



**NEW DIRECTIONS
FOR CORRECTIONS**

**Creative Concepts for Future
Criminal Justice Planning**

MICROFICHE

"Punishment: Perspectives in a Civilized Society"

January 17-20, 1977

Co-Sponsored by:

**Center for Social Work Research
School of Social Work
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PUNISHMENT: PERSPECTIVES IN A CIVILIZED SOCIETY

Center for Social Work Research

University of Texas at Austin

January 17-20, 1977

Conference Convener
Chester A. Chiles, Ph.D.

Editors

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Douglas W. Denton
Georgann English

This conference is the first in a series of five held in Federal Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas). This project, New Directions for Corrections was made possible by the Texas Criminal Justice Division and the Law Enforcement Assistance Administration on grant #DS-77-E01-4307. New Directions for Corrections is administered by The Institute of Urban Studies, The University of Texas at Arlington. The views expressed by participants in this conference are their own, and should not be ascribed to The University of Texas at Arlington or the Law Enforcement Assistance Administration.

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This is the first of a five (5) volume set of conference proceedings produced as an aspect of a Law Enforcement Assistance Administration (LEAA) United States Department of Justice grant to enhance citizen efforts to interact with the Criminal Justice System. This project would never have been conceived nor allowed to grow had not two very busy, but caring, people, Isabelle Collora, Vice President of the National Council of Catholic Laity and Richard Velde, Former Administrator of LEAA, taken the opportunities to meet and discuss the issues which surround these conferences.

The people who helped prepare this volume are numerous. From the earliest stages of conference preparation, Claire Daulton was making arrangements, securing equipment, preparing agendas, and recording this conference. Damon Bockoven, University of Texas at Austin, coordinated the physical arrangements of the conference and made us quite comfortable. Chet Chiles, Associate Professor of Social Work as the Conference Convenor, was the prime designer of the meeting, working long hours to secure a balance of professionals, ex-offenders, practitioners, and lay citizens for our sessions.

The proceedings are intended to paraphrase the presentations, vis-a-vis, reproduce them word for word throughout. We strived to remain faithful to the concepts shared in the conference while conveying the nature of the interaction. Human error and machine recalcitrance may have caused us to miss some material, but generally, we had good luck with the quality of the recordings.

Transcribing the tape recordings was a long and arduous task for Dalene Bagby and I wish her well. Georgann English patiently waded through the transcripts, filling gaps, deleting bad jokes and helping me move toward a final product. Isabelle Collora did the final work on sentence structure and concept retrieval. If this sounds like a confusing situation, please consider there were four other conferences in the same process. Gene Witsell, who had been with me from the beginning, coordinated the entire effort, as well as prepare the photo-ready copy for the publication you now hold. I am grateful to have been associated with these people.

Douglas W. Denton
Project Director
New Directions for Corrections

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PUNISHMENT: PERSPECTIVES IN A CIVILIZED SOCIETY

Thompson Conference Center
School of Social Work
University of Texas at Austin

January 17-20, 1977

January 17, 1977

Welcome: Harry Fleischman - The American Jewish Committee
Introduction: Roy M. Mersky, Professor, University of Texas Law School
Address: "A Critical Overview of the Criminal Justice System"
John Kaplan, Professor of Law, Stanford University

January 18, 1977

Address: "What Causes Criminal Behavior?"
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Address: "Socialization, Learning and Behavior Change"
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Ron Wetherington, Anthropology Department, SMU, Dallas
Father Ricardo Ramirez, Associate Director Mexican/American
Cultural Center, San Antonio, Texas
Volma Overton, NAACP, Austin Area Representative*
Address: "Restoration of Hope: Punishment In Religious Perspective"
Kim Beach, Minister First Unitarian Church of Austin, Texas
Address: "Socio-Political Barriers to Correctional Reform"
Eugene Czajkoski, Dean, School of Criminology, Florida State

January 19, 1977

Address: "Experiencing the Criminal Justice System"
Don Taylor, Counselor, Development and Rehabilitation
Austin, Texas
Address: "An Examination of the Criminal Justice System
In Light of Learning Theory"
Karl Slaikeu, Associate Director, Counseling-Psychological
Films: Voices Inside (Featuring Karl Menninger) & No Guntowers: No Fences

January 20, 1977

Film: Modernizing Criminal Justice Through Citizen Power
Address: "American Bar Association Standards and Goals for Corrections"
Penelope D. Clute, Esq., Michigan Department of Corrections
Address: "A Model for a Rational Criminal Justice System"
John Albach, Texas State Director, National Council on Crime and
Delinquency, Austin, Texas

*Mr. Overton's presentation and audience reactions are not included in this publication due to a truly unfortunate equipment malfunction.

WELCOMING ADDRESS -- Harry Fleischman

Harry Fleischman is the American Jewish Committee's representative to the New Directions for Corrections project. Harry is the Director of AJC's Race Relations Division and the Executive Director of The National Alliance for Shaping Safer Cities.

I am honored to welcome you to this conference which is co-sponsored by the Center for Social Work Research of the University of Texas at Austin and the Institute of Urban Studies of The University of Texas at Arlington. This session is being co-sponsored by the University of Texas Law School. This project was unofficially launched in March, 1975, when the First National Conference on Capital Punishment was held at Notre Dame University under the sponsorship of The National Council of Catholic Laity. It subsequently developed into a coalition which included among its members the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), The American GI Forum, The American Jewish Committee, The National Conference of State Legislatures, The National Alliance of Businessmen, and The National Council of Catholic Laity of the U.S. Catholic Conference. These organizational sponsors will be able to share with their constituencies the information presented at the conferences, in the following manner:

The conference proceedings will be published in five (5) volumes which will present the concepts surfaced in each of the conferences, along with the resulting dialogue and feedback. In addition, selected (recent) research on corrections, criminal justice and citizen involvement will be prepared from the presentations submitted by the participants in the conferences. The five conferences will address different areas of corrections. Throughout the series, the dialogue will "stretch" across disciplines by gathering theorists and practitioners from concerned fields including ex-offenders and persons representing the public and inviting them to address the issues surrounding corrections, criminal justice and citizen involvement.

A citizen action program will be developed for the sponsoring bodies to deliver to their constituencies utilizing the materials and concepts derived from the conferences. The program will facilitate enlightened citizen involvement in the correctional systems through education and interaction. Training specialists from each of the sponsoring organizations will participate in a training-of-trainers seminar designed to equip them with a workshop program for delivery in their respective organizations. The methodology will be transferable, we hope, to other criminal justice issues. Your participation will be highly valued and depended upon in order to bring the best thinking possible into exploring some new directions in the correctional process.

The theme of this conference is punishment in a civilized society. What is punishment? What is its purpose? Is it to deter crime? Is it to restrain people from committing crime? Is it for revenge against the criminal? Is it to reform him?

Take a look at Capital Punishment. Crime statistics show no higher homicide rate in states with Capital Punishment than in those without such punishment. Michigan (without Capital Punishment) had about the same rate of Ohio and Indiana, each of which have the death penalty. A study of homicides by criminologists during short periods before and after several well-publicized executions during the 1920's and 1930's in Philadelphia, found that there were significantly more homicides after the executions than before.

Supporters of capital punishment argue that only the death penalty can protect the public against further crimes by convicted murderers. However, innumerable studies show that murderers are the least likely (i.e., those convicted murderers in jail and prison) of all classes of offenders to return to crime when they are paroled or released.

Some have argued that retaliatory punishment is required as a form of moral education. One law official argued "to allow heinous criminals to commit their crimes without the commensurate reparation of the death penalty would surely brutalize and degrade human nature and reduce society to a state of barbarism." To this Arthur Kessler replied, "Deep inside every civilized being lurks a tiny stone-age man, dangling a club and screaming, 'an eye for an eye.' But we would rather not have that little fur-clad

figure dictate the law of the land." Today, one murderer, Gary Gilmore, was executed by a firing squad in Utah, the first instance of capital punishment in this land for a decade. Gilmore demanded that he be executed instead of receiving life imprisonment, and he had attempted suicide two times. There are now 358 people on death row throughout the nation. The fact that we have re-enacted capital punishment may enact a considerable number of additional executions.

Another example is Peter Reilly of Connecticut. He was convicted of killing his mother, and sentenced to prison. Some years later, after a great deal of aid from playwright Authur Miller, it was found that the prosecution had withheld evidence. Further inquiries revealed that someone else had committed the murder and Reilly was freed. If capital punishment had been legally accessible, he might just have received a posthumous pardon.

In another case, Anastasio Vargas was convicted of murder and sentenced to death in Texas, in 1926. His head was shaved in preparation for the execution, whereupon a stay was granted after another man confessed to the crime.

Warden Duffy once stated that capital punishment is a privilege of the poor. Former Governor DeSalle, of Ohio added, "During my experience as governor of Ohio, I found the men in death row had one thing in common; they were penniless." There were other common denominators: low mental capacity, little or no education, few friends, and broken homes. The fact that they had no money was a principle factor in their being condemned to death.

The study of rape cases in Florida between 1940 and 1964 revealed that only 5% of Caucasians (whites) who raped white women were executed, while no white was sentenced to die for raping a black woman. However, 54% of blacks convicted of raping white victims were sentenced to death.

Why are we here? One reason is that increasing violent crime is making a jungle of our cities. We have asked Americans the following questions (and in all too many cases, Americans have given appallingly incorrect answers): 1) Who are most often murder victims, whites or blacks? The FBI's 1975 uniform crime report says the 51% of all murder victims are white; 47.5% were black. 2) Are most violent crimes committed by people

of one race against people of another race? No. Violence seldom crosses the traditional class and ethnic lines. 3) What type of person is most often found committing criminal offenses? Two-thirds of all arrests for major crimes are committed by people age 21 or younger. 4) Do most jails in the United States have educational programs for inmates to keep them from becoming repeaters? The Justice Department's 1974 National Jail Census reveals that less than 11% of jails had any educational facilities.

The question of "crime careers" should be considered. How many repeaters in crime do we have? The study by the FBI of 256,000 persons who were arrested between 1970 and 1975 showed that 64% of them had been arrested two or more times. The study also showed that those quarter of a million people had been accused of more than one million crimes.

How much does crime cost the country? The Joint Economic Committee of Congress estimates that the overall cost of crime to the nation during 1976 - just that one year - was at least 125 billion dollars; the crime tax of over \$500 a year for every man, woman, and child in America. These questions and their answers inform us of a need for citizen action in order to deal with crime.

Crime in the street has polarized the nation. Americans in massive numbers have come to fear and distrust strangers in public places, partly based on some sound good reasons, and partly based on myths centering around crime. A Gallup survey taken in 1949 showed only 4% of big city residents naming crime as their city's worst problem. That figure had risen to 21% by 1975. This is a higher percentage than that of unemployment, inflation, or anything else. We are all becoming casualties of fear.

Art Hoppy described this aspect of fear well in a recent column. He received a letter from a great-grandmother who wrote: "I have lived many years over my three score and ten, but if any joker thinks I would sit and be abused and have my purse taken without resistance, they are crazy." With obvious relish, she tells how she always carries a knife when she rides on a bus, and what she would do to those young goons who are asking for it. But then she reflects and says, "Born in San Francisco, I never thought of the city--so gentle during the greater part of my life-- would cause me to coldly and without fear contemplate mutilating another human being."

Adds Hoppy, "I was coming home the other night, a tennis racket in my hand, half-way down the block, two ominous figures approached. I envisioned them accosting me, demanding the few dollars I had in my wallet. My grip tightened on the racket. I would swing it like a club, bloodying their faces, cracking their skulls, beating them, hurting, killing them. Fifty feet from me they opened the doors of a parked car. In the light, I saw that one was an old man, the other a young woman in slacks. I was ashamed."

I cannot help wondering how many of us have not felt this irrational urge to kill by now. Violence breeds fear of those who are younger and stronger and more prone to violence than we are. But fear cracks the citadel of self. And hating fear, it is natural that we hate those who have made us afraid. This is what makes an old woman carry a knife on a bus. This is what makes men envision crushing two innocent people to death. But to dream such dreams, we must callous over a corner of our souls. Those relatively few among us who have actually been beaten and robbed are truly casualties of the times. But I think so are we all.

The American Jewish Committee initiated the National Alliance for Shaping Safer Cities in 1970, bringing together organizations of varying ideological views in order to take the crime issue away from both the ultra-right that call for repression, and the ultra-left that call for violent confrontation.

We are dedicated to reducing both crime and the fear of crime in America. This requires recognition of the fact that the present criminal justice system does not deter, detect, convict or correct. It will not become a real system without substantial public understanding and action. Thus, we mobilized experts in the criminal justice field, such as; The National Council of Crime and Delinquency, The VERA Institute of Justice, The Fortune Society of Ex-convicts, and the Odyssey House for Ex-addicts in order to help educate unions, church, business, and civic groups to act effectively against crime and injustice. We have compiled a list of twenty-two steps for a safer neighborhood which includes better lighting, citizen police auxiliaries, youth and adult escort patrols for the elderly; etc. But we warn that while the measures we advocate would reduce crime in the neighborhood and improve the life of the residents, increased crime control measures in one area sometimes lead criminals to seek their activities in another area. Therefore, we stress the urgency involving all citizens in

in on-going campaigns for long-range cures as well as short-range band-aids to conquer crime in America.

About a third of the nine-million arrests in 1975 were for "victimless" crimes. In order to enable the police, the judiciary, and correctional personnel to deal with serious crime, many groups are now urging that we spend less time and money prosecuting so-called "victimless" crimes such as drunkenness, gambling, prostitution, marijuana use, and homosexuality. Half of the fifty states have decriminalized public drunkenness and more than a third of the states have removed bans against homosexual practices and other commonly outlawed sexual acts that involve only consenting adults. Certain forms of gambling have been legalized in thirty-four states.

Furthermore, in 1972, after the Attica riot the Alliance launched a massive campaign to achieve a bill of rights for prisoners throughout the nation. We hail the action of Pennsylvania's Attorney General who endorsed such a bill of rights for prisoners in Pennsylvania State Prison. We issued a statement on human rights for prisoners and endorsement was gained by more than 500 leaders of religious, racial, business, labor and civic groups including 105 Catholic Bishops, Archbishops, and Cardinals, and 30 international union presidents. Many governors and state attorney generals agreed to take affirmative action on our proposal.

Our statement called for the adoption of the U.N. standard minimum rules for the treatment of prisoners. These rules prohibit racial or religious discrimination, require separation of untried from convicted inmates, and the separation of youthful offenders from hardened criminals. They declare that no punishment shall be imposed unless the inmate has been informed of the offense alleged against him and given the proper opportunity of presenting his defense. These rules clearly state that untried prisoners are presumed to be innocent and should be treated as such.

Prison reform is needed not only to protect the rights and safety of prisoners, but also to protect the rights and safety of correctional employees and the general public. Edward Kirkland, a guard at Sing-Sing, reflected in a press conference that if a bill of rights to prisoners had been in effect before the Attica riot, the forty-three hostages and prisoners who died there would probably still be alive. If we want to prevent further

riots and save lives of guards and prisoners, we need to adopt this bill of rights now. Even presidents have recognized that prisons today are "colleges" of crime, and many people are urging the diversion of offenders into health, welfare, and other community based facilities. They suggest these measures would prevent petty offenders from becoming hardened criminals, reduce rates of recidivism, and thus reduce the amount of crime against all of us on the streets and in our home.

Are those who support prison reform "bleeding hearts"? One letter I received signed "mugged citizen" asked, "Has anyone in your family or friends ever been mugged, raped, or killed by these animals? Have any of you taken the time to visit the hospitals, to see the ones these animals injured so badly that they are crippled for life? No bill of rights for them." I can sympathize with his anger. My son was mugged, and I have been robbed and burgularized, but anger is no program.

Would it not be better to work the programs which would promote restitution and compensation for the victims of crime? A number of states have such laws today and there is legislation in the U.S. Congress to promote the same approach. Minnesota, for instance, sends its offenders to a restitution house where they can work for a living, support their families, pay taxes, and also compensate their innocent victims. In Sweden each year, 80% of its convicted offenders receive a suspended sentence or probation, but forfeit one-third of their daily pay for a period determined by the seriousness of their offenses. These new approaches existed centuries ago in China, in Judaic life, in many Slavic cultures, among some African tribes, and in Northern European countries. Most often, the wrong-doer was obliged to make restitution to his victim and if he had killed or injured another man, he was required to support the widow and family as long as it was necessary. Can we be as wise as our forefathers? I have only touched on some of the issues we will be debating throughout this conference. In conclusion, let me stress that we have power in our coalition, the power of informed public opinion. We can come to agreement on the issues before us and then unite to educate the members of our own organization and the general citizenry. If we achieve this goal, we can turn the country around and bring peace and tranquility to the nation.

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A Critical Overview of the Criminal Justice System

John Kaplan
Stanford University

After graduating from Harvard with degrees in physics and law, Dr. Kaplan clerked for Justice Tom C. Clark of the U.S. Supreme Court and then continued on to the University of Vienna for advanced studies in criminology. After four years in prosecutorial capacity with the federal government, he returned to the academic world. He has served on the faculty of Stanford University since 1965, and is currently a professor of law. Dr. Kaplan remains a prolific author, having written five books and fourteen articles in the last decade. He is noted for his work in the criminology of drug offenses, and his texts are the most widely used law books currently in print.

My discussion is scheduled as a critical look at the criminal justice system. The idea of criticizing the criminal justice system is really too easy. Frankly, it is a "sitting duck." The police, the prosecutors, the courts, the prisons, probation and parole, are really too easy as targets. All of these defects are mainly a consequence of the poor materials with which we are forced to construct a society. But consider some of the other institutions in our society; medical care, mental health, welfare, education. Can we say that any of these institutions is in better shape than our criminal justice system? Or if it is in better shape, is it in much better shape? All of these institutions could be greatly improved if we had only four items: 1) better people, 2) more resources, 3) much more knowledge, and 4) easier problems to cope with.

The first thing we must realize about the criminal justice system is that the causes of crime are complex and difficult, and that our society for very many reasons (many reasons we do not understand), is generating a tremendous amount of crime. After a long period of decline in crime, around 1955, crime began to go up, and it has been going up at an accelerating rate ever since. The reasons for this rise in crime are very complicated. Anyone who views the problems realizes that such things as the decline of the

American family, inequality of wealth and opportunity, are very difficult problems, and that they do cause crime and aid the cause of more crime.

The criminal justice system is not a very important determinant in the crime rate. In other words, within the limits we are talking about here, any foreseeable change in the criminal justice system is not going to have a great deal of effect. If we did away with the criminal justice system, I am convinced that crime would go up considerably. If we had a police state, I am convinced that crime would go down. In America today, the criminal justice system, in most instances, is not a very important determinant of crime. This is a very important reason when you analyze all the aspects of the criminal justice system we can improve, even in terms of crime prevention. Regardless of how well we do on lowering the crime rate through the actions of the criminal justice system, we can at least make the system more efficient, more just, more humane, and in some ways less expensive. This is a very important thing upon which we must concentrate. Of the institutions of the criminal justice system, the intake institution, the first one in criminal justice is, of course, the police. We have learned that the police cannot catch many more people than they do, without vastly increasing their resources. The problem is that criminals by and large are intelligent, and where you have more policemen, they will go elsewhere and commit crimes. That is one reason why police patrol, about which there is tremendous debate, is not as effective as we had thought. By and large, criminals just waited until the patrol had gone. Similarly, if you heavily police one area, you get a displacement effect and the criminals go elsewhere. Now, that doesn't mean the police can't do better, and a great many innovations in police techniques are being tried now. Some of them will be improvements, but we cannot expect a great deal more from the police than catching criminals. But what can we expect?

