. Department of Justice, 1978, p. 397.)

4. The Seminar was partially funded by the German Marshall Fund and administered by the New York State Council of Churches, the Prison Research Education Action Project (PREAP), and the American Foundation, Institute of Corrections.

The 21 participants in the Seminar included prison reformers and abolitionists, ex-prisoners, representatives of the religious community, justice system administrators, a White House staff member, minority group members, and representatives of non-profit action and service agencies. Their diversity and collective experience contributed to a balanced examination of Dutch theories and practices.

The Seminar involved two weeks of interviews and visitations with prison governors (wardens); judges; police officials; prosecutors; lawyers; media representatives; probation workers; prisoners; prison abolitionists; academics (particularly criminal law professors); officials from the Ministry of Justice and the Ministry of Culture, Recreation and Social Work; and representatives of advocacy and service groups. We observed court proceedings and visited several penal institutions, including remand centers, a selection center, a youth detention center, a semi-open prison, and a private psychiatric clinic.⁵

The variety of our contacts with the Dutch left us both more knowledgeable and more cautious. We can now draw a more informed picture of factors contributing to Holland's low incarceration rate, subject to some clear limitations. We acknowledge that our observations are not empirically tested. Nor did we assess the Dutch juvenile justice system, a study in its own right. In this paper, we do not provide a comprehensive description of the Dutch justice system nor the wider social context. Instead, we describe only those aspects which we believe contribute to the low incarceration rate and a few issues which we found particularly troublesome. Finally, our endorsement of the Dutch low incarceration rate should not be misinterpreted as an unqualified endorsement of the Dutch criminal justice system.

As we have implied, factors contributing to Holland's low incarceration rate lie both inside and outside the justice system. In this report, we look first at the social context and then at the justice system itself.

5. A "remand center" is a jail; a "selection center" is an intake and assessment center; a "youth detention center" is for offenders aged 16 to 23 years; a "semi-open prison" is essentially a minimum-security prison; and a "psychiatric clinic" holds prisoners convicted and sentenced to psychiatric treatment on renewable two-year terms.

II. THE CULTURE'S CONTRIBUTION
TO A LOW INCARCERATION RATE.

One of the clearest messages we heard in
Holland is that Dutch culture limits the
use of any part of the justice system.

The latter is invoked only when other social systems have failed. How is this possible?

A. National Identity Stresses Individual
Liberty, Tolerance and Social Responsibility.

Holland, with its more than 13 million inhabitants and 1,000 people

per square mile,⁶ is a small yet densely populated country. Its size and its long history as one country, as well as its long struggle against the sea, contribute to the existence of a strong national self-image, a sense of "Dutchness." The fact that the Dutch have a national identity may be as significant as the nature of that spirit.

Many Dutch see themselves as very independent and individualistic. Their respect for individual liberties has deep historical roots. They have defended their country from Spanish and French invasions, and they resisted the more recent Nazi occupation, to maintain these liberties. As a people, they also exhibit deep tolerance of divergent positions. We heard comments such as "We are a tolerant people...we have always been a haven for refugees...we respect others' individualism." This shared value of tolerance allows the Dutch to regard behavior which Americans consider threatening as simply eccentric and therefore outside the domain of the legal system.

The Dutch emphasis on individualism does not preclude a sense of community responsibility. Dutch citizens expect to give more and receive more from their government than Americans. For instance, social problems tend to be seen as requiring collective rather than individual solutions. One official commented that "only when social risks are handled on a collective basis can an individual have the secure base necessary for carrying the responsibilities of his own life." This position is quite a contrast to America's "rugged individualism" by which each person is expected to compete to meet their own basic needs. Dutch individualism is expressed in a context of mutual responsibility. As one Dutchman said, "The Dutch are a stubborn people, defensive of their rights...(and yet) they are capable of giving up individual freedom for solidarity reasons."

B. The Socio-Economic System Minimizes
Income Disparity and Insecurity.

Since World War II, individual concentration of wealth has been diminished through heavy inheri-

tance taxes and progressive income taxes. Insurance programs paid for by workers and employers cover unemployment, workers' compensation, and substantial retirement plans. Unemployment benefits are available to all who have paid a premium for six weeks, for as much as 80% of the previous wage during the first six months of unemployment and 70% for the following two years. These benefits

6. Huggett, Frank, The Dutch Today, Ministry of Foreign Affairs, the Hague, p. 8. The density of the western Randstad area is eight times as high.

7. The Ministry of Culture, Recreation, and Social Work states Holland accepts a minimum of 750 refugees per year.

do not fall below the minimum wage of approximately \$650 per month per individual worker.⁸ Also, rent subsidies are available, so that no more than 10% of a person's or family's income need be expended on housing. Welfare and public services, including ample medical services, are viewed as rights rather than privileges.

These economic and social policies have resulted in less income disparity than in most Western countries, certainly less than in the United States.⁹ A firm economic base is provided to most Dutch citizens. Consequently, personal events such as unemployment, illness, or old age do not represent the potential catastrophes they do in our country. The Dutch social and economic systems provide an environment in which people do not have to fear the future or each other.

C. The Legacies of Dutch Churches. One reason why the Dutch have developed such a supportive economic system and tradition of tolerance, lies in Holland's religious history. The Dutch Reformed (Protestant) Church and the Catholic Church have played significant roles in providing services, education, political candidates and even media outlets for their constituencies. The various religious faiths have fostered a spirit of mutual respect and caring for people at all socio-economic levels.

While the extent and scope of church power has declined, several legacies remain. The social benefits system grew from the various churches' interest in serving all their constituencies, especially those in need. The churches were also responsible for establishing many social service agencies. Once limited to specific denominations, these agencies are now supported totally by government monies to serve the whole population. The agencies, however, are still privately run, and several different agencies often compete with each other to serve the same needs. For example, probation in Holland is provided by several private social service agencies, funded through the Ministry of Justice and officially charged to provide "inspection, help and assistance" during criminal proceedings. From their position outside the criminal justice system, these agencies are available to provide preventive and supportive services as well as advocacy. They challenge one another to serve the best interests of their clients.

8. Interview with M. Ebelling, representative of Ministry of Culture, Recreation and Social Work.

9. As of the 1960's, total personal income in Holland was distributed as follows: one-third owned by one-tenth of the population, another third by 25%, and the last third by 65%. (John Goudsblom, Dutch Society, New York: Random House, 1967, pp. 64-65.) In contrast, "...the richest 10% of our American households receive 26.1% of our income, while the poorest receive only 1.7%.... If we look at the distribution of physical wealth, the top 20% owns 80% of all that can be privately owned...and the bottom 25% owns nothing.'" (Lester C. Thurow, Professor of Economics and Management at M.I.T., quoted in "In These Times," May 19-23, 1978, p.2.)

As the old church system disintegrated, it gave rise to a multiplicity of political parties (16 now hold seats in Parliament). The variety of expressed positions requires that coalitions be formed and compromises reached to set national policy. This process of national decision-making means that key issues are openly discussed in Parliament and that no one party gains a monopoly on handling crime issues. The Dutch political style seems to preclude rapid policy shifts on justice matters.

D. A Tradition of Minimizing Violence. An overview of Dutch culture would not be complete without mentioning the Dutch attitude toward violence. By virtue of its values, relative economic homogeneity, and its religious and political traditions, Holland can be understood as a society with a relatively low incidence of, and tolerance for, violence. Most citizens consider owning a firearm as neither a right nor a desirability. Even the police are limited to a single, officially issued, .22 caliber pistol per person and are allowed to shoot to kill only in self-defense. There is no death penalty, and in most prisons there are virtually no reported incidences of physical violence.¹⁰ By resolving disputes at the earliest possible time and with minimal official intervention, the criminal justice system itself plays a role in curtailing violence. While Americans yearn for a less violent society, the Dutch seem to have integrated better controls on violence into their way of life.

E. Conclusions. It became very clear to us in Holland that American over-dependence on, and over-use of, the criminal justice system reflect the absence or disuse of other social and economic support systems. Our criminal justice system seems willing not only to act as the main source of social control, but also to accept responsibility for dealing with all kinds of social problems. The Dutch accept the fact that the criminal justice system is the most inappropriate way to solve social problems and that, in fact, it exacerbates these problems when it does become involved.

10. We were told this by prisoners, prison critics and officials. Our observations reinforced this statement.

III. THE JUSTICE SYSTEM'S CONTRIBUTION TO A LOW INCARCERATION RATE.

A. The Underlying Thesis: Prison is a Harmful Institution. We were particularly struck by one often repeated view: Prisons are damaging institutions and should not be heavily relied upon. Representatives from every segment of the criminal justice system supported this view of prisons as harmful institutions. Speaking for the Ministry of Justice, one official explained: "It is almost hypocritical to think a person in prison can be made better...so we try to limit the damage." The official then emphasized: "A prison sentence is the last sanction...last resort...and that philosophy is practiced." A judge said: "The least possible harm should be done." Social workers who prepare pre-sentence reports emphasized: "We always go in the direction of not sending clients to prison," and "We think prisons are no good." Finally, one prosecutor told us: "Almost everyone in Holland knows that prison has mainly or only negative effects. Some may think it is necessary, but they too know it is negative."