We can expect that the police be more humane, more just, more law-abiding. I think every observer of the criminal system has noted that over the past twenty years the police have become more humane, less brutal. If the trend is continuing (and hopefully it will continue into the future), there exist three "police related" problem areas. The first one is police corruption, which is a very serious problem, one that is endemic to certain police depart-

ments of the large eastern and northeastern cities. Of course, there will be a certain amount of corruption in any institution, but as the Knapp Commission in New York showed, the police departments in some cities are so heavily infiltrated by corruption that we really almost despair doing anything about it. Gradually, over time, we hope it will get better. Certainly there are things that can be done. Many of the things that can be done are at the legislative level because a great deal of corruption comes from non-victim crimes.

Secondly, we worry about inequality in the law. This is: 1) the use of physical force when it is not necessary; 2) the police treating different people differently because of race; and, 3) abrasions which are aggravated by insensitivity. We are trying to change our police. They are human beings and they do not adapt as readily as machines do to new instruction. In addition, we have the problem of inequality. This is a problem which is not only racial, but also economic. The police treat people differently, not only because of what the people are, but also how the people behave toward the police. Middle class people are respectful of the police, thus they have less trouble in their dealings with them. Perhaps the police have no legal right to demand that the people be respectful, but if we learn how to treat our police differently, they will treat us differently. This is something that the whole of society needs to practice.

The third problem area concerning the police is their violation of the law. Most often they violate the law not only with respect to corruption, but also with respect to constitutional rights. We agree that the police should honor the constitution and the rights that it guarantees to all people. However, citizens want the police to catch lawbreakers, and if the police have to "cut a couple of corners", the citizen by and large approves. Until this society rids itself of the dangerous notion that the end justifies the means, we can only expect the policemen to keep doing what we want them to do, rather than what we tell them to do.

There are several ways in which the police are changing. In three areas we are getting new kinds of people within the police that are having an effect. The first area is that of civilian participation. This not only cuts down on police expense, but also gets people into the police station

who are not bound by the police code and can testify as to what goes on. That is a very important thing, and there is no reason to believe that the police do not know it and behave differently around the citizens. The second area is that of women police officers. They do not seem to be quite as adept to violence, and they do not seem to be quite as anxious to use violence. I think that will be a very healthy trend in our police departments; the addition of more women will have an important effect upon the vital image ("Macho") the police try to project, even though they are very often a social service agency. The third and final area is that of minorities. We are getting more and more minority group members in the police. It also has its problems, however. Minority citizens levy brutality complaints against minority members of the police force at a much higher rate than those levied against the white middle class police officer. But in the future, the police will be seen by the minority group as more representative of the community. It will be a better thing for community and police relations. But the important things that we have to change are the institutional structures of the police and the relations between our citizens and our police. They are working on this, but it is a long difficult process.

The next institution of the criminal system that I would like to discuss is the bail system. The fact is, people who are accused of crime are released from jail pending trial, depending on whether they can put up the necessary amount of money or get somebody else to put it up for them. Thus, we see a regressive tax upon the poor in a sense. Also, it is a clear inequality in our system that is expensive to society in terms of keeping many people in jail who do not belong there. This is an inhumane, unequal thing to do to a human being. Now, one of the problems is that in our bail system we find the fact that there are many people whom we arrest and do not really want to go free, people accused of violent crimes, fugitives, and the like. Some day we will confront this problem honestly and try to develop workable standards for keeping people in jail pending trial. Currently, we keep far too many people in jail and our methods of predicting who will become violent and who may commit other crimes are very, very bad.

The next aspect of the criminal justice system I wish to deal with is that of the prosecutor's office. It seems to be that the basic problem of the

prosecutor's office is that they are understaffed, which puts tremendous pressure on them to get rid of cases that will otherwise take up too much time. The other problems of the prosecutor are the problems of prosecutorial discretion. There are no controls on it. Well, there are, of course, other problems of prosecuting. Not all of our devices can make sure the prosecutor is fair during trial, but I think by and large on the whole, he is not one of the major problems in the American Criminal Justice System. A more serious problem, I think, is that of the defense attorney. First of all, defense attorneys vary so tremendously in their quality. Some are very good, some are very poor. Interestingly, the public defender's offices that I am familiar with tend to be by and large better than the average criminal defense attorney. They cannot be the best because the best are making very good money, perhaps defending criminal cases for people who can afford it. On the other hand, most criminal lawyers work for people who are middle class but cannot really afford the expenses of litigation and they very often do a very shabby job. However, the public defender is somewhat independent.

Another problem is that most public defenders are grossly overworked. This prevents them from doing as good a job as they could and maybe should. He may receive a flat fee for defending the case. Therefore, if he can work out a plea of guilty, he may put tremendous pressure on his client to plead guilty. Thus, the interest of the attorney may diverge from the client. The public defender has to keep his calendar moving or else the whole system will grind to a halt. I think the problem of not enough adversary system in the criminal defense is balanced by the problem of too much adversariness. Very often our defense attorneys use unethical antics to help get their clients freed. Again and again defense attorneys try to delay cases on the theory that the delay works for the defense. I think by and large that is true. The longer the delay in the case the better the defense, as witnesses tend to forget or they die. The prosecution has the burden of proof, and very often the case simply gets "stale", and the prosecutor is willing to make a much better deal in plea bargaining. How can we prevent this?

The court could do a great deal to prevent it. Many of the judges are former defense attorneys who relied on this when they were defense attorneys and they know the "game." In addition, the defense attorneys will often

stall things along not only for delay but also until they can get a fee from their client. Every defense attorney knows that once your client is convicted, they are not going to be willing to pay a fee and if they are acquitted, that shows they were innocent anyway and did not need you. So, typically the defense attorney will stall the case until he gets his fee. In some courts the defense attorney will say "we move for continuance according to Rule I of the court". Rule I means a District Attorney has to get paid. Another thing, a District Attorney will slyly say "Well, your honor, we are waiting for a missing witness." This is not a very healthy way to run a criminal system; it has many serious effects that we should try to stop.

The next area in our criminal justice system that we want to talk about is the trial. Here, the System is in its "best shape." The trial is not perfect, but the American trial is probably more fair to the defendant than any other justice system ever devised. It is an elaborate, expensive, and inefficient system. It depends in part upon human beings being gullible and curious, as well as a great many other things. The problem with the trial is simply that it is so elaborate and takes so long. Perhaps we could consider it unnecessarily complicated. Another related problem is the type of sentencing. The first problem of sentencing is that it is standardless. We do not really know what the proper sentences for different people for different crimes are. I do know that the criminal law has purposes of deterring isolation, rehabilitation, retribution and many other subsidiary purposes, but the judge has to balance all of these things against each other and it may be that they point in perfectly opposite directions. Deterrence may require a punishment, but the judge may feel that the chance of rehabilitation would be better served by not punishing. Not only that, the judge may feel that although deterrence requires a jail term, the defendant has a family, and sending him to jail will disrupt his family and make him even more likely to commit a crime. Also, it will put his family on welfare, and it costs society a great deal more in the way of money than necessary.

Furthermore, judges will make different decisions depending on their different values and how seriously they regard different crimes. One judge will regard marijuana smoking a very serious crime and another judge will regard sex offenses a most serious crime. Sentencing is committed to the

discretion of the judge. We are moving toward standard procedures as well as toward a review of sentences. Maybe there are no right sentences. Maybe it is more important to have sentences that are uniformly applied than to do the right thing. Maybe equality and fairness is more important in reaching the right results. The problem when you have mandatory sentencing is that people are forced to go to trial more and crowd up the courts further or the prosecutor is forced to bargain so hard that he gets out from under the mandatory sentences much less than would be the case if the defendant went to trial. This is a serious problem, and it may be that there is no solution to it. It may be the guilty plea prevents rationality in sentences, and we have to do something about it. We as yet have not learned how to use very short sentences. Many countries have. By and large, they work as well as long sentences and they can be applied to many more people, increase the deterrent effects of the law, and we can actually do something by cutting down on the unproductive, shockingly low percentages. No doubt that the United States uses the longest sentencing in the developed world, and indeed probably even in the world outside the iron curtain country.

I think we can say that we have learned a little bit in the last ten years in the criminal justice system. The most important thing we have learned is that rehabilitation should not be a goal of imprisonment. Rehabilitation may go on in the prison, and it may not. The most important rehabilitating effect, I think, is that people get old. Regardless of whether it (rehabilitation) happens or it does not, the important thing is that it is not a reason to put people in prison until they are rehabilitated, because we do not know when they are rehabilitated. One thing is clear, that behavior in prison is not a predictor in any way of a law-abiding life outside prison, so as a result, holding them in prison so we can see if they are rehabilitated, is simply a waste of money, time, and is inhumane. We should make available educational programs and the like, if the prisoner wants such programs. But we must understand that whether they do it or not is their choice, and they do not get any reward for it or any punishment for not doing it. The worse thing we have learned so far is that coerced rehabilitation does not work. Once we "divorce" rehabilitation from the goals of punishment and make nothing depend upon rehabilitation, we will begin to learn something about rehabilitation.

In addition to the problems of getting rehabilitation out of the system one of the basic problems is that our prisons contain large numbers of dangerous people. Sexual assaults and all sorts of terrible things go on in our prisons, and the problem is that they will continue because the only way we can prevent prison "persons" taking terrible advantage of each other is to keep them in such close custody that it is extremely inhumane. We do not know how to handle this problem. Many people feel that because we cannot handle it, we should not send anybody to prison, but for the foreseeable future, we may be able to cut down on the impositions and barbaric things that go on there.

Let us look at a couple of things which in part may be a solution to many of the problems we have. One of the basic problems of the criminal justice system is that there are too many people processed in the criminal justice system who do not really belong there. Such a crime under consideration is drunkenness. We are gradually lowering this as we get more and more drunks out of the criminal justice system into a public health system which will not do any more for them, but at least take proper care of them. We are trying to haggle with the problem of prostitution, but we simply do not know how within the political constraints of our system. Heroin is a major problem in our political arena. We have presently removed about 70,000 addicts from the criminal justice system by maintaining them on methadone. Criminality drops tremendously when they are on methadone and they become far more productive citizens. It may be that this is a type of solution to the heroin problem. Estimates are that up to 40% of major urban crime in New York is still by heroin addicts, because unfortunately, methadone does not work for all addicts. When we are able to get more of these non-victims, these consensual crimes out of the criminal justice system, it may be that we will have more time and resources to devote to the things we have to use the criminal justice system for -- violent crimes. But beyond the victimless crimes, I want to focus on one aspect of the criminal justice system which is a response to one of its harder problems. The problem is that there are too many real criminals. The response is the guilty plea and plea bargaining.

In 1965, the chances of serious assault against an American were 1 in

550, and now it is 1 in 200. In 1974, a study revealed that an American born that year had just as much chance of dying of homicide as a soldier did of WW II. Violent crimes have decreased as a percentage of total crimes in the past decade, because while violent crimes have only gone up threefold, non-violent crimes have gone up fourfold.

I wish to discuss the causes of crime. Frankly, I am not very tolerant of two attitudes. The first is "we should forget about the criminal justice system since that has no influence on crime." I think that it does, although there are many other influences, many of which are probably more important. These are poverty, slums, racism, the breakdown of the family, inequality, and many others that we frankly are only beginning to understand. But it seems to me that there is very substantial evidence that the threat of the criminal justice system does have some influence. In other words, deterrence does work sometimes.

I have equally less patience with the idea, "improving the criminal justice system will have a major effect on crime." It will not, considering the resources we could conceivably devote to the problem are not available in a free, open, and constitutionally governed society like our own. Deterrence at the level of apprehension and punishment that we can achieve does not work well, nor does isolation based on the theory they will not be able to do it again if they are in prison. That will not work unless huge amounts of money are spent. Nonetheless, there is a place for the criminal justice system, and we should devote a sizeable amount of thought and effort to making it as fair and humane as we can on the theory that if its power to prevent crime is limited, we at least can make it fair and decent. The problem, as I say, is that we have too many criminals and what do we do about it.

Here enters the plea bargain. I am sure that you know the facts about plea bargaining. Over the United States, about 90% of cases in court are settled by a guilty plea. Typically, these pleas are the result of a bargain either spoken or unspoken. The plea bargaining system is a constant source of injustice. It causes some defendants (though probably few) to plead guilty when they are not guilty. It allows other defendants far too lenient treatment.

Plea bargaining pits the defense lawyer against his client in what criminologists have called a "confidence game", an effort to get the plea of guilty so that the system continues. It causes prosecutors to overcharge defendants so they can be forced to "cop a plea." It motivates prosecutors to lobby in the legislature for higher sentences, not so that they can be inflicted, but in order that they can be used as a "club" to coerce more guilty pleas. By the way, I am convinced that this "club" is a major factor in the retention of the death penalty. Also, the guilty plea prevents rationality in sentencing since the judges' hands are so often "tied" by the plea bargain. Even if these so-called "hands" are untied by any official bargain, the judge knows he has to offer inducements to plead guilty for the same reason that the prosecutor does, or else his court will be so hopelessly jammed that the backlog will grow tremendously.

The guilty plea also allows criminals to evade responsibility for their crimes. They can plead that they were innocent, but coerced by the threats and promises of the prosecutor and the judge to plead guilty, and find also that the majesty of the law is a fraud. In addition, to this, the plea bargain has the great disadvantage of covering all of the other defects in the criminal justice system. Somebody arrested on a terribly weak case can be offered such a good deal by the prosecutor covering the fact that the unlawful arrest or the arrest on too little cause, will never become public. In addition, people held on bail have a much stronger plea bargaining position. Hence, the prosecutor has every reason to want people retained in jail entirely apart for trial. The reason is simple. This way he can move his calendar along; the judge knows it, the prosecutor knows it, and the legislator knows it. In summary, the plea bargain is a distorted, disgraceful blight on the American system of justice. It varies in its necessity from area to area. In some areas such as North Dakota, the system is so undercrowded that plea bargaining usually does not have to take place. In others, the bargain day is a national scandal.

A little thought will show that there are some obvious things that have been suggested. Part of these work somewhat, some do not. Others have implications far beyond the problem of plea bargaining. First we can say quite easily that we should have fewer criminals. Secondly, we can take

fewer cases into the criminal justice system, and there are major movements in the system to do just this. Two examples are the movement to decriminalize non-victim crimes, and the diversion system. The problem with the diversion system is that it further extends the prosecutor's discretion. It is replete in inequality and typically, the cases that get diverted are those which would not have been prosecuted anyway, so it merely extends the power of the state over more and more people. Nonetheless, it is not the major problem of taking fewer cases into the criminal justice system. The major problem is simply that we still have far too many real criminals apart from those who can be diverted and apart from those who are guilty of non-victim crimes.

Another possibility is that we can simply forbid plea bargaining. The problem is that experience shows that without mandatory sentencing by the judge, it just does not work. The judge either is forced to do the bargaining himself instead of the prosecutor, or in order to move his calendar along, he has to develop policies on sentencing for those who plead guilty. Everyone knows what those policies are, and that those who plead not-guilty and go to trial are going to get a more severe sentence. In other words, the plea bargaining system just appears in another form, indeed an even worse form, because it is even more "under-the-table" and hidden where no one acknowledges it. If you couple a prohibition against plea bargaining with a mandatory sentence provision, you have typically what happened in New York under the famous Rockefeller Drug Law. What happened was that there were sharp increases in the percentage of defendants going to trial because of the restrictions on plea bargaining and mandatory sentencing. There were increased trial delays, further overcrowding of the courts, the prisons and a drop in the conviction rate. It would have been all the worse except that the police did some "bargaining" on the streets and simply did not arrest as many offenders. What they received for their bargains is not supposed to concern us; they did the bargaining.

The next possible solution, one that many people have recommended, is simply devote more resources to the problem. In other words, the lack of courts, prosecutors, defense attorneys, is what requires plea bargaining to begin with, so we should have more of these resources. If you lower the guilty plea rate to 70% only (and that is still an outrageous figure), you

would have to triple the number of courtrooms. If you drop the rate to 60% you quadruple the number of judges, courtrooms, etc. In other words, the amounts of resources that this takes are massive, and we simply are not prepared to use them for this purpose. Frankly, there are many other (better suited) places we can put that money, including the crime issue and many other issues in the American way of life.

What about simplifying our trial procedures so as to use the courts, prosecutors, etc., on more cases. In practice, this means eliminating the exclusionary rule, therefore saving the court time on hearings. It means excluding psychiatric testimony on the state of mind of the defendant. It means doing one thing after another to deprive the defendant of rights on the theory that the exercise of these rights takes time, and court time, at that. First of all, this will not work. The number of issues where we could conceivably save time are simply not that great. Not only that, the constitution was written to prevent the denial of individual rights in these instances.

What then can we do? Norval Morris has suggested that we require all plea bargaining to be in open court; that we make it unethical for the prosecutor and the defense attorney to talk about a plea bargain privately, and that in open court the prosecutor, defense lawyer, defendant, and the judge should be present. Professor Morris would also invite the victim; that is a very interesting idea. He has pointed out that, presently, plea bargains are secret covenants. The improvements that almost routinely are suggested by the Bar Association committees, and the like, are that we should have open covenants; the plea bargain should be "spread on the table" before the judge. Professor Morris says we should have an open covenant openly contrived. The problem is that while this may take care of a few of the abuses, it does not hit the major problem of plea bargaining. The major problem is that the defendant has the right to a trial, and that he can "sell" this right to the prosecutor and judge for more lenient treatment than the system has to buy. In other words, even under Professor Morris' system where it is all out in the open, we will just be treated to the spectacle of the "Turkish Bazaar" and its haggling.

I would like to propose a more sweeping improvement in plea bargaining.

I am convinced that we must still buy our pleas of guilty and that nothing we can do in the foreseeable future can change that. I would replace the "Turkish Bazaar" with another idea: Flat Time; a specific sentence for each violation, with variations for specific aggravating factors (e.g., prior criminal record, use of violence, etc.). The problem with all the so-called "flat time" proposals today is that they still leave plea bargaining untouched, while the freezing of the judge's ability to reward the defendant for forsaking his right to trial is also left unnoticed or unamended. As a result, the prosecutor simply has to "take up the slack" and give whatever rewards are necessary to make the system work.

My proposal is startling in its simplicity. Let us simply consider a plea of guilty as a mitigating factor in a flat time sentencing scheme. As a first consideration, a plea of guilty should reduce the sentence by 50%. Of course, the instant reaction to this scheme would be that it is unconstitutional. It amounts to a penalty for the exercise of a constitutional right, and so it does. Yet, it would be an especially hypocritical court which would invalidate such a plan. After all, we do exactly this; we pay the defendant for giving up his right to trial, but we do it in an uncontrolled, disguised manner. We will have to continue doing so unless we bring things out into the open where everyone can see what is going on. Not only that, but defendants within the constraints of their being charged all have the same rights. No one can claim the prosecutor was "out to get him" and drove an especially hard bargain; no one can complain that his defense attorney "sold him down the river" and did not "drive a hard enough bargain". No one can complain that the system has hidden its defects over and above the 50% we have to have.

Now, the system is a little more complicated than that because the defendant, though he is usually giving up his right simply to "clog" up the system and demand a trial, sometimes is giving up more. When the defendant is giving up more than his right to trial, we may have to offer more. But if so, it should be done on the record; if not publicly, then with all the parties present in the judge's chambers. In those rare cases where the defendant knows where the money is hidden and can trade this knowledge for leniency, he may not be able to prevent it; but at least

this should be out in the open, rather than a hidden consideration allowing the judge to make a specific finding that this is why he has given that extra leniency. The judge would have a discretion and properly use it to make a better bargain; but similarly, a bargain based on the chance of the defendant's innocence would not be permissible. The reason is that those are just the cases we most wish to have tried.