The public seems to share this view of prisons. Such sentiment may be explained in part by the personal experience of many Dutch people who were imprisoned during the Nazi occupation. Also, the Dutch press and television generally refrain from over-reporting and sensationalizing crimes and criminal proceedings.¹¹ Neither the media nor public officials seem to encourage a fearful and harshly punitive attitude toward crime.

While a critic of the Dutch criminal justice system described the limited use of prisons as "not the fruit of a conscious policy," it seems quite probable that the conscious understanding that prisons are harmful contributes to limiting the use and expansion of prisons.

B. Short Sentences are a Key Element. The view that prisons are harmful also reduces the length of many prison terms. Compared to American prison sentences, the longest in the Western world, Dutch sentences are remarkably mild.

Of 14,474 Dutch prison sentences imposed in 1975, for example, 75% were imposed for less than three months; another 20% ranged from three months to one year.¹² Although officials told us that their average sentence length has increased slightly, the average is still about 35 days, considerably shorter than American averages.¹³ Only 4% of those sentenced received terms of more than one year. The shortness of sentences is the single most important factor in creating Holland's relatively small prison population.

11. The news media tends to honor judges' requests that sensitive criminal trials should not be publicized. Also, newspapers do not print the names of adult or juvenile defendants. Juveniles are afforded anonymity and adults are referred to by their initials. American "cops and robbers" TV series have become more prevalent, but the effect of these films on the Dutch perceptions of crime and criminals has yet to be evaluated.

12. "Penal and Penitentiary Data Sheet 1975," Ministry of Justice, p. 1.

13 For instance, average time served in U.S. state prisons (1973) was 13.5 months; in federal prisons (1975) 18.5 months.

The way Dutch sentencing practices are stipulated in law is partially responsible for the shortness of the prison terms. Mandatory minimum prison sentences are almost non-existent even for serious crimes. The minimum penalty for most offenses is a suspended fine, and for more serious crimes like murder, a conditional sentence of one day's imprisonment.¹⁴ Thus, legal minimums do not escalate the length of imprisonment in any way.

Also, long sentences are not considered an effective deterrent. "I do not believe in general deterrence in sentencing," one judge told us. "It's like prescribing there should be no illness." His views were echoed by a Ministry of Justice official: "There's no such thing as general deterrence. It can't be proven." It appears that Dutch prison sentences are used more to mark the limits of social tolerance than as engines of retribution, incapacitation, or deterrence. Short sentences sufficiently serve this purpose.

C. The Filtering-Out Process of the Justice System.

At nearly every point in the Dutch criminal justice system, officials are empowered and encouraged to use discretion to decrease individual's involvement in the system.

Dutch police play their part by imposing fines at the scene of a crime or by negotiating a settlement between the parties. Arrests are least preferred, and police are occasionally instructed by prosecutors not to make arrests for certain crimes (e.g. shoplifting) considered too inconsequential to prosecute.

Only prosecutors are authorized to bring an arrest into court for prosecution. In making their decision to proceed, prosecutors tend to follow the "subsidiary principle," or least drastic alternative, discouraging prosecution even when there is substantial evidence of guilt. This practice states that a criminal disposition should only be used when "it is certain that such a disposition is more effective than a non-criminal or less radical criminal disposition."¹⁵ In other words, prosecutors are to prosecute only when they believe society will benefit more from court intervention than by abstention. Consequently, more than half (54%) of the cases brought to the prosecutors are handled out of court.

The model of the Dutch court, being more inquisitorial than adversarial, may also serve to filter people away from prisons. To a far greater extent than in American courts, the judge questions the defendant directly. This enables the accused to give his or her own explanation of mitigating circumstances. It also seems to bring out the human dimension of the person on trial. Pretrial reports, filed by probation caseworkers virtually always with the defendant's permission, also attempt to humanize the accused. When the human dimension of the convicted person is highlighted, judges are less likely to invoke a penal sentence.

14. Louk Hulsman, "The Dutch Criminal System," unpublished manuscript, p. 376.

15. Janse de Jonge, Kneepkens and Soetenhorst-de Savornin Lohman, "Recent Developments in the Dutch Criminal Justice System," a paper presented at a Criminal Justice Congress in Czechoslovakia, p. 5.

The position and training of judges and prosecutors also influences how they use their powers. Both positions are filled through appointments made by the Ministry of Justice upon completion of the required schooling and work experience.¹⁶ Adjudication and prosecution are thus professional careers in their own right. Men and women holding such positions seem to feel most responsible to the Ministry or other professionals. As a result, they are enabled to take more risks on behalf of defendants without jeopardizing their own status.

D. Sentencing Practices Show High Use of Fines. Sentences are given out to approximately 43% of the cases referred to the public prosecutors. Prosecutors divert 54% of

the referred cases, and the remaining 3% are terminated by court acquittal, discharge, and other procedures.

The Dutch do not have a large array of alternatives to incarceration. Instead, fines are used, even for serious offenses. In 1975, fines constituted 43.4% of all penalties imposed for serious offenses. An additional 20.7% of the penalties were fines combined with suspended sentences.¹⁷ Consequently, almost two out of every three convictions for serious crimes were dealt with by fining.

E. Overcrowding Unknown: Prison Beds Held to a Limited Number. When imprisonment is ordered at sentencing, a prison bed must be vacant before the person is admitted. In

Holland, double celling and prison over-crowding are unknown because the Ministry of Justice fixes prison capacities and regulates prison populations. All the prisons we visited (mostly 120-bed institutions) had empty beds, usually 20 vacancies.¹⁸ Prison administrators stated they would simply refuse to accept prisoners over and above the single room capacity of their institutions. "The more beds you have, the more people come in," the administrator of an Amsterdam remand prison told us.

One popular sentencing option which relieves prison population pressures is the practice of "walking convicts." This method grants at least a four-week delay between the time of sentencing and imprisonment. Consequently, a waiting list is developed and then used by the Ministry of Justice to regulate the flow of people into the prisons.

"Walking convicts" can create a large backlog, as it did in 1975. At that time, 14,000 people were awaiting a vacant prison bed. The Dutch solved this problem in a very simple way. At the request of the Minister of Justice, the Queen granted a blanket amnesty of 14 days to all "walking convicts," with the condition that the amnesty would be revoked for any person committing a crime

16. Judges must train a total of eight years as law clerk, defense counsel, public prosecutor and clerk of the court. Public prosecutors receive legal education, followed by a period of internship.

17. "Penal and Penitentiary Date Sheet 1975," Ministry of Justice, p.1.

18. As of July, 1977, total capacity of penal institutions in Holland was listed as 3,667, while current populations numbered 3,011. From "Population of Penitentiary Institutions," Ministry of Justice, July 1, 1977.

within that year. Since 6,000 people with this sentence had only 14 days or less to serve, they were completely diverted from imprisonment. Amnesty serves as another means of reducing Dutch prison populations.

We were surprised to learn that prison employees tend to limit increases in prisons and their populations. A professional who works with guards in a training capacity explained it this way: "Prisons are not fully used because the guards' trade unions have succeeded in holding down the population to insure good working conditions." The staff-to-prisoner ratio in Dutch jails and prisons is 1.5 to 1,¹⁹ contributing to an extraordinarily high per diem cost per prisoner. According to figures supplied by one governor (warden), it costs \$150 per prisoner per day in his remand prison. At a private psychiatric prison the cost was reported to be \$500 per prisoner per day. Such a high expense of maintaining prisons may be a built-in curb on prison expansion.

Finally, Dutch officials generally view new prisons as replacements for outdated facilities, not as additions. For instance, the controversial new high-rise prison complex near Amsterdam replaces the former women's institution in Rotterdam and two remand prisons in Amsterdam. Although the new towers will ultimately provide more spaces than were formerly available, the old facilities will not be used. According to a prison official, they have been sold for "more profitable" commercial use.²⁰ By selling and closing rather than maintaining former prisons, the Ministry contains the use of imprisonment.

19. "Penal and Penitentiary Key Data 1972," provided by the Ministry of Justice.

20. This partially completed prison was originally planned in the 1950's. There are approximately 625 spaces in its six towers: four towers for remand prisoners, each with a 120-bed capacity; one tower for women, with 70 to 80 beds (partially occupied at present); and one psychiatric facility reserved for future use with 70 to 80 beds. Many officials and concerned citizens are critical of its inhumane scale, its isolation and size.

IV. UNRESOLVED ISSUES, CRITICISMS, AND CONCERNS. There are many aspects of the Dutch system which seem enviable and worthy of emulation. But as stated at the outset of this report, we know that it is unrealistic to assume that such policies and practices can be imported unchanged. Features that may operate with good effect in Holland might have a very different impact here. We have also encountered aspects of Dutch policy and practice that gave us cause for concern, caution, or alarm. These factors should be balanced against the system's more favorable attributes.