Not only that, but we can build in other checks against the prosecutors overcharging the defendant. In other words, the prosecutor, where he has charged a crime, will have to reveal the extent of his evidence in the guilty plea discussion. The judge would then be expected to say, "well, you really do not expect to get a burglary first out of that; that is almost certainly a burglary second, so that is going to be the charge. Now the defendant can plead or not as he wishes." If he pleads, he gets the statutory 50% off, and if he does not, that is his decision. Now, it may be that 50% of the sentence may be too lenient, or it may be that it would be too little "to clear the market." If it is too little "to clear the market" the legislature can have the choice of adding the resources to the court system or raising the percentage discount.

By the way, one advantage of the "flat time" proposal is a similar one; if the prisons are overcrowded, the legislature has to make the choice for either building more space at considerable expense or of lowering their sentences. In both this case and in the case of the statutory discount, the responsibility will be on the legislature and not blamed on plea bargaining or on lenient judges. Hopefully, too, the legislature will be able to lower the discount for pleading guilty every time. After all, it is necessary to pay for giving up his right to trial. This is a regrettable necessity, but perhaps when plea bargaining is brought out into the open we can better work to eliminate it. After all, when the legislature works without hiding its reasoning, it tends to work more fairly and better.

In conclusion, I will say we will always have our discretion in the criminal justice system. The more we can do to bring it out into the open, the better. It is true that we have gone for a long time with the plea system. But in the words of Justice Felix Frankfurter, "Wisdom so often never comes, that we should not neglect it merely because it comes late."

-----DISCUSSION-----

Question: Will a system of statutory discount rates increase the pressure to plead guilty?

Answer: I do not think it will have a great effect on the rate of guilty pleas because the rate of guilty pleas is determined basically by the number of trials that we can afford to have. The advantages to this one are: 1) people who plead guilty will be treated equally, 2) they will come out "in the open" and we can see precisely what the rate is. For instance, in a court like New York the average discount presently is 70%. If the legislature adopts a 50% discount, obviously, if you believe in a demand curve, you do not get more trials and therefore you do not know how to clear the market. Therefore you have to increase the trials rather than discount. Certainly if the discount is set properly it will produce the same number of trials on the same number of guilty pleas.

Question: Do you believe that upon the instigation of pre-trial parole (in lieu of trial) including restitution, it would help to minimize the number of trials, and also minimize the number of criminals? This seems to be a possible result, because if alleged offenders come through pre-trial services and they can be paroled prior to their trial, they would not be criminals.

Answer: First of all, the whole concept of restitution in our criminal system is phony. Almost all of the criminals in our system do not have any money. They cannot even sustain themselves or else they would not be criminals. Now, of course you can have restitution for the embezzeler, providing he hasn't embezzeled \$450,000, spent it all, and now that he has been arrested, he will be working most of his life to pay off his lawyer. As a practical matter, restitution may work fine in the society which is a great deal more homogeneous than ours. That is, society in which there is a much lower unemployment rate, with a much lower difference between poverty and wealth. But where most of the people who commit the crimes that require restitution are in fact the poverty ones themselves, what are you going to do when you require restitution and in turn, force them to commit more crimes to get the money?

I do not like the pre-trial parole system; it allows the police to control the lives of more and more people. They can say to someone "either you get prosecuted or you do not." Once they do it, that is that. This way, it can keep hanging over someone's head and become a method of manipulation. Not only that, but it is going to increase the control of the state over criminals who, by and large, might be left out of the system completely and is not going to have much to do with the more important ones. Finally, I believe that recidivism is simply not affected by these. In other words, everyone assumes that more humane ways of treating prisoners produce a lower rate of recidivism. It would be wonderful if it were true, but in fact it is not.

Question: As a defense attorney, I like the way you conceive a new system that is more fair and open, but I want to know how you put it into practice. This is a real problem because you do not have people participating in this area with the exception of the lawyers and judges. So essentially, it is like law school. That is the way it should be, but how do we get there?

Answer: I think this could be done at a legislative level. It is one of these things whereupon, if the legislature does it, I could draft the statutes for them and adapt them because it is really quite easy. All you have to do is figure out what your discount rate is outside the open court and allow a flat sentencing so that the judge cannot levy a punishment over and above what the legislature states. Also the prosecutor cannot give any sentence over and above what the legislature does. Upon becoming written into law, it might be that our discounts became so generous that the judges and prosecutors were in essence doing nothing. In that case, we have to lower it, and have the legislature reassess it. I someday hope that this could be turned over to the judiciary as a matter of internal court business. I do not think that any court in America currently has the know-how to handle these matters. But someday it will, and it may turn out that it works very well, whereupon a computer will be utilized to set the discount rate of the year instead of the legislature.

Question: Has anyone considered such a proposal yet?

Answer: As far as I know, a proposal was first made tonight at 8:23 p.m.

January 17, 1977, and no one has had time to consider it.

Question: If you remember, Fleischman mentioned certain individualistic considerations like poverty, broken homes, and considerations like that you take into account. Does your flat rate discount totally ignore those individualistic considerations?

Answer: Yes, and I think quite properly, I think that when we get to court, we should be judged on what we are and what we have done, nothing more or less.

What should you do about an armed robber who is poor and black versus an embezzler who is white and middle class? Why should you send one to prison and the other be put on probation? It is not fair. If you talk about the purposes of the criminal law, who do you need more to isolate for the protection of society? Which crimes are we more worried about? Which crimes do we realize as more serious? Which do you need deterrents for? A crime committed by someone who really has nothing more to lose than his freedom (because the armed robber does not have a job, any money, does not have any social standing) can only lose his freedom as punishment. While the embezzler will not get another job. He will suffer tremendously, in his own mind. In other words, the deterrent for the embezzler does not have to be through the criminal system.

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What Causes Criminal Behavior?

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Dr. Chiles received his MSW from the University of Colorado, and later received his Ph.D. in Criminology and Corrections from Florida State University. He has worked in child welfare and psychiatric social work. Dr. Chiles has taught at several universities, and he is currently associate professor of sociology at the University of Texas at Austin. He has written several publications as well as receiving several federal grants to study such things as mental health, correctional matters, and drug abuse.

In reviewing the causes of criminal behavior, Dr. Chiles discussed some of the problems associated with the consequences of criminal behavior and the consequences of criminal conviction. The first mistake made is the assumption that the crime is wrong because it is a violation of the law, or because a person does something that is forbidden by the state, like disobeying one's parents. It is the disobedience that is wrong, and it is the disobedience that the state seeks to punish. Both crime and courts are wrong, but crimes are considered acts against the state because the state prohibits them, and courts are acts against individuals, who must go into court and sue on their own. Hence, crimes are punished by the state and courts are to be dealt with by individual suffering. There is a fundamental fallacy in assuming that most crimes are against the state. If a crime is a theft of state property or a tax violation, or a violation of safety laws which would create a general public hazard, then there is harm to the state. If the state intercedes, it should be on behalf of the victim rather than on behalf of the state. Therefore, a crime is wrong, not because of disobedience, but because it does harm to someone.

Those people who want to have stricter penalties, more imprisonment, and longer sentences, frequently base their case on remembering the victim. Their fear is that the criminal justice system, with all of the protections and rights of the accused and limitations of the police who catch and

prosecute the offender, has too much concern for the rights of the offender and not enough for the rights of the victims. I would agree that the criminal justice process traditionally does not give due consideration to the victims of crime. In fact, it gives too much consideration to the needs of the offender (needs to be punished, corrected, rehabilitated, etc.). But the focus is on the offender and not on the harm suffered by the victim. We actually reward the offender by giving him or her punishment, treatment, and incidentally, free room and board in prison. Now, some of these may be seen as "negative strokes", but negative strokes are better than no strokes at all; and the game of "cops and robbers" goes on because there is a pay-off both for the offenders and for the public. But this does nothing for the victims of crime, except perhaps, the satisfaction they may have in seeing the offender caught and punished.

A rational criminal justice system would focus on the harm done by the crime, and use the coercive and helping power of the state to see that the harm is corrected. Corrections would then mean correcting the harm done rather than correcting the offender. The model for that kind of societal response is found in a body of tort law and procedure. Also, there is reason for combining civil and criminal proceedings, as this is done in some European countries. In civil proceedings, of course, there is an award to the victim or the plaintiff, or compensation for damages done against him or her. In cases where the courts were wrong, it is also a crime requiring the defense to pay damages. This may be all the punishment that is needed. If, in the case of crime, the state brings the court action on behalf of the victim, and if corrections involve the process of aiding and coercing the offender to pay the damages awarded, that may be a more satisfactory criminal justice than our present practice of punishing and/or treating the offender and leaving the victim without compensation.

Now, tort law does provide punishment as well as compensation for actual damages suffered, in that it provides for punitive damages, or damages over and above the actual damages suffered. Thus, where the defendant's wrong doing was intentional and deliberate, and has the characteristics associated with the crime, the victim may in most jurisdictions be awarded more than the actual harm served. Under the present

separation of tort and criminal proceedings, however, the victims just bring legal action against the offender on his own and at his own expense, taking the risk of winning or losing. If the offender is without means of compensation, the victim may never be compensated, even though he may win the suit. However, it does not have to be that way. Instead of addressing itself to correcting or punishing, the institution we call corrections can address itself to helping the offender meet his obligation to pay damages. This could be done with the offender at large; probation can be directed to that end, helping the offender get or keep a job and seeing that he/she pays. If the offender needs to be imprisoned, the prison should include a paying job where the inmate can earn money to compensate the victim and pay for the prisoner's care in the institution. The length of sentence, then, would be contingent upon the amount of time necessary for the offender to earn enough money to pay the damage award. Such a system would simplify sentencing and simplify the whole correctional process.

The question might be raised as to whether the public would accept the substitution of tort action and coercive action on the part of the state to affect compensation of the victim by the offender. A study Dr. Chiles did in Boston found that the general public is significantly less punitive toward offenders who have already made restitution than they are toward offenders where no restitution is mentioned. In American jurisdiction, restitution is frequently a condition of probation. How seriously is this taken? A recent study made by the General Accounting Office for the U.S. Congress revealed that in only 61% of court-ordered restitution cases was restitution actually made.

It is not just out of concern for the victim that the substitution of restitution for punishment and treatment is advocated, it is also out of concern for the criminal justice system, and especially for that part called corrections. The criminal justice system does not work very well. Not that prisons, probation, or parole do not work at all; they just do not work as well as the public expects, and has a right to expect, basically because there is no rational basis for the major decisions that are made in the system. That may be somewhat of an exaggeration, but not much. According to Kaplan, seventy to ninety percent of con-

victions are on pleas of guilty, and most generally on pleas of guilty there is some kind of plea bargaining going on over the following: 1) the level of the charge against the accused, 2) the number of charges to be leveled against the accused, and 3) the sentence recommendation. This bargaining has very little to do with the harm done by the criminal act. It has more to do with the availability of witnesses and evidence. The result is that the defendant (especially if he has a court appointed attorney) frequently thinks that he/she is being "sold down the river", and the sentence does not match the offense.

Think how much more rational the tort system is. Now, there is often bargaining before coming to court, in an attempt to settle the case out of court, which is a kind of plea bargaining. That process should be brought into plea bargaining in criminal cases so that determination can be made as to how much the offender can pay the victim. One of the criticisms of the criminal justice system is the disparity of sentences, and to overcome this, judges sometimes have held conferences to talk over the kinds of sentences offenders should receive. Those have not been very successful in bringing about uniformity in sentencing. Another popular notion is the use of "flat sentences" in place of indeterminate sentencing, primarily because of the unfairness of the indeterminate sentence and perhaps because of the unconstitutionality of it. If sentences were always based on the amount of damages decided upon and the kind and length of sentence which would be necessary for the convicted person to pay the damages, then sentencing would be rational. The convicted person would understand what needs to be done to be released, and correctional personnel would know what needs to be done before the convict can be released from the system. If there has been no harm done by the criminal act, then there would be no award for damages, and hence, no sentence. Upon this foundation, the causes of criminal behavior can be surveyed. Look at the law itself. There are three ways in which the law contributes to criminal behavior.

First, it doesn't require segregation of alleged and convicted offenders in jails and prisons, and it labels persons as criminals, which tends to give them criminal identity. For most people arrested, it is necessary to

hold them in jail awaiting trial. The bail bond system is profitable only to bondsmen and contributes nothing to the protection of the public. It has been estimated that only about fifteen to twenty percent of persons in traditional close security prisons need that kind of supervision, but for social and psychological reasons a person subjected to that experience has great difficulty in regaining independence and self-supporting behavior. Further, the stigma of a prison sentence results in employers refusing to hire the ex-con and to social ostracism of the ex-con. Through the criminal justice process, the public is playing a "cops and robbers" game which perpetuates the robber class and gives rise to a need for more cops, and the big pay-off for us is that it is entertaining. The public is able to identify themselves as different from the bad people.

Secondly, the harm done by one individual against another may be treated as crimes or not, and may be handled either through criminal law or civil law. So, the more harm handled by criminal law, the more crimes we have. The more harm handled by tort law rather than criminal law, the fewer crimes we have. Prosecuting attorneys have the discretion as to whether they prosecute given cases under the criminal law, so there probably needs to be more diversion of cases from the criminal justice system to the civil system.

A third way in which the law contributes to criminal behavior is in declaring certain acts without victims as acts against the law. Such crimes include prostitution, drug offenses, gambling, homosexual behavior, and other sex offenses, and some safety-regulations. The argument is not that there is no harm done by the so-called victimless crime, but it is not a definite kind of harm that one individual can do to another. By decriminalizing these kinds of offenses, much crime would be eliminated. For example, according to Kaplan in 1968 in California, one-fourth of all felony complaints were for violations of marijuana laws. That is just one drug finding. Again, I would not argue that marijuana use does no harm, but compared to such legal drugs as alcohol and tobacco, it is relatively harmless. True to form, by keeping marijuana a crime, it adds to the lucrative business of organized crime in supplying drugs to those who want to use it. In the past, organized crime became really big business when

alcohol manufacture, sale, and use became a crime. Enforcement of victimless crime laws not only takes a lot of time from our police resources, but it also tends to corrupt them. In big cities, vice squads have to be changed regularly because of the corrupting nature of vice law enforcement.

Our legal efforts addressed to the use of heroin cause a significant amount of crime. Because of black market prices, most addicts are forced to steal money to support the habit. If it could be obtained through a prescription it would be much cheaper, and most addicts would not have to "rip off" the public to support their habit. In addition, black market heroin is not pure, and much suffering, illness, and death are caused by its sale and purchase. Again, there is no evidence that physical effects of pure heroin are harmless, but the criminalization of heroin proves to be very harmful and costly to the public, as well as to addicts. So much crime could be averted by decriminalizing the use of heroin.

The Garden of Eden has been a popular explanation of crime. The notions of being possessed by the devil, and witchcraft, led to the explanation of crime in the Middle Ages and in the 1930's, and even today exorcism is practiced, and millions of people of the Christian faith and other religions believe in the devil as a source of crime, evil, and sin. Although such explanations of crime are not taken seriously by the scientific world, men and women tend to act on what they believe and there are criminals who believe they have a mandate from the devil to behave as they do. Not only does the devil bedevil us, but the gods themselves are also the source of crime and catastrophe for mankind, a theme that runs throughout history.

A step forward perhaps from the demological theories is the free will theory. According to free will theory, people are free to choose good or evil, to commit crimes, or to live law abiding lives. People are free to do so because they have intelligence and, in calculating the pains and pleasures of crime and a non-criminal way of life, they do not blame their behavior upon the devil or upon God. If they choose a holy life, shun the wrong and do the right, the reward will be eternal salvation. If they choose to do evil, to sin, to reject salvation offered through Jesus Christ, they will go to hell and eternal damnation. Now, if one accepts these basic assumptions about the nature of the human condition, it makes sense

to base the criminal justice system upon punishment, and punishment to fit the criminal. Since different persons derive different amounts of pleasure from their crimes, the amount of punishment which is meted out to any criminal should, according to some philosophers of the eighteenth century, be such as to give them more pain than pleasure. Criminal behavior would be a losing proposition. The whole idea is based upon a rational man or woman. The doctrine of free will is still alive today and healthy. It is in fact the basis of our criminal law and criminal justice system. However, it is certainty, rather than severity, that is most likely to deter persons from committing crimes.

Another school of thought in regard to human behavior is that man is not free at all to determine his destiny, but is a victim of his biological nature and social circumstances in which he finds himself. Although men and women do make choices, they must make them in accord with biological and environmental forces in their lives. Now, there are various psychological explanations for criminal behavior. A simple way to approach it is to look first at Freudian structure of personality, the Id, Ego, and Superego, and the Freudian theory of the unconscious and the Freudian psycho-sexual phases of personality development. The infant comes into the world in an unsocialized condition without conscience or capacity to test reality, and hence, no inner control. He/she has no thoughts of others, their wishes, or their interests. This could be seen as the Id, the uncontrolled desire to wishes that we all have. Gradually, the infant learns to discriminate and control, and to obtain pleasure by correct behavior, and to avoid pain by wrong behavior, and so develops an ego, or the ability to evaluate and control. He comes to identify with his parents and significant others, and he incorporates their values or ways of acting, feeling, etc., in developing the superego.

Although Freudian theory does not refer to defects in the Id, it seems that Id variation might result in some people getting into trouble whereas other people do not. However, defects of the Ego or mental deficiency can result in criminal behavior. The problem, as far as criminal behavior is concerned, would be in the adapted or conditioned child ego stage to get faulty messages from the external parent or parent figure. Also, criminal behavior may well represent an acting out of unconscious

hostility, fantasies, desires, love, or an unconscious wish for punishment. According to Freudian theory, a person can be fixated in a preadult level or psycho-sexual development such as in the infancy stage, the Oedipal stage, or the latency stage. A fixation, of course, does not necessarily result in criminal behavior. However, one might be fixated in the latency stage and be engaged in a lifetime game of "cops and robbers", but with real cops and real robbers. No doubt, much criminal behavior is caused by psychopathology, but in the game of crime, there are winners and losers: those who get caught and play the game to get caught, and there are those who play to win - the successful team. There seem to be criminals and probational criminals who have very good mental health, and who are very successful at their profession.

There are also sociological theories of crime. There is plenty of evidence showing that people can engage, and do engage in criminal delinquency behavior without serious psychological problems. If one belongs to a reference group, such as a business corporation, or a neighborhood gang, that systematically engages in criminal behavior, one engages in criminal behavior precisely because an aspect of good mental health is the ability to relate and share values with others.

Criminal behavior can be learned from parent or peers and transmitted through families, neighborhood gangs, business associates, and through criminal organizations. Perhaps the best theory in regard to learning criminal behavior is Southerland's Differential Association Theory. Southerland held that a person will or will not develop a criminal pattern of behavior according to the contacts he/she has with others which are favorable or unfavorable to criminal behavior. If one associates more with criminals than non-criminals, one is more likely to develop criminal behavior patterns. The effective association itself manifests according to: 1) priority to contact, 2) intensity of contact, 3) frequency, and 4) duration of the contact. Now, if one were sociologically oriented, one might see organized and meaningful behavior as the reflection of value. Value is defined as how one behaves in relation to other things, subjects, and people. Values are acquired in the socialization process. An important source of our values is that of learning them through the imitation of others. Values, defined as ways of behaving toward objects, are acquired through other

means such as reading, T.V., movies, and life situations. But suppose the models we have for values in examining a neighborhood, a city, a society, are so varied that there is no norm or standard way of behaving in relation to objects in question. What should one's values then be, in relation to those objects? One would not know and would not feel social pressure to behave in a socially approved way, because there would be no socially approved way; thus, one's actions could very likely be of a criminal nature.



DISCUSSION WAS OFTEN lively among the citizens, ex-offenders, and practioners attending the conference. Pictured above (left to right) are Mary Blackstock, League of Women Voters; University of Texas, Austin student; Professor Chet Chiles, University of Texas School of Social Work; Sisto Ramirez, Director, Development Assistance for Rehabilitation; and Richard Fortenberry, Texas Department of Corrections.