We found, for example, that there is little citizen involvement in, or control over, the Dutch criminal justice system. Holland has developed a large central bureaucracy (the Ministry of Justice and its appointed judges and prosecutors) which sets criminal justice policy quite detached from public scrutiny. At the court level, Dutch judges are not checked by jury trials, and no verbatim record is kept of proceedings. Citizens seem conspicuously absent as volunteers or active monitors in the courts or prisons. The Ex-prisoners' group is barred from organizing in the prisons. Criminal justice system administrators appear to enjoy much greater autonomy than we would feel comfortable affording our authorities. However, the Dutch citizen seems to assume that their officials will "do the right thing" without need of close monitoring. A system that rests on good intentions in lieu of systematic safe-guards and checks on official action does not appear suitable for the United States.

The continuance of many admirable Dutch practices, such as short sentences, seems to depend on the benevolence of the people in decision-making positions-- prosecutors, judges, and the Ministry of Justice. Too often we have seen powerful systems operate in the "best interest of the people," only to find that those affected feel their interests are subservient to bureaucratic expedience. We feel the Dutch system shares many of the features of our juvenile court system and thus potentially suffers from many of the ills of that system.

Early in the course of our Seminar, we began to question the extent to which the Dutch system operates in a racially discriminatory fashion. Our first inquiries about the proportion of racial and ethnic populations at various points of the criminal justice process were met by denials that such information was collected or considered. Although we eventually received some statistical information, we were not able to put together a reliable overview on the fate of minorities within the system.²¹ We saw a disproportionate number of non-whites in the prisons and jails we visited, and heard that new police sometimes tend to treat minority group members harshly, out of ignorance and fear. We suspect that discretion is not used uniformly. We also heard that non-whites face higher levels of unemployment, but official statistics do not have racial breakdowns. While there is

21. According to M. Ebbeling, official for cultural minorities in the Ministry of Culture, Recreation and Social Work, the three main racial minority groups-- Surinamers, Moluccans and Dutch Antileans--constitute 1.5% of the Dutch population. Prison figures provided by E. Besier of the Ministry of Justice show that 4.6% of the prison population comes from these groups. It should be noted that there are many other non-white groups and that non-whites may or may not be Dutch citizens. A person can be a Dutch national, former colonial with the option of choosing full citizenship, a citizen of a European Common Market country automatically allowed to work, a political refugee, a legal or illegal foreigner.

danger that the Dutch self-image of tolerance may become stained by racial discrimination, many Dutch apparently believe that existing problems will be resolved over time. Nevertheless, potential racial problems were a source of particular concern to us.

We also left Holland with many questions about the use of indeterminate sentences for psychiatric treatment of "criminal psychopaths." Approximately one-third of those confined in Dutch prison-type facilities are assigned "at Her Majesty's pleasure" to one of the seven state or private psychiatric prisons. Persons in such facilities are placed there if found not guilty by reason of insanity, if sentenced as a criminal psychopath, or if transferred from a regular prison. Although the number in the "psychopathic" population has declined from approximately 850 in 1965 to about 400 in 1977, we were not able to answer satisfactorily, for ourselves, how many Dutch "troublemakers" are controlled in this way or how many of our long term prisoners would be in "psychiatric hospitals" if sentenced in Holland. It appears such sentences are now used predominantly for very serious crimes, but we were uneasy with the Dutch system's reliance upon psychiatry and its trappings.

In addition, we noted that many persons²² unnecessarily spend some time in Dutch prison or jail. Although we were positively impressed by the "walking convict" option, the fact that such persons begin serving short sentences months after their convictions, demonstrates that they do not need to be confined for reasons of public safety. We were not convinced that the Dutch prison population has reached an irreducible minimum. We had some lingering questions about the rationale for imprisoning offenders guilty of non-dangerous acts. If the purpose of confinement is symbolic or punitive, might less drastic sanctions serve as well or better?

We did not find Dutch prisons and jails to be different from typical penal and detention facilities in the United States, except in two important aspects: they were smaller and they had a much lower level of reported violence. Otherwise, severe restrictions on visiting, eating practices--only one hot meal a day and all meals eaten alone in a cell--and other aspects of prison life seemed to resemble our own dehumanizing penal practices. Except for a few advocacy groups, the Dutch public seems unaware of the prisoners' rights and the importance of these rights in ameliorating the dehumanization of prisons.