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Socialization, Learning and Behavior Change:
Implications For Analysis of Criminal Behavior

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I have been asked to present in about 45 minutes a summary of psychological knowledge which has to do with how persons grow up, some to be law-abiding citizens and others to be criminals. The topic given me, "Socialization, Learning and Behavior Change" was intended, I am sure, to be broad and include the psychological processes which are important for the theme of this conference. Adequate attention to each of these topics or constructs is, of course, impossible in so short a time. Indeed, entire courses are offered and books written on small parts of each. At the same time, it is possible to summarize what are held to be key concepts or ideas in this area.

I would like to divide this lecture into two parts. The first will have to do with what the title suggests--namely, a focus on the psychological processes which take place when any one of us grows up. I would note at the outset that these apply whether a person ends up as a criminal or as a non-criminal, offender or non-offender. Hopefully, the concepts presented will provide a groundwork for further discussion in this conference.

In the second part of this lecture, however, I will address myself to the limitations of everything that I will have said up to that point. Namely, the concepts I will have described tell us about how persons grow up, but do not give us the complete story of why some become criminals and others relatively law-abiding citizens. The rest of the story, I will suggest, has to do with the factors which are not specifically tied to socialization, learning and behavior change, but rather have to do with larger constructs such as

economic injustice, racism, and societal oppression.

To begin then, let us consider, as the given title of this lecture suggests, socialization and learning. For the fact of the matter is that as psychological research suggests, we are products of what we are taught as children, we are subject to a socialization process very early on, and our adult behavior is a combination both of hereditary factors and environmental effects.

A basic distinction to begin with has to do with heredity vs. environment, or nature vs. nurture, or what we might call genetic factor vs. socialization factors. If we compare human infants in different cultures, we see a great uniformity in behavior. They all go through the same stages of learning to walk, and all are motivated initially by only physiological needs. In addition, they show considerable similarity in early development of emotional behavior. While there clearly are individual differences within cultures and across cultures, there are still the similarities across cultures. Such differences might include some infants sleeping more than others, others being more active, some crying more than others, others being placid. Still, what strikes us most about behavior across cultures in human infants, is its uniformity rather than its variability.

In looking at five year olds, we see that the differences in behavior are much more apparent among the older children than among infants. And, further comparing the behavior of mature adults with that of five year old children reveals even greater differences. In other words, behavior is most uniform in the very young and becomes less uniform with increasing age.

These observations have led many social scientists to conclude that learning is of greater importance than biological factors determining such behavior. The contention is that it is not the race, or sex, or physical type to which the individual belongs by heredity that determines his psychological makeup, but the cultural group in which he has been reared, the traditions, attitudes, and points of view impressed upon him, and the type of abilities fostered and encouraged.

The differences we see in the behavior of human beings in various cultures and even within the same culture are due largely to a process which we call socialization. Socialization refers to the learning of accepted and approved ways of behaving. When a child has been socialized, he has

learned to act in accordance with certain standardized ways of behaving that are characteristic of the group in which he was raised.

If we apply this discussion of socialization to the topic of criminality, the important point to be made is that most criminal behavior is the result of the socialization process, not a result of genetic or of hereditary factors. While this statement may be controversial to some of my colleagues in psychology and medicine, still the weight of evidence suggests that if genetic deficiency is a contributing factor to criminal behavior, it is so in a rather small percentage of cases. (This suggests, parenthetically, that if, and it is a tremendously large "if," psychosurgery has an application at all, it is to a very circumscribed and small set of criminal behavior cases.) The preponderance of criminal behavior is that which is learned behavior: learned in the home, in the schools, on the streets, in subcultures of American society, and in our society as a whole. Given this, how is the criminal behavior learned? What are the learning mechanisms by which socialization takes place?

Several concepts are important. The first is what is called the law of effect.

The law of effect, first conceptualized by Edward Thorndike (1911) suggests that those activities which are followed by reward will tend to increase in frequency, or be strengthened. Also, by implication, those behaviors which are not followed by rewards will tend to decrease in frequency, or be strengthened. Also, by implication, those behaviors which are not followed by rewards will tend to decrease in frequency and strength. The law of effect suggests that if a child engages in certain behavior and if this behavior is followed by a reward or positive reinforcement, he will tend to do that behavior again. And similarly, if at the end of engaging in that activity there is either no reinforcement or an aversive response, he will reduce that behavior, or discontinue it.

If we are to apply the law of effect to the development of criminal behavior, we might consider a child who begins stealing candy and small toys, and later moves to clothes, records, etc. Quite simply the behavior of stealing is followed by a rewarding event, namely, acquisition of a desired object. Similarly, the child may receive praise from peers for being able to steal effectively, i.e., not yet caught, hence increasing the probability

of the stealing behavior occurring again. However, if the stealing behavior is followed by no reward or an aversive consequence--e.g., getting caught--the behavior will decrease in frequency. Critical to this analysis, however, is the relative weight of positive vs. negative reinforcers. A number of positive reinforcers will outweigh one negative reinforcer. To be sure, in some cases a tremendously heavy or weighty negative reinforcer--for example an aversive experience with the police for a child, could outweigh a number of positive reinforcers from friends. The point, however, is that behavior is shaped by its consequences. Behaviors which tend to receive a number of heavily weighted positive consequences after they take place tend to occur again; behaviors which do not receive the positive consequences or the rewards or that are punished, tend to be reduced in frequency and strength.

Parents, of course, know well about the law of effect, or what some call operant conditioning or reinforcement theory. Very early on as children grow up they are given rewards such as warm smiles, attention, candy, favors and so on for activities or behaviors that parents consider to be appropriate, good and desired. Similarly, the activities which parents do not wish to see continued are supposedly not rewarded in this manner, or are punished. In the same vein, our legal system possesses many elements of rewards and punishments. Fines, imprisonment, and even the ultimate punishment, capital punishment, are instituted by society in an attempt to control behavior or to reduce or eliminate unwanted activities, such as burglary, robbery and physical harm of other citizens.

It is not enough, however, to simply talk about rewards and punishments of behavior, assuming that everything that is punished will stop and that everything that is rewarded will continue. The law of effect has a number of corollaries, a number of additional factors that need to be spelled out. Much psychological research has taken place on each of these. For example, it is important to specify precisely what is a reinforcer. To use the example of a small child, one little boy may well love a particular toy and consider it to be a reward, while another would not be the least bit interested. Also, there must be the physical capability or there must be the resources to allow the target behaviors to occur. It does no good to reward a two year old for learning to read when he does not yet have the physical capabilities to do so. It does no good to reward a child for picking up

toys if he has no toys. It does no good to reward a child for cleaning up her room if she either has no room of her own or, if she's sharing the room with three other children and there exists no possibility that the child can have control over what takes place in the room. Also, it does little good to reward a child for asking for toys instead of stealing them when parents are not financially in a position to reward the asking behavior with a toy.

Psychological research on the role of punishment in learning suggests that it is more complex than many think. The literature reports several conclusions. First, punishing inappropriate behavior is not as effective as rewarding appropriate behavior in the achievement of behavior goals. Punishment as a means of shaping behavior is both less permanent and less predictable than the use of rewards. By less predictable I mean that punishment basically says to a child "stop it." In other words, stop what you were just doing, be it spilling a glass of milk, hitting your sister, throwing your toys all over the room. It does not say what you should do. This is left, by implication, for the child to figure out. Rewards, on the other hand, say to the child "do again or continue to do what you were just doing." The child does not have to figure out what the appropriate behavior is. The reward tells him or her what is appropriate. He or she has already done it. He or she is in a position to do it again. The most critical and most effective way, then, to achieve the desired end is to reinforce or reward the desired behaviors.

Secondly, punishment has unintended consequences which often subvert the original intention. For example, severely spanking a child (as opposed to sending a child to her room for a period of time as punishment) has the additional consequence of engendering fear of the spanker or anger toward the spanker which may well "take its toll later."

Finally, punishment has been found to teach, more than anything else, avoidance behavior. Punishment teaches the child to avoid the punishment rather than to stop engaging in the behavior. It is more often the case that if the activity is especially desired by the child (e.g., taking cookies from the cookie jar), after punishment the child will simply find a way to do it without being caught, instead of stopping the behavior entirely.

Why then do people continue to use punishment? The answer is very

simple. In the case of child-rearing, punishment is immediately satisfying to the parent (it brings about a reduction in tension) and it brings about an immediate positive result for the parent--cessation of the undesired behavior. Notice the emphasis is on immediate since research has shown that while the child will stop the behavior at the time, the behavior will be picked up again later. Parents, then, experience drive reduction for the moment, even though the long term goals are not achieved.

Looking, then, to society and the role of punishment, it may well be that similar processes occur. Punishing a person who has committed a heinous crime reduces a drive on the part of society, if you will. It allows us to "feel better" for having punished a person. The connection between punishment and deterrence, however, is much more tenuous. The punisher feeling better is one thing; stopping the behavior and getting new behaviors to begin is quite another. The same principles outlined above on punishment as they apply to children, may be used to help understand the extreme limitations of punishment in reducing crime on a community or societal level. As stated above, punishment is less permanent in that while it brings about an immediate result, the result does not last over time. Secondly, by only imprisoning a person for committing, for example, armed robbery (and when that imprisonment is a most aversive experience), we begin the unintended consequence of punishment, namely, developing feelings of anger and bitterness toward the punisher, in this case the society represented by police, guards and ordinary citizens. Finally, if we recall the critical corollary of the law of effect which states that there must exist the resources for engaging in the new appropriate behaviors, we note that by only punishing a person and by not providing the resources for new behaviors, we destine the punishment strategy to failure. To punish stealing without providing the resources for a person to acquire skills to engage in meaningful work, and then to be able to find employment, we do not allow the person to change his or her behavior.

Two other principles relate to the law of effect: modeling and imitation. Considerable research has been generated suggesting ways in which a person will imitate, under certain circumstances, the behavior of models. For example, a child who watches a video presentation and sees a reward given to someone who engages in a certain act--e.g., reading--might well engage in

the same behavior with the hope of achieving the same reward.

The role of modeling and imitation has received considerable attention in psychology literature, particularly as it applies to television. Though the results are mixed, the weight of evidence seems to suggest that children are clearly susceptible to the modeling which takes place on television, especially as regards conflict resolution, problem solving, and expressions of anger or violence. Indeed, this research has already begun to raise concern on the part of parents; such concern has been picked up by television networks, and led to designation of an evening family viewing time when violence is supposed to be reduced.

Another aspect of modeling which appears on television, has to do with social roles presented, and whether they are positive or negative for child development. For example, 10 to 15 years ago almost all commercials pictured white Anglo-Saxon Protestants as competent, in power, the ultimate consumer; in fact this was pretty much the case with most television programs. Ethnic minorities were relegated to subservient roles. Recognition that ethnic minority groups were either excluded from programs or given clearly inferior roles led networks, after considerable pressure in the late 1960's, to change programming formats, including commercials. The critical point in first moving for changes in television programming was that many black and brown kids simply had no positive models on television to whom they might look up. To focus the issue even more clearly, many social scientists clearly applauded the work of, e.g., singer James Brown and heavy weight champion, Muhammed Ali, in filling a void by presenting black children with role models which showed that they could "make it" in American society, that they need not set their sights exclusively on servile roles of chef, waiter, skycap, etc. When James Brown stands outside a television studio saying that he used to shine shoes outside that studio and now, after having worked hard and having had some lucky breaks, he owns the studio, this provides the occasion for young black children to want to imitate him.

There are, of course, a number of opportunities provided where modeling is important. Television is but one occasion for modeling and imitation to take place. Within a particular subculture, the heroes may be gang leaders, pimps, hustlers, or members of the Junior Chamber of Commerce. All are present for children to imitate.

Also, whether or not it is entirely feasible for many black and brown children to emulate the models of Muhammed Ali and James Brown, as two examples, is a question which I shall address later. Indeed, this will become the crux of the argument on economic and social conditions as it relates to criminal behavior. For the present purposes, however, the point is that imitation and modeling are important processes in learning, and that through the mass media and/or a particular subculture, they can have an effect on the development of children.

Another construct deserves our attention in discussing learning: Labeling. Labeling is a process whereby individuals attempt to explain certain behaviors and/or feelings by use of a construct, or descriptive word. For example, a child who spills a glass of milk and hears someone say that was a stupid thing to do, may well begin to label himself stupid--how else would he have spilled the milk, he thinks to himself. Thomas Scheff, sociologist, describes the labeling process for criminals (Scheff, 1966). One need only look at the evening news to examine how the labeling process is used in our country. Persons committing robberies are often referred to on the evening news as "thugs." The person who commits a crime, and has had any contact with a mental health agency, will likely be referred to as a "mental patient."

Labeling is not only a process whereby as persons grow they seek to explain their behavior, it is also a process by which a community or a society attempts to explain and to characterize persons who commit deviant acts. To take the example of robbery of a grocery store for a moment, the evening news will refer to that person as a thug because this act is an offense to the community. The label, however, may not be very precise. It describes activities under one circumstance, and leaves out the rest of the person's life. Similarly, a person who commits a crime and is referred to as a mental patient, is labeled according to one particular aspect of his history. It is "assumed" that the fact that the person is a mental patient has something to do with the particular crime being committed. Quite often this is not the case.

Labels, then, are used to help explain. However, they are often inaccurate. Labels are powerful in that, once labeled, many persons go on to attempt to live up to the label. A child who spills milk, is called stupid

or clumsy, instead of simply one who made a mistake, may well go on to seeing him or herself as stupid or clumsy and begin acting more that way. The labeling process takes a similar toll in later life. I have worked with convicts in prison who, because of the tremendous attention given to the crimes (sometimes one or two) which they committed, were tried for, and sentenced to prison for, are incapable of seeing themselves in any other light--a real hurdle in trying to make any changes.

Several other concepts are worthy of note here in discussing the process of learning. They have to do with the immediate context within which the preceding principles apply: peer groups, norms, subcultures. There is of course considerable research on the importance of approval of peer groups and of norms within various subcultures as determinants of behavior. My own work with inmates whose roots are in large cities suggests that for many the image of hustler or pimp is much more immediate and much more appealing and receives greater reinforcement than that of day laborer or diligent employee. Marvin Wolfgang, noted criminologist, in discussing subcultures and norms refers to "subcultures of violence" in large cities. The excellent, recent news cast put on by NBC news described violence in America in this way. They talked of economic deprivation in cities, out of which violence has become a way of life in dealing with interpersonal difficulties, and in securing needed goods. For the purposes of our discussion, it is important to underline the fact that the specific principles of learning that have been outlined up to this point in the address take place in a context. The context is usually the community group, including ethnic and socio-economic subcultures. Many activities which may look deviant and strange to persons outside a particular subculture are accepted as ways of coping within a particular subculture.

Given these constructs to describe the processes of socialization and of learning, what are the implications for behavior change, specifically, change of behavior for persons who commit crimes? The first point to be made is that behavior which is learned can be unlearned. Quite often the first task is to unlearn one behavior before relearning a new behavior. For example, for a person to learn not to express anger physically, he must learn to express it verbally. The critical question here is what behavior is to be learned? Does one learn to be a "good" citizen, or does one learn

to go out and get a job and stay on that job? Does one learn to be dependent, i.e., one down from authorities, or does one learn to deal assertively with authority figures as an adult? The critical premise, then, in unlearning old behaviors and learning new behaviors, is specifying what is to be learned. As I will spell out in my second lecture, this could be the most important and unattended to question in corrections, and it has major ethical and social implications. It is best when the new behavior literally displaces or replaces the old inappropriate behavior. It is not sufficient simply to teach a person not to steal; he or she must also be taught to work at a regular job, including the various components of that: i.e., showing up for work on time, relating to peers and authority figures on the job, and completing the work. It is not enough to stop doing something; it is important that the person start doing something else.

An additional element of the behavior change has to do with the existence of resources for learning new behaviors. This may seem a trivial point, but it is critical. In light of the preceding analysis on principles of learning, it does no good to teach a person how to apply for a job if there are no jobs for which he might apply. It does no good to teach a person to imitate the behavior of appropriate models, if after engaging in that behavior, there will not be the positive rewards or consequences.

The critical elements of behavior change for criminals, then, have to do with looking closely at those principles of learning which lead to socialization into a criminal role, and reversing many of the processes. In most cases this means unlearning one set of behaviors and relearning a new set of behaviors. All of this assumes the existence of resources.

This brings us, then, to part two of my presentation: the question of what is left out in an analysis of criminal behavior which focuses on socialization and learning exclusively. Everything said up to this point has to do with the how a person grows into a criminal role. Another way to speak of this would be to say that these are the psychological mechanisms through which criminal behavior is developed. It should be noted that the same mechanisms apply to people growing into the role of "law-abiding" citizens. Namely, the law of effect, imitation, modeling, the role of peer groups and subcultures, and labeling are all processes which can be used to describe how any one of us grows up. But the question remains:

what are the primary factors which lead large numbers of the population to become criminals and large numbers to not become criminals? Experts usually retreat from this "why" question-- (Why does this particular person behave in this particular way?). Many say that there are no simple answers. This is of course true. On the other hand, there are glaring data (much to be presented in this conference) which point unmistakably to the critical role of social and economic factors in the development of criminality. Well over half of the population in our prisons is comprised of minority groups from the lower end of the socio-economic ladder. Unemployment among blacks is twice that of the white population (Brenner, 1976). Racism continues to take its toll in the employment process, as well as in our institutions, including schools.

In talking with various community groups and students about the development of criminal behavior, I often use a personal example: the differences between my own birth, early development, growing up, and education into adulthood, and, that of a hypothetical black person in my home town. I was born to middle class parents, never experienced racial discrimination, had numerous vocational options as I went through the public schools, and had college as a clear possibility. Black male infants born in the Midwest in 1944, I can assure you, had a very different lot. Less money, more siblings to share it with, the father likely unemployed, and subject to racial discrimination in the schools and the community.

Comparing the two situations, then, there is no doubt, I am sure, in anyone's mind about how and why I would be much more likely to grow up to be a Ph.D. in psychology working at a university while my black counterpart in this Midwestern town might end up working at the airport. The implications I wish to underline are straightforward. First, the differences between the way I grew up and the way my hypothetical black counterpart might have grown up are accounted for primarily by social and economic factors, and racism. If, as an adult, this hypothetical black male decides against working in jobs which don't provide him with the challenge or meaning that he wants, if he finds that he wants more money, more of the good things in life, and if he then holds up a 7-11 store to get it, I suggest that this is not because he is a pathological deviant, or possessed of some peculiar "criminal mind." If we wish to latch on to factors which will help us predict more

than anything else which ways these two infants will go, we would look not at "aggressive tendencies" in one versus another, not at "socialization" into the criminal role, not at "biological predispositions," but rather we would look at the social and economical fabric of American life and how it shapes behavior of persons and groups.

The second point I wish to make is that the processes by which this takes place--socialization, learning, imitation, modeling--are identical in both cases. The difference lies in what is imitated, what is modeled. The difference is in what is reinforced for the black child--what is reinforced for the white child. The difference is what is punished for the black child and what is punished for the white child. You can go on from here.

Third, while my example compares a black male infant with a white male infant in Midwestern America, the analysis applies to other socially and economically depressed groups. Poverty has in the past, is in the present, and will continue to be (unless it is eliminated) related to a large percentage of the crimes committed in this country. It is incumbent upon planners, behavior scientists and governmental officials to recognize this fact and to make the hard decisions about jobs, educational opportunities, health insurance, discrimination, and how these effect crime in our society. To focus on changing the minds "through psychotherapy or psychosurgery" of criminals as the way to combat crime, or to devote energies toward rehabilitation programs only, is both misleading and a further means of processing these groups.