Although we were impressed by some of the philosophy and effects of the Dutch fact finding/dispute resolution model, we question the lack of due process checks. Dutch police, for example, are legally permitted to jail and question suspects without a lawyer present and without advising them of their right to remain silent. Advocates for the accused expressed concern over insufficient proofs of guilt and defective investigation procedures.

Finally, we note that the practice of money bail is non-existent in Holland. Dutch jails are not filled with poor people unable to purchase their freedom. Still, we suspect that some socio-economic discrepancies in pre-trial detention nevertheless exist in Holland.

22. A total of 22,000 served at least one day in adult, juvenile, or psychiatric prisons during 1977. (Ministry of Justice figures).

V. CONCLUSION. The following questions remain then: What is responsible for the low rate of incarceration in Holland? What elements of the Dutch system are relevant and transferable to the American system? Predictably, there are no easy answers to these most difficult questions.

Dutch history and culture clearly account for some major differences from American criminal justice practices. Holland's history of tolerance helps to explain the relatively mild approach to incarceration. The country also has a strong sense that imprisonment does not deter, does not protect, and does not, effectively, eliminate deviant behavior. For these functions, the Dutch turn more to other societal institutions.

There is clearly a relationship between a low level of economic disparity and limited use of incarceration. The correlation between economic conditions and the use of incarceration has been well established in numerous studies. The Netherlands is economically prosperous, has a social service system that seems genuinely responsive to the needs of its citizens, and has a relatively low disparity of income between upper and lower economic groups. The benefits of the Dutch economic system are reflected in its infrequent reliance upon imprisonment.

Holland is a stable nation with a vital democratic tradition and a proud progressive spirit. This stability has allowed the criminal justice system to function as a relatively independent body, somewhat removed from the vicissitudes of an ever changing political scene. The absence of capital punishment and the presence of strong laws forbidding the average citizen from possessing handguns result in a relatively violence-free society. The almost total absence of physical violence within the Dutch correctional system is, in part, a reflection of the low levels of violence in the general society.

The last question then takes on increasing importance: What is relevant to the American scene? What is useful?

Shorter sentences for criminal acts certainly should be adopted as official U.S. policy. Our long sentences, and consequently our large prison populations, have not reduced our crime rate and, in the long run, may have exacerbated our social problems. As a nation we must recognize the fallacy of our present practices and change accordingly. The Dutch show it can be done.

The "subsidiary principle" of doing "as little harm as possible" seems to be a great contributor to minimal use of imprisonment and shorter sentences. The strong belief that prisons should be used as a last resort, quite simply must be put into practice throughout our country, as it is in Holland.

Reduced incarceration is not dependent on sophisticated and at times expensive "alternatives" or diversionary programs. Without these programs, the Dutch have maintained a low rate of incarceration by simply putting into practice their philosophy that incarceration has no salutary effect on the offender. Justice and society can best be served by the minimal use of prosecution and incarceration.

This paper is not intended as a wholesale indictment of the American criminal justice system, nor as a blanket endorsement of the Dutch system. We appreciate our provisions for due process, our consciousness of the need to assure prisoners'

constitutional rights, our citizen involvement, and our struggles to alleviate racism. We also believe that our criminal justice system can and must undergo some drastic changes. From others, such as the Dutch, we can learn many useful strategies for reducing our overreliance on imprisonment. But in the end, making improvements will require us to look to ourselves, to our shortcomings and our strengths as a people.

July 1978

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(more)

APPENDIX I.
(cont'd)

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MAJOR MEETINGS

NETHERLANDS CRIMINAL JUSTICE INVESTIGATIVE SEMINAR

MONDAY, APRIL 17

Rotterdam: Erasmus Universiteit

- 9:30 a.m. Louk Hulsman, Criminologist, Faculty of Law
Erasmus Universiteit, Rotterdam)
"An Introduction to the Dutch System"
- 1:30 p.m. Jim Olila, Anthropologist
Ellie Rood, Lecturer in Criminology and Social Welfare
Erasmus Universiteit, Rotterdam)
"Concepts of Criminality in Dordrecht"
- 3:30 p.m. Charles Vermeer)
Erasmus Universiteit, Rotterdam)
"T.B.R. Treatment Programs"
- 8:00 p.m. Judge C. Boot)
Rotterdam)
"The Dutch Judicial System"

TUESDAY, APRIL 18

den Haag: Ministrie of Justice

- 10:20 a.m. Eric Beiser, Information and Foreign Visitors
& 3:00 p.m. M.v.d. Goorbergh, Head of Department of Prisons
Ministrie of Justice)
"Dutch Penal Institutions"

(Part of Seminar group to Alkmaar: Local Court)

- (9:45 a.m. C. Schrijnen, Civil Lawyer and experienced prosecutor in training
to be a judge
J. Abspoel, Prosecutor
Alkmaar)
"Dutch Criminal Procedures")

(1:00 p.m. Small group visited local detention center)

WEDNESDAY, APRIL 19

Amsterdam: H.V.O.

- 9:30 a.m. Frank Kuiterbrouwer
N.R.C. Newspaper)
"The Role of the Press in Crime Reporting")

WEDNESDAY, APRIL 19 (continued)

2:00 p.m. Ada van der Feen, Senior Social Worker
Amsterdam Regional Office
Algemene Reclasseringsverniging (General Rehabilitation Association)
"Probation/Rehabilitation and After Care in Holland")

(Part of Seminar group to Amsterdam: Advokaten Kollektief)

(1:00 p.m. Ineke de Graaf
Advokaten Kollektief
"Legal Aid and Defense in Holland"))

Amsterdam: H.V.O.

8:00 p.m. Petra Rombouts
Willem Koeberg
Constance Vrydaghs
H.V.O. (literal translation: Help for the Homeless)
"Alternative Probation/Rehabilitation and After Care Services")

THURSDAY, APRIL 20

Utrecht: Van der Hoeven Clinic

9:30 a.m. Dr. Julie T. Feldbrugge
Van der Hoeven Clinic
"T.B.R. Treatment at Van der Hoeven Clinic")

(Part of Seminar group to den Haag: Penitentiary Selection Center)

(10:30 a.m. Dr. J. Dorpsman, Director, Psychiatrist
Willem de Carpentier, Psychologist
K. Vaaktjes, Psychologist
Penitentiary Selection Center
"Classification and Assignment of Prisoners to Prisons"))

den Haag Scheveningen: De Sprang Remand Center

2:30 p.m. G. Jongkind, Governor
De Sprang Remand Center for Youth
"The De Sprang House of Detention for Young People")

FRIDAY, APRIL 21

Amsterdam: H.V.O.

9:45 a.m. Piet van Rheenen, Sociologist
Police Training Institute
Amsterdam
"The Role of the Police in the Dutch System")

FRIDAY, APRIL 21 (continued)

Amsterdam: Remand Prison I

2:00 p.m. Jan den Brant, Assistant Governor
Perci Anthony Redan, prisoner, native of Surinam
Robbyn Devlugt, prisoner, native of Surinam
Remand Prison I
Amsterdam
"The Amsterdam Remand Center: Operations and Problems")

(Part of Seminar group to Amsterdam: Police Headquarters)

(2:00 p.m. Frans Dankers, Psychologist
Evert Jagerman, Police Inspector
Bob Hoornsta, Public Relations
Amsterdam Police
"Police Operations in Holland")

MONDAY, APRIL 24

Arnhem: Otterlo Museum

12:00 noon Eugene Sutorius, Prosecutor
Arnhem
"Courts and Prosecution in Holland")

Zutphen: Zutphen Prison

4:20 p.m. Sipke Teyema, Assistant Governor
Zutphen Prison
"Operations of Zutphen Prison")

TUESDAY, APRIL 25

Amsterdam: COOS (Coördinatie-buro Opvang Surinamers)

9:30 a.m. Leentje Ingenbleek, Treasurer
Rikky Pas, Drug Worker
Wan Pipel Foundation
Amsterdam
"Surinamers in Holland")

WEDNESDAY, APRIL 26

Amsterdam: Ira and Hans Goldwasser's home

9:30 a.m. Bart Smit, Ministry of Justice Psychiatrist
Amsterdam
"A Critical Look at T.B.R.")

WEDNESDAY, APRIL 26 (continued)

Amsterdam: H.V.O.

4:00 p.m. Luuk Hamer, President
Coordhert Liga (Criminal Justice Professionals for Penal Reform)
Amsterdam
"Penal Reform Efforts in Holland")

8:00 p.m. Syp Fiers
Lidwien Ophey
Henk Schwab
B.W.O. (Prisoners Union)
Rotterdam
"Problems of Prisoner Organizing in Holland")

(Ed Parrott and Sharon Smolick to Rijswijk: Bureau of Minority Cultures)

(10:00 a.m. M. G. Ebbeling, Director
Bureau of Minority Cultures
Rijswijk
"The Status of Minority Cultures and Foreigners in Holland")

(Ginny Mackey and Kay Harris to Amsterdam: A.R.V.)