What does all of this say, however, about the criminal justice system? This will be the topic of my second address which will be given tomorrow (Slaikou, 1977). For now, as a bit of foreshadowing, let me say the following. I have attempted in this address to focus on the psychological mechanisms of learning and socialization which lead to criminality. At the same time I have attempted to point out that they do not tell the whole story. That there are social and economic considerations prior to, above, and beyond, which are causal in nature and which are most important. Implications for the criminal justice system? This analysis suggests a twofold approach. The first has to do with intervention in the lives of persons who have already committed crimes, the second to do with prevention. A metaphor which is often used in the area of community psychology will help us differentiate

between the two.

Picture yourself for a moment on a lazy summer afternoon sitting by the banks of a river. The river is beautiful. The current, however, is swift. As you lounge on a blanket, sipping your favorite beverage, you hear thrashing sounds and realize that a person is struggling unsuccessfully to keep the water from sweeping him away. You courageously dive in and rescue him, and return to your blanket to enjoy the sunshine. You are to have no rest, however, for as soon as you sit down you hear cries for help from another victim who needs to be rescued. This goes on to a third, a fourth, and even a fifth and more throughout the afternoon. As you are working on the last victim a passerby stops and asks two questions, both simple, yet both powerful: "Wouldn't you do better to go upstream and find out how these people are falling into the river--who is throwing them in?" Also, "Why don't all these people know how to swim?"

This metaphor has been used often by those in the helping professions to differentiate between treatment and prevention, between helping persons who are already in distress, and, focusing on the social systems which cause persons to be in distress. The point for our discussion this morning is that it is one thing to preoccupy ourselves with the criminal justice system and how it operates and the role of punishment in dealing with criminal behavior, it is quite another, however, to go upstream, as the metaphor suggests, and deal with the causes of such behavior. We can, and we need to deal with those who have already fallen or been thrown into the river. On the other hand, unless we move quickly and decisively upstream to take preventative measures, we engage in an endless, futile task.

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PUNISHMENT IN CROSS-CULTURAL PERSPECTIVE

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Punishment occurs as part of an authorized system of social control in all societies: The so-called primitive as well as the advanced, simple as well as complex, those whose legacy of justice may be traced to the Twelve Tables of Roman Law, and those whose traditional folk-systems of justice were forged around ancestral hearth-fires. Punishment in all societies finds occasional promotion outside the framework of legitimized authority, but its common context, and certainly the context of our interest here, is the framework of law.

The necessity, however perceived or misapprehended, for maintaining in society a reasonably predictable and reasonably consistent pattern of interpersonal behavior, is frequently cited as the source of laws which specify those patterns and sanctions which insure it. This, however, is a short-sighted view which focuses on law as a proscriptive instrument and punishment as a deterrent force for law's violation. In any cross-cultural context, law, whether codified or not, is predominately prescriptive -- affirming rights and obligations of individuals and groups. Punishment, on the other hand, at least in some societies, serves the law in three functional dimensions: retribution, deterrence, and rehabilitation.

It is to the questions of the justification and the adequacy of this service that I want to briefly direct attention. As these dimensions are being treated elsewhere in specific contexts, I will limit my treatment of them to the cross-cultural perspective of anthropology. I will then conclude

with some insights to be gained from this comparative approach.

A focus on punishment, or the application of sanctions, is quite appropriate for both a cross-cultural approach to justice and a study of our own criminal justice system. The most productive comparative approach is caustic for two reasons: 1) what a legal system prescribes should be done and what legal authorities do are frequently quite distinct, even in the more inflexible legalistic societies; and 2) the inventory of punishment meted by authorities defines the legal system, where a study of statutes and codes does not. Finally, in our own criminal justice system the disposition of cases, rather than their adjudication, is the more common function of the courts. This is certainly true of criminal cases, where 85% end in plea bargaining.

Of the three functions which punishment has come to serve, retribution, deterrence, and rehabilitation, only the former appears to have universal relevance. Retribution, or retaliation, should be distinguished here from revenge. While the two may have similar outcomes, that is, while the reciprocity of crime and punishment may be the same, vengeance is subjectively motivated and serves personal vindication. Retribution, on the other hand, is the objective retaliation of society. In Hegel's words, it is "the annulment of crime" by the concept of justice itself. It is this concept, of punishment serving its own ends and thus the end of justice, which underscored Mosaic Law in the Old Testament rendition of it, and which through Classic society characterizes the justice of the gods as well as mortals. Its philosophical argument reaches its essential peak in the finely-honed logic of Kant and Hegel in the late 18th and early 19th Centuries, who proclaimed strongly that retributive justice is the only justification and criterion for punishment.

In non-literate societies where customary law promotes tribal and group solidarity, punishment is commonly aimed at restoration of interrupted social order. In most cases, although the weight of punishment will vary by offense and even by individual cases for the same offense, it is seen as primarily retributive. The penalty of damage payment for the crime of theft, for example, is cross-culturally frequent.

This is certainly not the only condition in which punishment serves a deterrent function in primitive society. One must examine, however, not the

latent or secondary functions which punishment may serve, but the socially-preferred and manifest functions. In most cases where disputes or claims of wrong doing are submitted to authority, cases are either resolved without penalty per se or are disposed of with a punishment (such as payment of money, goods, or services) which is viewed as justice served rather than as a future injustice prevented.

The third function -- rehabilitation -- occurs in the Western tradition somewhat conterminously with that of prevention. Indeed, the secular philosophers Plato, Hobbes, Locke and Rousseau held that these two utilitarian functions should be the sole aim of punishment. The notion of punishment for rehabilitation is intriguing in its many facets and, to my knowledge, has not received adequate historical review. Obvious conflicts with the first two functions have, of course, been subject to considerable discussion. Certainly the death penalty and extended prison terms can serve no restorative functions, and yet by what criteria may a judgment be reached that as first-time offenders a rape-murderer or a presidential assassin have less capacity for rehabilitation than the common every-day murderer?

In any case, it seems likely to me that the notion of punishment-for-rehabilitation reflects particular presuppositions about the interrelationship of human beings and society, and that it is a different set of presuppositions which characterizes societies without the notion. The notion of rehabilitation implies that individuals, by certain manifest acts, have fallen or removed themselves from a particular status category necessary for social acceptability, much like a sinner fallen from a state of grace. Since the fall was not at the hands of society (or the church), society cannot arbitrarily proclaim its return, but, in this view, can and ought to point the way and provide the means towards reclaiming it: the analogy of cleansing ritual and penance come to mind.

At this point, I do not wish to further evaluate the validity of this presupposition about the man-society dichotomy. We will have cause to recall it in a moment. The lack of this notion of man v. society in a majority of the world's cultures suggests at most that it has been recently added to our inventory of human definitions, and suggests at least a reason why the concept of rehabilitation-through-punishment is alien to many.

In most non-literate and in many literate societies, the dichotomy

does not prevail. There are indeed crimes which manifestly remove the individual from the status of person-society member. The most notable are witchcraft and certain forms of homicide. The status, however, cannot be restored and consequently rehabilitation is meaningless. The punishment for such crimes is either execution or banishment, which is often paramount to execution. For other crimes, the perspective from which the perpetrator is viewed (the term "criminal" is thus inappropriate) is normally that of a miscreant: and we are all, they will say, potential miscreants. We will all wrong our fellows, and thus our society, at times; some will be caught; some are indeed dangerous, and when the danger, in the mind of the authorities, becomes too great, it is dealt with by removal. But the idea of "rehabilitation" is too far afield in this context: for before the concept could be entertained, one would have to answer the question "From what or where would one be rehabilitated?"

None of the foregoing is to imply that the so-called primitive is a "noble savage" or is intrinsically more humanitarian. Much of social practice in non-Western, non-civilized societies would be repugnant to our system of values: physical torture, infanticide, gerontocide, and wife-purchase are common practices which we deem inhumane.

Let us, however, return briefly to the cross-cultural perspective with a view to examining the different concepts of man-society relations which promote the dispositions of unauthorized conduct.

Of course, crime in both its nature and its severity is legally defined and specified by the society, and it is a common notion in anthropology that as society becomes more complex and its organization more stratified, the need for integrative mechanisms becomes greater. In this view, the more complex societies need more ramified legal systems because the opportunities for dis-integrative behavior are greater. This over-generalization is only a part-truth. There are peasant and horticultural societies with stratified authority systems providing differential access to resources which yet retain traditional value systems, and in which the nature of crime and punishment are not materially different from the simpler subsistence societies.

The Inca, for example, maintained a highly stratified system in which, for the identical crimes, the commoner would receive physical punishment while the noble would suffer public ridicule and loss of office. In both

cases, the values accruing to individuals were as members of society rather than as beings estranged.

The important distinctions between the traditional and Western industrial values, at the risk of oversimplification, lie in how social reality is codified. It is often remarked that primitive societies are retrospective while advanced civilizations are prospective in their outlooks. Again, this is not quite true: Primitive societies as well as complex societies with traditional values (we may refer to them as "tribal values"), are "now" oriented. They tend to exist in a temporal vacuum. They are timeless enclaves of ageless cultural enterprises, and what we see as their obsession with the past is to them an eternal present. This does not necessarily mean they reject the notion of innovation and change, but it does mean that they do not pursue it as a force of social life. Since the present is all-encompassing, so is the meaning of society for the individual and the meaning of the individual to society. Since tomorrow's gain is not simply seen linearly as the outcome of today's effort, so the individual does not invest himself in today's enterprise simply to maximize tomorrow. Participation is as much an affirmation of being as the results of participation are the extensions of being, and unsuccessful results do not nullify the value of participating.

Social reality is not an unchanging present in the industrialized West. Reality is codified in linear terms in which there is not only a logical sequence of events, but the meaning of a given event is often definable only by reference to its antecedent or to its anticipated successor. The notion of progress provides a rationale for creativity and innovation. It provides for the individual a rationale for independence, freedom, and personal achievement. The meaning of society for the individual lies, therefore, in the comforts and securities it provides while ends are sought, and in the opportunities it provides for achieving these ends. Mobility upward -- in psychological and socioeconomic terms -- are overriding goals and are the measures of success.

In both kinds of social systems there are subgroups and classes with unequal access to resources and unequal privileges, even unequal power and wealth. In the non-linear Western tradition these inequalities are often deemed inequitable, or lead to inequities because the notions of personal

freedom and independence conflict with them.

A more fundamental conflict is built into the system, for our cultural heritage has not substituted progressive values for traditional ones, it has provided a conflicting co-existence of both. Political, economic and educational institutions tend to espouse one set, family and religious institutions another. Their codifications and values conflict; the ideals and the ideologies are mutually incoherent. The resulting sense of the loss of self, and by extension therefore the loss of personal freedom, autonomy and social participation, tend to reflect in the person the conflicts in the culture.

Traditional societies provide the individual with little opportunity for autonomy and independent achievement, but the value context provides little basis for conceptualizing these qualities. Personal freedom is the freedom to participate in social endeavors. The sense of self is perpetually reactivated in such participation, which is an intrinsic value as well as a means to an end.

If taken as a series of definitive statements, the foregoing observations are assuredly oversimplifications. Their intent, however, is to establish a contrast in high relief, such that the perspective on crime and on punishment may be broadened.

By our standards, punishments for violations of conduct in many traditional cultures would be unjust in terms of their severity. They serve the principle of justice, that is, annulment of crime, however, in the following important ways:

- 1) Punishment is a function of legitimized authority
- 2) In following customary law, punishment reflects social consensus
- 3) It has as an important intent the maintenance of social order, including the continued participation in that order of the violator, hence the idea of incarceration as punishment is essentially nonexistent; and finally,
- 4) The implementation of punishment is immediate, disallowing the lengthy delay which a higher system of justice frequently requires.

These more complex systems of justice had their beginnings in classical

antiquity. Of such a system, and its advantages, Lucretius wrote: "Mankind, tried out with a life of brute force, lay exhausted from its feuds; and therefore the more readily it submitted of its own free will to laws and stringent codes. As each man moved by anger took measures to avenge himself with more severity than is now permitted by equitable laws, for this reason men grew sick of the life of brute force." Lucretius may be forgiven for his Hobbesian view of the primitive. In contrast to what is the common view of justice by traditional societies, it is our own society which now seeks to find not only what equality means under the law, but what equity means in the assignment of punishment.

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CULTURAL PERSPECTIVES ON PUNISHMENT

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The culture or ethnic group that I represent is Mexican American and my presentation will be limited to this group's perspective. Nonetheless, I feel that some of the things said regarding the Mexican American give us at least the idea that there exist other realms of attitudes, thought patterns and values with emphases and characteristics other than that of the predominating American culture with its strong influence of English and Saxon traditions, particularly in the area of criminal justice. In other words, there is the world of the other that is sometimes difficult to understand and appreciate (e.g. the Tarahumara tribe of Chihuahua, Mexico.)

For over two years the Mexican American Cultural Center has been directly involved in assisting families of prisoners in the San Antonio area in their visits to various federal and state prisons such as those at Leavenworth, Kansas, El Reno, Oklahoma, Huntsville and El Paso, Texas (La Tuna). Mr. Leonard Anguiano, director of the Leadership Institute of MACC, who organizes these visits and other activities for prisoners' families will give his first hand experiences.

I would like to suggest certain cultural traits of the Mexican American which have bearing on the matter of punishment. In no way am I excluding these traits from other racial or ethnic groups, but these are values and characteristics which are generally found in our people.

First of all, we must remember that the Mexican American is doubly mestizo (mixed); he is neither simply Mexican nor simply American; he has

the blood-spirit blend of the Spanish and the Indian, plus the added influence of living in the United States. The cultural values and characteristics I will now describe are largely based on this fact of mestizaje.

1. Cultural Aspects

a. Religious aspect.

The Mexican American is generally a religious person (which does not necessarily mean church-going). His concept of God--handed down more through an "osmosis" process rather than through specific instruction--is that of a demanding God whose favorite pastime seems to be to punish the children. We often hear the expression, "Diosito castiga" (God punishes). It is a God who spies, who sees all, knows all and does not forget; while he may be merciful, he is just: this means that he is above all a vengeful God who gets even ("...alla lo pagaras con Dios").

Therefore punishment comes not so much from society but from God. In fact all suffering and hardship come from God. There is a marked degree of fatalism; "asi lo quiere Dios...yo tengo que sufrir", which is an attitude of resignation and all one can do is to patiently endure God's will.

b. The Human Person.

A constant which we usually point out about the Mexican American is the concept of person. There is something sacred about the individual, he has inalienable dignity, God given and forever. This of course is something we share with many other cultures. Everyone has this dignity which must be respected; "El respeto al derecho ajeno es la paz", a principle articulated by Benito Juarez in the 19th century and repeated again and again. No matter what crime is committed or guilt is involved, the dignity of the person remains.

Moreover, we like to think that the Mexican American is person-oriented; an individual is seen first of all as a person with whom to relate as a friend and secondly, as a functionary or role player.

c. The Family Unit

An important consideration bearing on punishment in many cultures is the family. In the case of the Mexican American for example, there are strong family ties, owed perhaps to a basically agrarian folk culture which struggles for survival and therefore depends on the force of unity. As a consequence, the family, especially the parents of a criminal, will suffer

deep and lasting hurt on account of their errant son or daughter.

Very close ties are felt with members of the extended family (relationships beyond the immediate family: los abuelitos (grandparents), tios y tias (aunts and uncles), etc., plus the padrinos y madrinas (godparents).

A parent is reluctant to admit failure in raising children who have gone wrong; "going bad" is due to bad company or to an unfortunate moment or set of circumstances.

MACHISMO = Phenomenon among the male Mexican American $\left\{ \begin{array}{l} \text{Crime} \\ \text{Punishment} \end{array} \right.$

d. Law

Law itself is an ideal, which is neither necessarily attainable nor enforceable. Therefore, law can be adapted to situations, as is done frequently in Latin American countries.

e. Punishment.

Punishment must come if one is guilty, yet the Mexican American is very sensitive to punishment meted out commensurate to the crime committed and that it be applied in a consistent way. He or she cannot understand when for the same crime and for technicalities or smooth and expensive legal counsel some receive little or no punishment.

II. Patterns in Prisoner's relationships due to culture.

a. Intra-institutional.

There is always a sensitivity towards discrimination in the prison on the part of any minority group. Discrimination practiced not only by prison officials but also by fellow prisoners can serve only to destroy the person and further his sense of futility in society. A prisoner will relate better to a guard of his own ethnic, cultural or racial background who is sensitive to his own if he or she can speak the prisoner's own language. This means the guard can see reality as the prisoner sees it, for language often conveys another perspective.

Relations with chaplains can be a key factor in rehabilitation. The chaplain will enhance his or her ministry if addressed to the popular religion of the prisoner. It is a whole religious value system involving practices, devotions, and beliefs based on real faith but often taken as

THE RESTORATION OF HOPE: PUNISHMENT IN RELIGIOUS PERSPECTIVE

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First, what I understand by "theological perspective." Theology properly springs from the central or ultimate concern of a community of faith--a church, a dedicated community, call it what you will. Its "ultimate concern," in Paul Tillich's terminology, is the active, formative expression of its faith. The fundamental intentionality of the dedicated community is for the wholeness--the moral and spiritual well being--of the person and the community, of both together inseparably and at once. It is for the covenantal community: "The people who," Douglas Sturm writes, "embody the qualities of life itself, the qualities of peace, righteousness, and loving kindness." (Certain Hebrew terms, associated in the Bible with the idea of covenant, stand behind these three terms: shalom, sedaka, and hesed.)

This idea of Covenant lies at the core of the Judeo-Christian tradition, disused though it has been by most theologians. Consider two brief passages from Isaiah 42. Here the prophet speaks of the historical task and calling of the people:

"I am the Lord, I have called you in righteousness,
I have taken you by the hand and kept you;
I have given you as a covenant to the people,
a light to the nations,
to open the eyes that are blind,
to bring out the prisoners from the dungeon,

mere superstitions.

b. Extra-institutionals.

Rehabilitation of Mexican Americans, we believe, can be better if more attention is given to the prisoner-family relationships particularly in the area of visits conjugal and otherwise (mother's, brothers', sisters', friends').

The mother-son relationship is usually very close. It is a relationship that, if fostered, can aid the rehabilitation process.

III. Other cultural considerations.

Other cultural considerations that need further study and evaluations:

a. Regarding undocumented worker (illegal alien), what specifically is their crime and should they be treated as criminals?

b. Why not study prison systems such as Mexico's and learn what is valid from that experience, since the Mexican government has based its systems on the Mexican culture.

c. Community-based corrections may be more effective particularly since they would be closer to the family and the cultural situation.

d. Cultural awareness is an implicate aspect in rehabilitation.

1. cultural groups: Mexican, Mexican American, Chicano, all unite under motivation of values.

2. Self worth: Society is not threatening when one knows who one is and is not punished but reconciled with mercy.

from the prison those who sit in darkness." (Isa. 42:6-7)

What does that mean? That we're called upon to let everybody out of jail? Commentators usually append a footnote to explain that the prophet here refers to release from "spiritual bondage." How they exactly know is not explained. We should be wary, I think, of these ready, "spiritualizing" interpretations, especially of the words of the prophets of Israel. In this case, the anonymous prophet of the Babylonian captivity, called Second Isaiah, spoke to his people in a particular historical situation, one that threatened their continued existence as a community of faith. The whole thrust of the prophets was historical--toward the transformation of the social-institutional plane of human existence for the sake of a new community, a renewal of Israel's Covenant.

There is a second passage from the same chapter of Isaiah which became particularly poignant to me several years ago; at the time I was in a specialized, urban ministry in Cleveland, one that entailed engagement with people and groups of the inner city--though in a broader sense it applies to us all. Against the vision of eschatological fulfillment by release from all forms of blindness and bondage, the prophet sets his words about his people's actual, present condition:

But this is a people robbed and plundered,
they are all of them trapped in holes
and hidden in prisons;
they have become a prey with none to rescue,
a spoil with none to say, "Restore!"
Who among you will give ear to this,
will attend and listen for the time to come? (Isa. 42: 22-23)

This, I believe, is a relevant theological perspective. What about punishment as such? In the very precise definition of the philosopher, Anthony Flew, punishment is "an evil or unpleasantness to the victim"... "for an offense"... "of the offender"... "imposed by virtue of some special authority." Or as the Concise Oxford Dictionary says, "An act of a superior or public authority." Very little attention is given, in the discussions of punishment I have read, to the questions that arise around the concept of authority in society; everyone takes this part of the definition for granted, and starts off with arguments over how or whether "two wrongs

can make a right." Just here theology ought to be most relevant, even when it has been wrong-headed, for the theologians have always been centrally concerned with questions of authority, that is, with the ultimate justifications of human life and actions.

Down through the centuries their way of answering this question has mostly led to very conservative conclusions. Much of this tradition has appealed directly to a passage of St. Paul's, in Romans 13: "Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment." (vv. 1-2) But not always. For there is also the radically authority-questioning tradition represented by Leo Tolstoy's searing question, "By what right do some persons punish other persons?" By what authority, if not in service to the community exemplifying the qualities of life itself, the covenantal community?

Faith gives at least a toe-hold on a larger vision, a transcendental hope to set over against our present condition as victims and victimizers, all mixed together. All of us are subject to evil in the radical form of living under "a broken covenant," punishing some persons as if we others "had it all together," and had only to oil the moving parts and tinker with the mechanisms of our "criminal justice system." How we love that word, "system," in this day of "systems analysis"--as if offenders were just so many problem cases to be processed, as if no one were in charge and had authority to make responsible decisions for himself or others, but the "system" just ran itself. "Reforming the system," in other words, goes far beyond finding better "sentencing" or "correctional" or whatnot techniques.

Some would like to ditch the term "authority" all together; it sounds so...unliberal. But I suggest that we will not come to grips with the full dimensions of the punishment problem until we bite this particular intellectual bullet. Hear Chief Justice Warren Burger, in 1975: "Perhaps the most immediate and pressing problem is to be found in the challenge--some would say the collapse--of correction--philosophy as it has been known." He settles for the word "erosion": "It is widely said that there is an erosion of accepted but largely unexamined theories of crime causation.

and--especially--an erosion of widely held theories of rehabilitation in corrections."

Or hear criminologist John P. Conrad: "These are bleak times for correctional reformers. In the early 1970's, belief in the rehabilitative ideology disintegrated, thereby threatening the whole structure of the apparatus." His title--"We Should Never Have Promised a Hospital"--tells his own repudiation of "the rehabilitation ideology," dependent as it has been on the model and promise of "medical science": crime as a kind of social sickness in persons, and corrections as the techniques of curing them.

Is it true, as one reformer put it to me, that "rehabilitation has never really been tried"? Of course it has never really been really tried: but still escaping notice is how we have built that house on philosophical sand, on an ideology too often masquerading as scientific knowledge. (If you think I'm too harsh, read Karl Menninger's The Crime of Punishment for yourself. The authority he has for me is his manifest commitment to justice and his compassion, whereas he wants some to believe it rests on the science of psychiatry.) I hold that one of the functions of good theology is to rescue us from bad ideology. (And you will notice how I covered myself by distinguishing "good" from other sorts of theology.)

The deeper trouble of the present situation is that we are left today without prophetic voices, voices of judgment and hope for civil society, including crime victims and criminal offenders alike. We have instead a variety of cool, hard-nosed analyses. On the one side there is a James Q Wilson; in his recent book, Thinking About Crime, he says that the obvious purpose of the correctional system is "to isolate and to punish," which may seem harsh, he adds, but is just "a frank admission that society really does not know how to do much else." This has the virtues of sober realism and modesty. It differs in degree, but not in kind from Ohio Attorney General William Brown's view: "I am firmly convinced that the mandatory-type penalty structure will actually deter crimes of intent... The guy who uses a gun should be put in jail...forever... And he stays. Forever and ever and ever." Thus sounding like an angry god, yet without the undertone of divine pathos which we also hear in the God of the prophets of Israel.

Since I have referred a couple of times, now, to that rather disturbing old notion of "the wrath of God," let me add a word about it. In the Talmud it is asked, "Does God pray?" A rabbi answers, "Yes. He prays that His wrath may be turned to mercy." Anyone who is a parent will have experienced that doubleness of emotion, which arises on account of the prior and ongoing emotional involvement with one's children. But when we are dealing with society at large, and especially in our mass society, the spirit of impersonality takes over and our minds become as bureaucratized as our institutions.

But super-cool also comes from the left. Thus the National Council on Crime and Delinquency has published a booklet, Toward a New Criminology (1973), running twenty pages without ever hinting that crime brings any actual suffering or loss to individuals or society. They put special emphases on the idea that pinning a criminal identity on some people serves the positive social function of reinforcing the norms of "straight" society; thus they move from the partial but slippery truth that "if we didn't have criminals we would have to invent them" to the implication that the whole problem of crime is a matter of social labeling. The crisis character of our situation tends to dissolve in this brave new world of "the new criminology." They say, for example, "Apart from the fact of conviction there is in such reform-minded statements for eliminating the disparity between our handling of so-called "street crime" and "white collar crime," that zeal is cancelled out by a sociological positivism which rests its critique purely on the notion that society punishes what it wants to punish to sustain its own power structure, making all talk of "justice" the work of authority which is itself, in the end, "criminal."

How then, does the idea of authority to punish arise historically, how does it come to its present crisis of legitimacy, and what does a co-venantal-theological perspective say to us about it?

In archaic societies an individual with a grievance sought a judgment from the clan or tribal head against another, and then himself executed the punishment, probably with the help of kin or friends. The official judgment served only to legitimate and specify the compensation. According to Egon Bittner and Anthony Platt, "...Archaic laws always brought

the punishment of offenders into some sort of relationship to the loss of the injured party"--a restitution paid, or an injury inflicted in retaliation. Very early in the history of civilization it was seen that the needs of social order required a means of regulating the urge to violent revenge, and the tendency of the strong to dominate the weak. A recognized authority, then, served to legitimate and regularize the commonly accepted standards of fair recompense.

In a narrow but significant sense, the acceptance of punishment by the offender was voluntary, insofar as he had the choice of paying the penalty, or, in Bittner and Platt's words, of "placing himself outside the scope of the protection of the moral order, which he enjoyed even as an offender." The person who rejected this authority became as one "dead" in the eyes of the community, an obnoxious object to be either banished or literally exterminated. (And in this lies the "cruel and unusual" character of the death penalty, and the reason for our moral rejection of it; and we cannot conceive of the moral worth of a person as totally defined by his social group.) Famous Biblical examples of this kind of purification of the community by ridding it of the source of moral pollution are the banishment of Cain, to be forever a wanderer and a "marked man," or Jesus' protest against the stoning of the woman taken in adultery. Crimes involving ritual or magical pollution, for which no repayment was possible, would necessarily receive this kind of treatment, but this (Bittner and Egon argue) was not "punishment," for punishment was essentially a system for stipulating the terms of an offender's restoration to the social order.

The appearance of written law codes in ancient times emerged along with the rise of ethnically diverse states; these did not generally introduce new laws, but served to create uniform standards of law and punishment. The early Babylonian Code of Hammurabi, for example, stipulates, "If a man destroy the eye of another, they shall destroy his eye. If a man knock out a tooth of a man of his own rank, they shall knock out his tooth." The Law of Retaliation is stated in very similar terms in the Old Testament Book of Exodus (21. 24). Jokesters have said that the doctrine of "an eye for an eye, a tooth for a tooth" will result in "a blind society and a toothless generation."

While any punishment involving physical mutilation is repugnant to

our moral sense, nevertheless, this law of retaliation served to limit the penalty to the extent of the damage done; it ruled out the unrestricted violence of a vendetta. And Rabbinical interpreters have maintained that it is not to be read literally, but as a symbolic expression of the principle of equitable punishments. Wise lawmakers and judges have always, it seems, been mindful of the sense of right and fairness resident in the people, for on this their consent to authority, their acknowledgment of its legitimacy finally depends. At least if there is not to be constant repression, but civil peace.

Also notable, at this point, is that from its origin Judaic faith conceived God as the giver of laws regulating civic as much as religious life. God becomes both the standard of justice and its ultimate guarantor. This idea allows St. Paul to incorporate Jesus' ethic of non-retaliation to any person. He says, "Beloved, never avenge yourselves, but leave it to the wrath of God; for it is written, 'Vengeance is mine, I will repay, says the Lord.'" (Rom. 12. 19) In other words we can abandon the urge to retaliate, for God will fulfill the demands of retributive justice for us. Yet Paul goes directly on to his words, quoted before, about submission to secular authorities. Their authority rests directly on the ultimate authority of God, without break or qualification. Lost, here, is the prophetic recognition that the justice of the people depends on their fidelity to their Covenant with God, their constitution as a people turned toward and steadfast in seeking peace.

We see in Paul, then, a spiritualizing tendency that allows Jesus' words of non-resistance and love apply to individuals, while the principle of retributive punishment, which restrains by force and fear, remains absolutely intact for the state. In this split we see the beginnings of the pietistic moralism of so much of Christian ethics--the focus on the sins of individuals to the exclusion of more fundamental questions of social justice.

The prestige of Paul as the Apostle contributed to the rise of an absolute self-assurance about the justice of secular authority. With the union of church and state under Emperor Constantine, the age of Christian triumphalism was inaugurated. Now the Church sought to impose its divinely sanctioned rule with the aid of the secular state. In theology proper, a

system of eternal punishments, previously unknown in Greek or Hebrew thought, was added to temporal punishments.

St. Augustine, for example, is of the opinion that though many will be saved by the atonement of Christ from eternal punishment, which is justly due to all on account of original sin, the preponderance of humanity will in fact be damned. He also argues that the institution of slavery is a just punishment for Adam's sin, thus mixing with the idea of punishment for crimes actually committed a case of gross social repression--at least as it must appear to us, and I dare say to slaves in any age.

Christian theologians have reflected the commonsense view of punishment as serving several ends at once. "God," Augustine says, "knows how to award fit punishments for every variety of offense," thus expressing his confidence in divine justice; it will perfect the roughness or fallibility of man's. He goes on to observe, "We must not only do harm to no man, but also restrain him from sin or punish his sin, so that either the man himself who is punished may profit by his experience or others be warned by his example."

In the Middle Ages, St. Thomas Aquinas likewise finds all three of the basic justifications for punishment valid and compatible--retribution, deterrence, and reformation. But the fundamental theological rationale lies in the metaphysical conception of God as the author and guarantor of order throughout creation; punishment is essentially retributive, for it is a righting of the scales of justice. "The order of justice," says Aquinas, "belongs to the order of the universe; and this requires that penalty should be dealt out to sinners."

Aquinas's view became normative for Roman Catholic thought; in fact his basic ideas are repeated and elaborated by Pope Pius XII, in a 1954 address to Italian jurists. He, like Aquinas, draws a distinction between moral sins, which the state has no interest in punishing because they do not threaten the public order, and those which do and are punishable as crimes--an important distinction if we are to deal rationally with "victimless crimes." Yet here again, the Pope cites Paul's words in Romans 13 as the basis for finding an unbroken, unambiguous authority in the state. Divine power is thus identified with "the powers that be," rather than with what is moving forward, with "the pull of the future."

The feudal social structure of medieval Europe encouraged the view that all property belonged to the prince; hence we find the gradual monopolization of authority to punish by the princes or kings. Crime came, then, to be viewed as a violation of "the king's peace," and he executed both judgment and punishment in behalf of his subjects. Yet systematic public law enforcement dates at the earliest from the 16th century. This is also the era of rising social and religious conflict. Notably, Martin Luther cites St. Paul's famous words from Romans 13 once again, in his violent outburst calling for repression of the Peasants' Revolt of 1525. He informed the princes of Germany that their failure to punish with the sword would bring God's wrath on them.

In the late 16th century we see the beginnings of the struggle to limit the authority of kings by placing them under law. The great English jurist of the common law, Sir Edward Coke, set out to ensure that judges would not be, in his words, "lions under the king's chair." The common law--the law resident in the cumulative wisdom and sense of justice of the people--had a standing independent of the monarchy. So conceived, common law not only guided the king, but finally judged him in the exercise of just authority.

American democracy builds on the foundations of this English common law tradition. In the 18th century the conviction arises that "the consent of the governed" is the indispensable basis of legitimate authority in government. A free people is one governed "by laws, not men," by impartial principles, that is, not self-serving personal interests. So too the distinction between just and unjust (or "cruel and unusual") punishments, is made explicit in the fundamental law, a Constitution which represents the collective voice of "we the people."

This new beginning is in fact a renewal of certain ancient ideas, both Greco-roman and Judaic. In the Old Testament there is a covenantal "we the people." It too means being governed by laws, not men, not even by Moses himself. The legitimate authority of the legal stipulations of their Covenant is bound up with the fact that they have voluntarily and explicitly consented to it. Though the people repeatedly fall short, prophets arise again and again in Judaism and Christianity to recall them to their reason for being.

Prophetic faith thus sees the dynamic and social dimensions of life, and does not see the individual apart from the community nor the present situation apart from the intended future. The justice of laws and punishments necessarily depends on the fundamental intentionality of the society, on whether they aim, steadfastly, toward peace, toward the restoration of hope.

Human justice which does not recognize its own partiality, which does not aim at surpassing itself but only at the restoration of an already unjust social order, degenerates into sheer repression, deterrence for the sake of security and/or self-interest. That is why all the great theologians from Jeremiah and Jesus to Paul Tillich insist that justice is only fulfilled when it aims beyond the present, when it works through loving kindness, steadfastness, forbearance, forgiveness. Love, says Tillich, is the creative, transformative element in justice, without which it becomes unjust. Aquinas: "Mercy without justice is the mother of dissolution. Justice without mercy is cruelty."

When I say we live under the condition of a "broken covenant," I fear of such widely recognized matters as the immense disparities between our punishments of black and whites, of lower and upper socio-economic class persons, to the wide disparities in sentencing between similar crimes, and more broadly still, to the effect of an economic system which includes such features as cyclical unemployment.

Yet clearly it is misleading simply to conclude that, therefore, poverty causes crime, for poverty is so thoroughly relative to social perception. Both more realistic and more promising is to see that some persons perceive themselves as shut out of the "promise" of a society, and that our society promises, above all, ever more of the things that money can buy. While accepting this dominant social goal, they reject the norms of "straight society." They may join in their own sub-culture perhaps one whose norms include "ripping off the establishment." They are participants in a counter-covenant, a self-sustaining mode of social life which is destructive of the dominant culture.

There are no simple or painless solutions to this problem. Social authority will in fact continue to "play God" by meting out punishments;

yet recognizing that it cannot really be God, it will limit its punishment in accordance with reason, and humane concern, and hope.

Persons are not "rehabilitated" by treating them as if they were mental patients, denied the dignity of their own moral freedom. Punishments must fit the offense, not the offender; it is deceptive practice, a bewitchment of our intelligence, to use sugar-coated language which hides the fact that any coercive treatment, however well-intentioned, is a punishment.

Also punishments must not deal unequally with similar offenses, nor be excessively long in duration, or you have in fact a system of preventive detention, the injustice of which only breeds broad-scale cynicism. You cannot fall below the standard of equal justice, in the name of mercy or deterrence.

But you must also go beyond mere retributive justice. In the end, it is something like the parent who must teach his child that there are limits to acceptable behavior, who cannot not punish him when persuasion fails, but who also provides for his re-entrance into the ongoing life of the family. And that means face-to-face talk, an exchange of consents, a fresh understanding, a new covenant.

We have not begun to tackle the deeper challenge posed by crime and punishment until we seek ways which practically allow the offender to form new, non-exploitative and non-destructive modes of behavior, to find a community of friends oriented toward the social good, to understand himself not as a defective human being but as a moral agent who is responsible for his actions.

In an article by Patrick McAnany in an issue of the National Catholic Reporter distributed at this conference, I find a striking confirmation of the point to which I finally come: retribution insists on the language of moral discourse in discussing punishment. It is not outcome in terms of lower rates of recidivism. Retribution is the justice of restoring social order." The alternative to "moral discourse," which a theological and ethical perspective brings into view, is the discourse of social control, whether it is called "deterrence" or "rehabilitation." It should be noted, however, that such moral discourse also sustains the idea of social justice. McAnany continues: "Only where there is some fundamental consensus of

moral norms and some coincidence between norm and social reality can punishment make any sense. The struggle with the current meaninglessness of punishment pushes us toward social justice beyond the law courts."

A theological perspective will not in itself provide practical solutions to the dire problems that arise in connection with the idea and practice of punishment. Still less can it be a handmaiden of the state, legitimating its authority, for example, with chaplains who are seen as guards! Its only virtue is to put the subject in the largest possible context. In the context of life itself, our authority does not rest on our professional expertise, nor even on our vote as citizens, but our consciences and consents in personal confrontation.

Religious understanding arises, in the end, from our ultimate concern as persons; it works not by force of argument, but by the consent of heart, mind, and will, just as the creation of a covenant does. To do that requires, at some point, ceasing to talk about them--those who are called criminals--and begin to talk to them, person to person, perhaps as volunteer ombudsmen or simply as concerned persons who may become friends. That may strike you as a very small or impractical thing, but if broadly effected it would be a revolution in our criminal justice system.

I have focused on the problem of authority because this is the key, I believe, to the justification of punishment in any form, and the recognition of its limits. In the perspective of prophetic faith, I have tried to say any punishment is legitimated only as it aims toward, and provides for, conditions of social life which transcend the present by transforming it, which generate new forms of community among persons, which thus restore hope.

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SOCIO-POLITICAL BARRIERS TO CORRECTIONAL REFORM

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In using the synthetic phrase "Socio-Political", one can expect a vast array of factors, only a portion of which will be addressed in this paper. Actually, the part of the socio-political constellation to be addressed here is largely made up of what may be termed bureaucratic forces. In other words, it will be argued that what currently exists in our corrections-punishment apparatus and what is likely to exist in the future is mainly shaped by essential bureaucratic interests.

Lest the above opening statement suggests to the reader that he prepare himself for the familiar diatribe against the bureaucracy, let it be said at the outset that this writer is convinced of the absolute necessity of bureaucratic structures in a large, pluralistic and democratic society. Thus, this discourse needs to begin with some exposition of the positive, and assuredly, indispensable role played by the bureaucracy in the American state.

Many of the arguments to be presented later depend on an understanding of the policy-making role of bureaucratic administrators. For a long time, in administrative science, the orthodoxy was that bureaucrats or administrators merely carried out policy determined by others, usually those involved in some sort of legislative or quasi-judicial process. The idea

was that administrators were experts in the implementation of policy and that it was somehow inappropriate for them to engage in the "making" of policy. Part of this idea emanated from the belief that administration could be carried out in accordance with scientific principles. From the famous essay by Woodrow Wilson in 1887, which suggested the development of professional public administrators, through the influence of the scientific management movement, a firm politics-administration dichotomy evolved. This dichotomy became entrenched in the public mind so that vestiges of it remain today even though the mythological nature of the dichotomy has long been recognized. Setting aside any ideals in the matter, the fact has been that bureaucratic administrators play a very crucial role in policy making. Really, they never were simply the neutral executors we thought them to be and perhaps wished them to be.