(2:00 p.m. Casta Deen
West District Office of ARV
Amsterdam
"A.R.V. Probation/Rehabilitation Social Work")

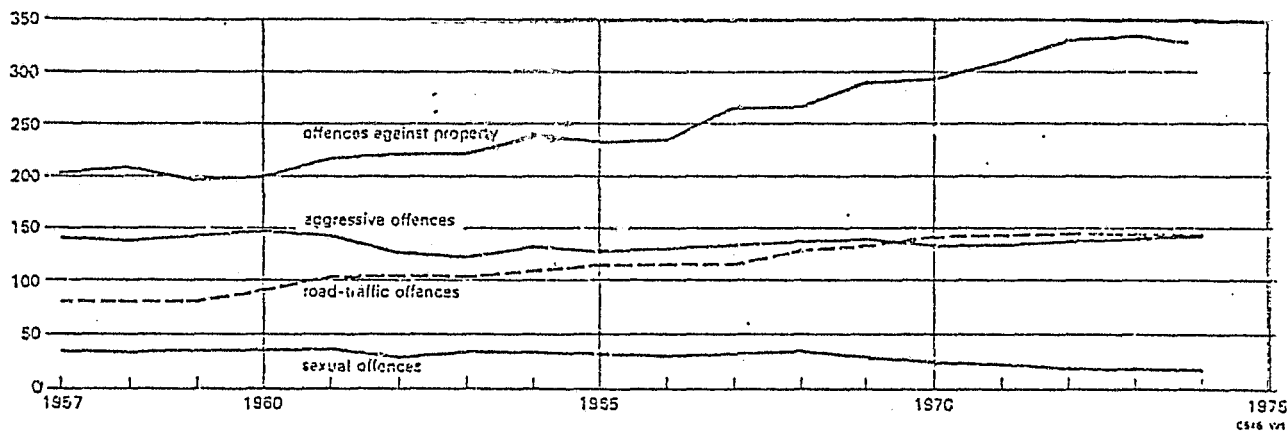
THURSDAY, APRIL 27

Amsterdam: Free University

9:30 a.m. Professor Herman Bianchi, Founder
Criminological Institute, Free University
Amsterdam
"The Concept of Sanctuary")

From the Official Yearbook 1975, Netherlands Central Bureau of Statistics.

1. Major Offenses Sentenced by the Public Prosecutor per 100,00 Inhabitants from 1957 to 1974.



2. Prison Sentences for Selected Offenses in Percentages (1971).

	<u>burglary</u>	<u>larceny incl. auto theft</u>	<u>aggravated assault</u>	<u>simple assault</u>
Immediate prison sentence (% of all convictions for the offense)	57%	19%	71%	13%
Of which:				
3 yrs or more	0.25%	--	0.5%	--
1-3 yrs	3%	0.4%	3%	--
1 yr (possibly partially conditional)	6%	0.4%	6%	--
6 mos-1 yr (possibly partially conditional)	35%	10%	25%	1%
3-6 mos (possibly partially conditional)	31%	22%	29%	2%
1-3 mos (possibly partially conditional)	17%	28%	21%	20%
less than 1 mo (possibly partially conditional)	7%	40%	16%	76%

APPENDIX IV.

From L.H.C. Hulsman, *The Dutch Criminal Justice System*, unpublished manuscript, available through Erasmus University, Rotterdam, Netherlands.

1. Demonstration of disproportionate convictions and imprisonment by class (based on a 1972 study conducted by the central office of statistics):

<u>Socioeconomic class (% of population)</u>	<u>Males with at least one conviction for a serious offense (misdrijf)</u>	<u>Males sentenced to prison at least once</u>
Upper class (15%)	1:33	1:70
Middle Class (50%)	1:9	1:18
Lower class (35%)	1:2.5	1:5

2. Distribution of prison sentence lengths from 1959-1972.

<u>Year</u>	<u>More than 3 yrs %</u>	<u>1-3 yrs %</u>	<u>6-12 mos %</u>	<u>3-6 mos %</u>	<u>1-3 mos %</u>	<u>Less than 1 mo %</u>
1959	0.9	7.0	16.1	19.7	20.3	36.0
1966	0.5	4.6	11.6	15.4	16.9	51.0
1970	0.3	2.4	7.5	15.5	16.7	57.6
1971	0.3	2.9	7.9	14.7	16.9	57.3
1972	0.4	2.4	7.0	14.8	17.3	58.1



END