As government in western nations has grown exceedingly complex, with a nearly infinite variety of interests to be balanced, officially designated policy makers like legislators cannot encompass the expertise required for setting policy in the numerous complicated areas of modern civilization. Until recently, official policy makers have had to rely on bureaucrats for policy development. In legislative sessions we have regularly seen the cadres of bureaucrats submitting position papers, testifying before committees and releasing "reports" to the mass media. Because of his expertise, because of the political favors he can do in making job appointments or in releasing valuable information to selected politicians (those favorable to him), because of the economic powers he wields through the deployment of his agencies, installations and resources, and because of the interest groups he can mobilize among the constituencies of his agency, the bureaucrat has always been in a powerful position to influence public policy. In the arena of criminal justice, at least two outstanding examples exist. Consider the impact J. Edgar Hoover had in promoting anti-crime and anti-subversive legislation when he was Director of the Federal Bureau of Investigation. An equally edifying example can be found in examining the role that Harry Anslinger played in federal marijuana legislation by creating the image of dope fiends and the marijuana menace in the minds of Congress. Think of the millions of testimonials, annual reports and news releases regularly

put out by thousands of police chiefs, sheriffs, wardens, correctional administrators, court managers, etc., and one soon realizes that criminal justice bureaucrats are no different than other bureaucrats in terms of their profound influence on policy making.

In referring to the reliance of legislatures on bureaucrats in connection with policy making, the phrase "until recently" was used. That is because in the aftermath of the Nixon-Watergate debacle, we are witnessing the clear ascendancy of legislative power over executive power. The balance undoubtedly will shortly be redressed with executive power strengthened to near its former level but in the meantime legislators are riding high. The evidence for legislatures feeling their oats is found among the following:

- (1) Legislative staffs are dramatically increasing in size to the point where legislators have substantially developed their own in-house expertise in a growing number of areas, thereby making legislatures less reliant on executive bureaucrats for information and expertise. While legislatures pare the bureaucracy of the executive branch of the government they are awesomely expanding the legislative bureaucracy almost to a point where we can see two parallel tracks of administration, one political and one managerial - similar to the Russian system involving political commissars.
- (2) Legislatures are insisting on overseeing bureaucratic management at lower and lower operational levels. (Legislators proposed a constitutional amendment in Florida which would have allowed legislative committees to reverse bureaucratic decisions without legislation. Fortunately it failed.)
- (3) There are many legislative proposals, so-called government in the sunset proposals, which would automatically dissolve government agencies after a fixed term, thereby making the agency subject to periodical renewal by the legislature.
- (4) Legislatures are forming their own budgetary monitoring systems.
- (5) With legislative instigation, there has been a high turnover among administrators with many cases of turnover due to criminal prosecution. In Florida, we have recently indicted our State Treasurer, State Commissioner of Education and the State

Comptroller. There is a noticeable difference between the way legislative miscreants are handled and the way executive miscreants are handled.

- (6) Legislation in general has become more controlling and in criminal justice we see a spate of mandatory sentencing statutes.

All this is not to say that bureaucracies have lost their policy making influence. They have lost some of it but a tremendous amount remains, especially within the criminal justice bureaucracy. The criminal justice bureaucracy generally enjoys a favored position because of the vital service it performs and because of the opportunity it presents for making political hay. In any case, the special benefit of bureaucratic government has yet to be cited. The special benefit relates to the policy making influence of the bureaucracy.

It is axiomatic that bureaucracies are formed as a result of pressures from special interest groups and later primarily serve those groups. Political theory holds that government agencies exist to serve the general public welfare but on balance it is evident that they are, at least, particularly beholden to clearly identifiable interest groups. Does the Department of Agriculture scrupulously make its decisions on the basis of the general public interest or does it somehow lean toward supporting the farmer? Consider the relationship of the FAA and the aviation industry or the ICC and the transportation industry. Further, consider the relationship between the regulators and the regulated is the heavy traffic between the two. Federal Communications Commissioners move into presidential appointments with broadcast corporations, Defense Department procurement officers retire into administrative positions in defense industries, union officials become Labor Department commissioners, etc., etc.

Despite the somewhat questionable relationship between government agencies and their client groups, the keen ability of government bureaucracies to represent the interests of special groups has a most positive aspect. In a nation of well over two hundred million people with uncountable combinations of interests, it is patently very difficult for a relative handful of legislators to channel expressions of the multifarious interests. The bureaucracies, federal, state and local, go a long way toward filling the representational gaps. Through large networks of local and regional

offices, the bureaucracy is able to get close to the grassroots and, perhaps more important, it is able to apply special expertise in understanding social problems. Not only is a bureaucracy able to convey special interests in a way which is beyond the means of the legislative apparatus, it is able to help effectively articulate those interests. The poor and the uneducated, for example, would be hard put to have their needs clearly heard by legislative policy makers were it not for the existence of the bureaucracy's control of welfare and education. The gains we have made in promoting the interests of minority groups and women would have been impossible were there not government bureaucracies built around them to help articulate their needs. In our vastly pluralistic society, the bureaucracy has a representative function which should permanently bury the politics-administration dichotomy which holds the bureaucratic administrator in a sterile, machine-like role. The dichotomy does not even hold in the private sector where we have seen public policy units emerge in various scientific organizations. Atomic physicists no longer narrowly pursue their scientific investigations into nuclear reactions without consideration of possible adverse consequences for world society. Psychiatrists have removed homosexuality from the taxonomy of psychiatric disease on grounds of social consciousness. Policy making is pervasive throughout societal organizations and it is naive to think that we can achieve regiments of policy-neutral people who blithely execute the policy of others in some vague "professional" way.

If at this point, the premise of the bureaucracy's role in criminal justice policy can be accepted, a review of bureaucratic barriers to correctional reform easily follows. The review turns on two seemingly natural characteristics of a bureaucracy: The implacable urge for survival; and a production and efficiency value system.

One need not spend time arguing the bureaucracy's drive for survival, it is too well known. What tends to be overlooked, however, is the meaning that bureaucratic survival has for reform. To put it in the form of a law, Czajkoski's Law, if you will, program change which sustains bureaucratic growth is more likely to occur than program change which diminishes bureaucratic growth. The best way to estimate a new program's change for adoption and retention is not through the currently fashionable evaluation

procedures which measure the worth of the program itself; the best way to gauge the program's effect is on the growth of the agency to which it is attached.

No+ long ago, a dynamic correctional administrator in Massachusetts, Jerry Miller, drastically sought to induce community-based treatment by closing down large youth prisons. He suffered a lot of criticism and negative pressures because, ostensibly at least, it looked like the Massachusetts youth service agency was about to be whittled down. It worked out all right, supposedly, inasmuch as closing large institutions did not result in any substantial decrease in the size of the agency. The slack was taken up by the creation of many new group-home installations to replace the larger institutions. The new result was an agency un-reduced.

When a federally financed study in Kansas City seriously questioned the efficacy of police patrol, by suggesting that patrol forces could be reduced and the agency diminished, police administrators around the country set up a howl which is still being heard.

In common sense terms, it is understandable that bureaucrats who have jobs and careers at stake are likely to take a dim view of any innovative program which threatens a lessening of their career development. As a hypothetical proposition, suppose unequivocal research finds correctional counseling is wholly without significant impact on recidivism. What reaction is expected from the individuals who have obtained graduate degrees in correctional counseling and are making a comfortable living pursuing that career line? Will they support program changes which would put them out of jobs? Hardly. Yet we now have afoot a movement which directly threatens jobs, careers and statuses of all those involved in the rehabilitation model of criminal justice. For years we have seen annoying accumulations of evaluative research which challenges the worth of our elaborate correctional operations. Martinson was by no means the first to present such cumulative evidence. There was, for example, a monumental study by Berelson and Steiner in the early 1960's published in a book called "Inventory of Human Behavior" which, after reviewing what was being done on the social sciences and the so called helping professions, demonstrated that the means we have been using for modifying behavior, criminal and otherwise, are effete indeed. The San Francisco project which raised doubt as to

the effectiveness of probation counseling, the Russell Sage Foundation study which showed no difference in the delinquency rate of high school girls when they receive preventative social work and the classic study by Eysenck which showed that psychoanalytic treatment produced cures at a rate no better than the spontaneous remission rate, are further examples of the severe doubts which have been raised regarding rehabilitative treatment.

Martinson creates a furor with his study not because he has said something new or more convincing than what has been said before but because certain factors have made the time right for him and for others playing the same theme. To only enumerate them, these factors are:

- (1) An apogee in the concern for individual rights and due process.
- (2) The very dramatic decline in the influence of psychoanalysis which enthralled the arts and social sciences for about fifty years.
- (3) The challenge to executive power nurtured in the 1960's and given impetus by Watergate.
- (4) The articulation of minority group concerns.
- (5) New perceptions of the crime rate which seems to rise relentlessly.

The resistance to the dismantling of the rehabilitation model comes obviously from those who have vested interests in it. It is no surprise that the former President of the American Correctional Association repeatedly lacerated Martinson. The response to the attack on the rehabilitation model is that rehabilitation efforts have never been adequately funded so as to be able to demonstrate their true worth and that evaluation research and corrections has been poorly done. Besides, there is substantial research to show that corrections is working. That's undoubtedly true and what we see is a strong drive to invest more in the rehabilitation model even as it is being severely undermined. It herein contended that while the battle may seem to be fought on empirical grounds, the real battleground is a complex of political and perhaps ideological interests.

Having discussed the bureaucratic need for survival as it affects criminal justice reform, it is time to look at the production and efficiency value system mentioned earlier. While criminal justice agencies are nominally set up to provide specific services in support of general goals having to do with justice, the protection of individual rights and the general public welfare, these goals tend to be displaced by bureaucratic goals of production

and efficiency. Means become ends. The bureaucracy's virtue of dispassionately handling individuals according to precedent and official rules, leads to a depersonalization process wherein a desire for production and efficiency becomes paramount. The demand for accountability, good in itself, has encouraged our criminal justice agencies to report statistics on the number of cases handled and the number of dollars spent. LEAA in its various funding projects has caused criminal justice agencies to think in terms of system-flow and ways of improving such flow. In addition to the line personnel in a criminal justice agency, there are to be seen growing numbers of researchers, evaluators, statisticians and data processors who are removed from the client arena of agency operation. The result is a strong tendency to see individuals as units to be processed. The goal becomes processing more units with greater speed and at less cost. The agency is thus measured on the simple efficiency criterion of input versus output. What is admittedly designed to aid program change serves to stifle it by extraneous demands. Production and efficiency become ends in themselves. If a court can be aided in getting more people through its system faster, attention is seldom paid to the quality of justice being dispensed. It seems to matter not whether the court is sufficiently acquitting the innocent or sufficiently convicting the guilty, it is enough to measure cases processed. Actually, as Blumberg and Packer have pointed out, the production and efficiency value system works against the potentially innocent.

The inertial characteristics of a bureaucracy affect correctional reforms in two ways: (1) Bureaucratic forces will resist diminishing effects; (2) Bureaucratic forces will strengthen expanding effects. On the latter point, changes in the criminal justice system can easily be made if they result in expansion of the system. Thus, we have a number of reforms which have easily been adopted despite their potential dangers. They have been easily adopted because they represent bureaucratic growth. The diversion fad is an example. The concept of diversion holds that certain worthy individuals will be spared the stigmatization and the debilitating effects of being ordinarily processed through the criminal justice system. What might appear to have diminishing effect on the system actually enlarges it by creating new appendages. The diversion we hear about is not a true diversion where individuals are released from the system without strings

attached. Nay, they are released to informal supervision by probation officers, by counselors working out of prosecutors' offices and by specially created governmental diversion units. The inherent danger of this kind of diversion process is that the state is able to take supervisory control over individuals through an administrative procedure rather than a judicial procedure. Such control then seeks to promote non-legal standards of behavior. Diversion actually encompasses more and more people into the state net. Not only is the diversionee subject to supervisory counseling but in order to get at the whole problem, the diversionee's family is involved. In some states there is a move to make the family involvement mandatory. Diversion is accepted for a number of reasons, not the least of which is the fact that it is a great opportunity for expanding the criminal justice bureaucracy. Perhaps the most elucidating example of bureaucratic influence on correctional change arises from the problem of drug abuse. Once there is established a government agency on drug abuse, that agency will inevitably seek to maintain itself despite erratic variations in the problem assigned to it for management. No one is naive enough to think that any drug abuse agency will dismantle itself in proportion to measured decreases in drug abuse. In such an event, the slack would be taken up by increased service to fewer clients. Ultimately as clients continue to diminish in number to the point where increased services could no longer balance the agency's operating position, a new definition of client would emerge to restore the numerical base. It is a well known phenomenon, one that is easily disguised by invoking values relating to general welfare.

If a narcotic addict treatment agency, set up to handle persons convicted of narcotic offenses convicted by the court, finds the pace of client referral insufficient to support its apparatus, it will quickly move to accept addicts convicted of offenses which do not directly involve drugs. If referrals still do not keep pace, the agency's concept of client can be broadened to include addiction problems unrelated to any specific crime. Still further, the addiction criterion gives way to an abuse criterion and finally the agency may see clients who have not themselves been engaged in drug abuse but who have been "exposed" to it. These steps of redefining clientele for the sake of numerical support are preceded by or accompanied by attempts to increase service by kind. Thus, a drug abuse agency might

grow from providing social work services to providing psychiatric services to providing vocational services, educational services, etc., all for the sake of enhancing the agency's particular mission and promoting the general welfare of the community.

Buried in the axiom that bureaucratic agencies possess an inherent drive for survival beyond the scope of their mission, is the understanding that bureaucratic survival means continuous expansion. The axiom signifies, in the case of the drug problem, that drug abuse agencies, once established, serve to support the existence of the general body of their clients by definitional means if by no other.

As the drug abuse problem has fitfully passed through arbitration by judicial and psychiatric systems, it is moved into a bureaucratic system where its singular identity is crucial. Judges without drug offenders still have more cases than they can handle to support their judicial occupation. Without drug patients, psychiatrists would still have ever increasing caseloads. But where would the specialized drug abuse agency be without drug abuses? The argument is that by passing the drug problem from the hands of multi-problem organizations, like the courts or like general psychiatric facilities, into the hands of single-problem organizations like a government drug abuse bureaucracy, we guarantee the continued existence of the problem in one way or another. In a single-problem bureaucracy, agency and client become locked into a commensal relationship that is self-perpetuating. The system is dramatized by the practice, maintained by several drug abuse agencies, of officially hiring ex-drug abusers as professionals in treating active drug abusers.

In conclusion, criminal justice reform is not possible without taking into account the self-interest of the criminal justice bureaucracy and its complicated constituency.

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"Experiencing the Criminal Justice System"

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In reflecting upon my experiences in the criminal justice system, I would like to touch on every aspect, including the police, the courts, and the jails. However, I decided to emphasize the juvenile institution experience, and then the adult first experience.

My first arrest was at the age of thirteen, and for the next seventeen years I was locked up for a total of over eleven calendar years. I had sixty years in sentences, and I was a drug addict for many years.

Before that, just to show you I was not always in trouble, I was a fairly normal, well-adjusted kid, in many group activities. I attended Sunday School, had several friends and was a Boy Scout.

My first arrest was at age thirteen for breaking into the elementary school that I attended. A friend and I broke in through a window, ate ice cream, and pilfered some lockers. A juvenile detective took me out to the juvenile detention home where I remained overnight, and subsequently was released on probation. I was admonished to stay out of trouble, or I would go to Gatesville. A couple of months later I was arrested again for breaking into a hardware store. This time I was in the juvenile home a couple of weeks and was told that this was my last chance. I was released. The next day a kid I met at the juvenile home came by and we stole a car and ran away.

We were caught in Fort Worth, and were taken to the Fort Worth jail,

returning to Dallas the next day. I was to be sent to Gatesville, but my family arranged a "deal" for me to go to the county boy's home, and my mother had to pay for me to stay there. I was there about a month-and-a-half when I went home on Christmas Day. A boy whom I had met from the boy's home came by and we ran away, stole a car, and got caught the next day in Arkansas. We were sent to the Mineral Springs, Arkansas Jail and transferred to the Nashville, Arkansas Jail. This was a federal violation, so we were transferred to Miller County Jail in Texarkana, where we remained about a month.

By this time, I was already beginning to fall into the role, by doing such things as getting tattooed. After approximately a month, I went to court in Texarkana. My friend received probation, and I was sentenced to three years in a federal institution (I was still thirteen). I was taken to the National Training School for Boys, Washington, D.C.

After remaining in quarantine for a month (entrance procedure) I was assigned to Columbia Hall. Columbia Hall was the cottage where the smallest boys were assigned. Once placed there, I found that the kids established "rank" by fighting and this system was maintained by "officer boys". A group consisted of four boys with the "captain" acting as the leader. They obeyed and received their orders from the adult officers in charge of the facility.

Violence was a "way of life"; if you "backed down" from a fight, you were considered weak. Sexual abuse was a regular occurrence. Weaker boys were sexually abused by stronger and older boys. The tougher boys carried a "clutch" in their back pocket. This was a glove with the fingers cut out; this glove indicated a readiness and willingness to fight at any time. Two boys were killed during the thirteen months I was there. They died from injuries received from other boys. The threat of shipment to a worse institution kept the "toughest" boys "in line," and in turn they policed the other boys.

The main recreational event was card playing. "Cut poker" was one of the popular card games; the loser received a razor slash on his arm from the other players. Robbing lockers and discussing past and future escape plans were popular pastimes.

After thirteen months, I was paroled. I returned to Dallas, dropped out of school in the 9th grade, and began using drugs. At age 17, I stole a radio. After being arrested for burglary, I was taken to the "tank" in the Dallas County Jail. I stayed in the county jail a few months. I was in the cell with a guy who was a drug addict; he showed me how to extract opium from paregoric and inject it.

Finally, I went to court, pleaded guilty, and received a probated sentence. I had been out for eighteen months when I was apprehended with a sack of paregoric bottles. The police went to my mother's house with a search warrant and found a syringe. Charged with possession of narcotic paraphernalia, I returned to jail and went to the Texas Department of Corrections when I was nineteen. After receiving a five year sentence, I was classified as a three-time loser (because of my juvenile record) with escape and narcotics in my file. After being sent to Ramsey I ("the end of the line" for incorrigibles), I was assigned to the worst cell block in the Texas prison system - "3 Wing". They say it has changed, but it was really bad then. The toughest, meanest convicts were made "building tenders"; they ran the cell blocks. It was a new facility (it opened in 1956; this was 1958) but the conditions were bad; the plumbing did not work, and it was terribly hot. The stress of living under conditions of physical violence was the worst.

Ramsey was a farm unit, and I was assigned to a "hoe squad". The work was unbearably hard. If you did not work hard enough, your boss would "arrest" you. They would take you into the hall and hold court. You could not get angry, because then you were sent to solitary confinement. My first big "arrest" was on my first day of picking cotton. I did not know how to pick cotton, so I was one of the "low weights". One of the punishments was shaving your head; they cut an "X" across my head. Next I was placed standing on a coke box; I was "sentenced" to about three hours where everyone could see you. You would then stand all night, and go to pick cotton the next day. Cotton is their money crop, and it is taken very seriously.

I "made" parole six months before my sentence was completed. The first day out of prison, I shot morphine. I was caught with a lid of marijuana shortly thereafter and sent back to the Dallas County Jail. After plea bargaining, I received a sentence of five years for a plea of guilty.

(This was during the late 1950's and early 1960's when a possession of marijuana conviction carried a two year to life sentence.) I spent three more years in Ramsey, and was released at the age of 25. During the ensuing time period, I married and attended the University of Texas at Arlington. However, I also became a drug addict. After forging prescriptions, I was arrested and put back into the Dallas County Jail. I went "cold turkey" in Jail, because at this time there was no treatment in the jail for drug addiction.

I had six cases filed against me. They indicted me as an habitual criminal for three, which is an automatic life sentence upon conviction. I did not have an attorney, and it was hard to get them to appoint one. They began by offering me twenty years if I would plead guilty. I told them that I had only written a prescription; I had paid for the drug. If I had gone in and robbed the pharmacy with a pistol, I might have only received a five year sentence. But under Texas law, on conviction for the prescription, I could receive an automatic life sentence. The plea bargaining ended with my receiving seven years for a guilty plea. I was sent to the Texas Department of Corrections once again.

My head was shaved and the guards sprayed me for bugs. They began immediately to institutionalize you, to strip you of anything that makes you an individual. I was classified and sent to the Ellis unit, after a month of quarantine in the Diagnostic Unit. I remained there until I was 30 years old, when I was released.

From my experience and the way I have reacted to the punishment that was administered, I can say that punishment never made anyone a better person. It might make you a little more cautious, but from my observations, it caused an opposite effect, that of bringing about a revolt against the source of pain and anger which is society. Many convicts come out and feel that they have "overpaid", and they are bitter. When I got out, I could only get minimal jobs because of my lack of education. Psychologically, I associated physical labor with punishment, so it took me quite a while to overcome the anger, and actual physical sickness that I felt from this association. Inmates are not allowed to get angry while they are in; all the anger is repressed. This is the reason for much of the recidivism. Institutional life does not prepare you to live in society; adjusting to

prison society makes it harder than ever to live "out here". It destroys the individual dignity and reduces a person to an automated number. This is a far greater crime than the crimes which most of these inmates have committed.

What the system is doing does not make sense because it makes people come out of prison as more effective criminals than when they entered. The important thing that we need to realize is that the laws in most of the states are such as to make it very difficult for ex-offenders to work in a great many occupations. A bar in New York State requires a license, and an ex-offender cannot qualify for one. There are hundreds of occupations that fall into those categories.

The American Bar Association has a project which is concerned with changing the laws which prevent ex-offenders from working in a variety of occupations. The Law Enforcement Assistance Administration of The Department of Justice is giving funds to that project, because they recognize the stupidity of the situation. The Fortune Society gets people on radio and TV to spread the message. That enables a lot more people to become aware of the problem, to get in touch with them, and offer assistance in readjusting to the outside. A number of offenders thought the whole thing was a big con job. They came to the Fortune Society expecting to take advantage of the situation but they found that these people were on the level and that you could not fool them because they had been through it, and a lot of people have changed their lives. The National Alliance of Businessmen and the Human Resources Development through AFL-CIO have been working together in terms of trying to help develop job openings for the people who have come to the Fortune Society in need of help. You need the support of an ex-offenders group that is really tough, that knows what it is all about, and can relate to people.

-----Discussion-----

We even had some of the ex-offenders at our meetings on community crime prevention pointing out how people get "ripped off", and what to do to protect yourself. I think the idea of an ex-offenders group is very

important, as long as it is with these other approaches. You have to work with the ex-offender, not so much to get them a job, but to counsel and work with them to help them realize the problems they will meet.

Comment: If the organization looks too straight, you are not going to attract people that an ex-offender group should, and if it looks too far out, you are going to have the danger of it going down the drain. There should be a balance.

Comment: Throughout this entire conference I have heard almost everything concentrate on what happens to convicts, why they are convicts. Everybody seems to be almost in consensus that no matter what you do, it does not make any difference; the recidivism rates are always the same whether they go to minimum or maximum security institutions. The critical point is to help them when they first get out of prison.

Comment: There are some prisons (I can not think of what state) where there is a small furniture factory outside of the prison where the prisoners run it for profit and they return to the institution at night.

Comment: Ex-offenders can get loans to go to school, and the Texas Rehabilitation Commission will give you job training or provide you with tools if you have a skill. However, the majority of people coming out do not know about this program. The job counselor with whom I spoke before I was released did not inform me of any of that.

Comment: Manpower has a program in which they pay ex-offenders \$2.50 an hour to go to school to be trained. But the average person who goes there is going strictly to get the money, not the training. Half of them do not show up except when they want to. Somebody is just giving them something, not really helping them be self-sufficient.

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An Examination of the Criminal Justice System
In Light of Learning Theory

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In this address I have been asked to apply the principles of socialization, learning and behavior change presented in the first address to the experience of offenders in the criminal justice system. We have been fortunate, indeed, to have the excellent presentation by Don Taylor concerning his own experience in the criminal justice system, including 11 years of incarceration. Don and I have talked a good deal over the past two weeks about his experience and many of the principles which I will present. At times I will refer to experiences Don has already discussed, and at other times I will draw on my work as a psychologist in prisons, discussions with ex-offenders, and the research literature. The goal will be to take the experience of offenders, the raw data as social scientists refer to it, and attempt to understand it in terms of the principles presented earlier on socialization, learning and behavior change (Slaikeu, 1977b). Particularly, the attempt will be to ask several questions. What behaviors are presently taught by the criminal justice system? What activities/behaviors are maintained once a person goes to prison? What is the "product", if you will, of our criminal justice system? After looking at questions such as these, I will address myself to constructive changes that might take place, in light of the principles of socialization, learning and behavior change. For example, what behaviors should the system teach, and maintain? How might

this take place? And finally, in my closing remarks, I would like for us to look at what I will refer to as the "tradeoffs" in making changes in the present system, for they clearly exist. We will gain certain things and we will lose certain things by changing the system. My own view is that we need to make the changes, that the gains clearly outweigh the costs or losses. The pressures for things to remain the same, however, are great.

Let us begin first by reviewing the major concepts of learning and behavior change outlined in my address of yesterday. Concepts discussed included: The law of effect, punishment, modeling and imitation, labeling, self-concept, peer groups, norms and subcultures. Most important, however, is the law of effect, namely, that those behaviors or activities which are followed by rewards will tend to increase in frequency and strength; those which are not followed by rewards will tend to decrease. In addition, I pointed out that the research literature suggests that rewards are much more effective than punishment in shaping behavior. The latter, while it may present a momentary change in behavior, is ineffective in the long run. In addition, punishment has unintended consequences which subvert the original intention: Namely, punished persons tend to develop bitterness and anger toward the punishers, and to develop behaviors to avoid the punishment rather than to engage in the socially acceptable behaviors.

In addition, I outlined several important aspects of behavior change based on learning theory. These included the following. First, behavior which is learned can be unlearned. Second, in behavior change, it is critical to specify which new behaviors are to be learned. For example, it is not enough to stipulate that we want a person to stop being a criminal or stop doing criminal activities. We must also specify what it is that we want the person to do. Thirdly, it is important, when possible, for the new learned behaviors to be incompatible with the old behaviors. When this is the case, and when the new behaviors are encouraged enough, chances of success are increased. This may, for example, be helpful in explaining why former drug addicts are often times helpful in working with ex-addicts. It is difficult to talk against drug abuse and at the same time engage in the behavior of abusing drugs. Fourth, it is important for a system to literally teach the new behaviors. For example, it is not sufficient to tell a person not to steal; he must also be taught how to work at a regular

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job. Fifth, it is important, essential, that the resources be available both to learn the new behavior, and then to practice the new behavior once it has been learned. For example, it is important if a person is to learn that trade. And then, once a person has learned the skill, it is important that jobs be available to practice such skill upon release.

As a part of our review of the principles of learning theory and behavior change, we might do well to focus on a very basic premise about behavior change that is built into a learning theory framework. This has to do with the difference between focusing on what social scientists refer to as intrapsychic variables, versus focusing on social systems or situational variables in attempting to change behavior. Most of the criminal justice system is built on an intrapsychiatric model of behavior change. Intrapsychic refers to things that go on within a person's mind, within the psyche. An intrapsychic view suggests that most people in prison have "criminal minds," i.e., they think differently from the rest of us. In dealing with the criminal mind and moving toward rehabilitation, then, the idea is to get persons to change their view of things, to deal with their own "pathology". This means developing a disdain for criminal activities and cultivating an appreciation for honest work and for taking one's place in society as a law abiding citizen. Group counseling and group therapy programs in prisons and many other "good works" programs instituted in correctional institutions usually focus on changing a person's point of view. Inmates are supposed to "get a better attitude." At the end of the process of rehabilitation in prisons assessment about progress is often made using psychological tests, e.g., Rorschach Ink Blot test, or Minnesota Multiphasic Personality test.

An alternative to the intrapsychic view of criminal behavior is a situational view, one which, in light of the learning theory model presented in my first lecture, looks at the behavior in its various contexts, environments, or situations. It looks at what takes place before and after the behavior (in this case criminal behavior) to see if these environmental or situational variables can be used to change the behavior.

In applying a social systems or situational analysis to the prisons themselves, it becomes a matter of looking at the nature of the social systems. A fascinating and profound study, in this regard, was conducted by Philip Zimbardo, Craig Haney, and Curt Banks in 1971 at the Stanford

University Psychology Department. A summary of this classic study appeared in a recent issue of the newsletter, Social Action and the Law (January, 1976). I shall quote from that summary:

"In the summer of 1971 the experimenters constructed a mock prison environment in the basement of a Stanford University Psychology Department building for the purpose of studying the behavioral and psychological consequences of imprisonment--specifically, the subtle changes which might take place over time in a man who is introduced into a prison-like environment.

'Stanford County Prison' was replete with iron-barred cells, a prison 'yard,' various video and recording devices, and a 'prison populace' was secured by placing an ad in a local paper promising \$15 a day for volunteers to participate in a 'psychological study of prison life.' Seventy-five students responded, but intensive psychological batteries designed to screen out the least emotionally stable brought the final number down to twenty. Half of those were then randomly designated as 'guards,' while the other ten were to be the 'prisoners.' Neither group was given any specific instructions on how to perform the various functions their roles might require. And since all were paid equally, (regardless of what actually occurred) there were no tangible incentives for them to behave in one specific way or another.

"On the first day of the planned two-week long experiment, the volunteer prisoners were 'arrested' at their homes by officers of the Palo Alto Police Department, 'booked,' and delivered to the Stanford Prison where they were stripped, skin-searched, deloused, issued a uniform, towel and soap, and assigned to one of the three adjoining jail cells. The 'guards,' supplied with khakis, silver reflector sunglasses, long billy clubs, and whistles, were then put in charge of the operation.

"Despite preliminary fears on the part of the researchers that the subjects might fail to take any part of the simulation seriously, it soon became painfully clear that all involved were beginning to inextricably merge reality with the illusion of imprisonment, readily giving up their own identities to allow the assigned roles and social dynamics of the situation to guide, shape and eventually control freedom of thought and action. The guards enjoyed their new power, and delighted in harassing and degrading the prisoners. As the study progressed harassment escalated to more extreme levels, with guards often going out of their way to actually increasing their own workload just

to create additional opportunities for themselves to humiliate the prisoners. The most sadistic behavior, however, was saved for moments when they were alone with the prisoners, out of sight of the experimenters who were considered 'soft.' The prisoners themselves were mildly rebellious at the start of the experiment, yet became quite passive and obedient after a day or two, effecting a submissive demeanor of lowered heads, glassy stares, and blank expressions and mumbling almost inaudibly when spoken to. So enmeshed had they become in their roles as prisoners, that analysis of their 'private' in-cell conversation revealed that a full 90 percent of their talk related directly to prison matters and less than 10 percent to the outside world and non-prison topics. For all intents and purposes, the subjects were no longer college students partaking in a research project, but actual members of a prison society.

"Only 36 hours into the study, the experimenters were forced to release their first prisoner, who was visibly suffering from acute depression, disorganized thinking, uncontrollable fits of rage, and crying. At first they doubted his sincerity for it seemed inconceivable at the time that anyone could have been so profoundly disturbed by the mock prison in so short a time. Yet on each succeeding day they were forced to release one additional prisoner, each of whom evidenced some form of emotional breakdown.

"It was not until the sixth day, with the five remaining prisoners obviously shaken by the experience and appearing on the verge of collapse, that the experimenters were able to remove themselves from the situation enough to realize that the 'simulation' should be terminated.

"A series of encounter and debriefing sessions between prisoners, guards, and experimenters followed, which allowed for the release of pent-up emotions and discussion of the profound moral and social implications of the study. Charges of un-ethical conduct on the part of the experimenters were made, as a result of the extreme duress subjects were submitted to. Yet subsequent tests on subjects showed no signs of psychological impairment, and all participants in the experiment agreed that they'd benefitted from their experiences in terms of heightened self-awareness and insight, and greater understanding of the necessity for immediate prison reform.

"More urgent however, are the perplexing problems which the research by Zimbardo, Haney, and Banks presents to us. The careful screening process

and random role assignment of the subjects cancel out any possibility of a predilection among them towards the elicited behavior, leaving only the obviously pathological qualities inherent in the structure of the prison environment as the determining factors. From this, a genuinely terrifying thought emerges: within an astonishingly brief period of time, within a most benign of prisons free from racism, involuntary homosexuality and physical brutality, and within the context of a maximum two-week 'sentence,' the simulation produced sadism in men who weren't sadistic, emotional breakdown in people chosen for their stability, and loss of objectivity in men whose professional training should have prevented it. How horrible then our real prisons must truly be, where real prison guards possess real power in almost limitless quantities over prisoners who must struggle to adjust and cope with an environment infinitely harsher and more cruel than anything the Stanford researchers could have devised, and who live with absolute uncertainty as to their eventual deliverance from it."

The point is that the behavior of both inmates and guards is shaped by the social roles they find themselves in; all this is quite independent of individual personality traits.

If we look at prisons as social systems, in other words if we take a situational approach at looking at human behavior, and, if we draw on the principles of learning and behavior change which I have just outlined, the main questions are: What behaviors does our criminal justice system shape? What behaviors does the system teach? Since time is at a premium, I will focus answers to these questions on the corrections component or the prison aspect of the criminal justice system. We may well use the principles outlined to look at other aspects; perhaps some of these issues will come out in the discussion which follows this address. For now, however, let us examine corrections.

It is my thesis that the corrections component of the criminal justice system historically shapes such things as: Dependence as opposed to independence, fear or hatred of work as opposed to the positive view of work, a self-concept which makes a person feel more like an animal than like a human being, an inability to make decisions for oneself, bitterness or hatred of authority and the society that authorities represent. Let's examine some raw data, and see what our correctional institutions really teach.

Many institutions teach physical aggression as a means of problem solving. Don Taylor talks about an experience at the age of thirteen at a juvenile institution in Washington, D.C., where whenever an inmate had an altercation with another inmate, i.e., got into a fight or had a difference of opinion, they could request the opportunity to bare knuckle it, i.e., fight it out. This was legitimized procedure for dealing with conflict in the institution. Quite clearly the institution, then, taught that when a conflict arose between two persons, the appropriate means of resolving it was to fight physically. Other problem solving approaches--in other words, those required for living a law abiding life on the street, were not encouraged, were in fact punished in the institutions. Don was not taught how to talk out difficulties with other inmates in that institution.

Most large correctional institutions teach dependence instead of independence. I have talked to inmates who said that, believe it or not, when they were released on parole it was most difficult to even order a meal off of a menu in a restaurant. For years, everything has been so planned and structured in their lives that they found it difficult to make even the most elementary decisions "on the street". Prisons have taught inmates to be dependent on authorities for the necessities of life. Getting up in the morning is taken care of by a buzzer, as is "lock in" at night. Meals are all taken care of. Appointments to see physicians or other persons in the institution are managed by the authorities ("sick call" or "call outs"), with little or no individual responsibility on the part of the inmate. Inmates, then, have not been taught to take care of themselves in the institutions, though they are expected to when they are released.

Inmates are taught to bury anger. Consistently in my talks with ex-convicts and with inmates, I am told (and this is confirmed by most correctional personnel as well) that inmates are not to express anger verbally to officers. This is interpreted as expressing disrespect. Often it is referred to as inability to deal with authority. Inmates are rather taught to keep the anger to themselves when a directive from an officer bothers them.

At the University of Texas Counseling Center we offer assertion training groups for students. The attempt is to teach persons to, instead of passively accepting adverse situations, and instead of reacting aggressively to same, to be able to in an honest and straightforward manner deal assertively with

friends, co-workers, and authorities. Our view, and it is supported by the work of others across the country and by research, is that assertiveness is a functional skill in our society. However, I have no doubt that the assertiveness we teach people to use in the community would be viewed as "disrespect for authority" in most correctional institutions. Skills which would be functional in the "streets" (supposed goal of any rehabilitation thrust) are then punished in most prisons.

"Adjustment to the institution" is typically held up in corrections as a worthy goal. If inmates adjust, they are rewarded often times with accumulation of good time, which can lead to an earlier release. If inmates do "not adjust" they lose good time and in fact end up doing more time, including receiving fewer privileges. While inmates are taught then to adjust to the institutions, I would like to point out that adjusting to a correctional institution is one thing; adjusting to life on the street is quite another. The fact of the matter is that we teach people to adjust to authoritarian institutions, and then expect them to readjust immediately to life on the street. In my own research on group treatment in prisons, I have found out that many group therapy programs are run with the quite naive assumption that these two roles are consistent. They are, I would contend, incompatible goals. To teach a person to bury his anger, to play one down to authorities, to allow everyone else to make decisions for him or her is to teach him behaviors which are incompatible with making it on the street. We are priming people for failure once they are dismissed from prison. Is it any wonder, then, that persons who have immaculate prison records within the prison, often commit new crimes, often most heinous crimes, on release. Appallingly enough, I have heard from correctional personnel that they do not understand this since "he was a model prisoner." I want to suggest that being a model prisoner in institutions as they presently exist will in no way help a person to live responsibly on the street. Indeed, with most institutions in this country, being a model prisoner in fact works against making it on the street.

Prisons presently teach persons to be tough, devious, in their dealings with peers as well as with authorities. Most members of this audience, I would suppose, are aware of novels or movies which talk about rough prison life. From county jails to maximum security institutions, we crowd persons into large, walled in, oppressive jungles whose goal is security, keeping

people in, with the outside hope that while they are in they will not hurt each other too much. (This, however, cuts two ways in that the hostile atmosphere is often manipulated by the authorities in the service of security.) Given this situation, and again I stress the word "situation," social context it is important for people to learn how to cope, how to survive. The situations are structured so that deviousness and physical strength are prized-- these will get you through. Prisons then teach people to be tough, to be wary.

Prisons also teach paranoia. Richard Steiner of Brooklyn College at the City University of New York in a recent issue of Social Action and the Law describes in vivid detail the experience of one particular inmate, Paulie. It shows that which many persons acquainted with corrections already know about: What it is like to have to watch your "back." Paulie describes it: "Having someone 'at your back' means someone is looking out for you, making it difficult for you to be attacked from behind. White convicts who talk to black convicts face ostracism. 'They're mutts,' Paulie says. 'You know, like a dog that's a mixed breed, white with black. No one talks to them, no one's at their back if someone pipes 'em.'"

Steiner notes: "The expression 'pipe 'em' is, simply stated, the act of hitting someone over the head with a pipe. Pipes are not part of the basic equipment issued to prisoners, but 'you make 'em out of anything. A piece of broom, whatever you can get your hands on. That's how it is. Like knives. When you eat in there, all they give you's a spoon, and when you leave the dining room, you gotta drop the spoon into a bucket, and there's a guy standin' there by the bucket. Only he's just listenin' for the "click", so what you do is, you break off the round part of the spoon, and when you drop that in he hears the "click". The long part, when you get back to the cell, underneath the radiator it's hard metal, so you sharpen the long part of the metal and you got a knife.'

"Grounds for piping someone are extensive. Paulie would give most whites the benefit of the doubt, but if the insult was made by a black, 'you pipe 'im if he brushes against you, if he doesn't say "excuse me", small things like that, or no one respects you. Yeah, I know it's stupid, doin' that just 'cause somebody's black, what could I tell ya? You gotta go along with the program. Why is it that way? Maybe 'cause it's traditional, that's how it's

always been."

Prisons also teach people to "do your own time." It means take care of yourself and don't worry about the next guy. On the street, however, we expect good citizens to respect and look out for their fellow man. Not caring, not looking out for the other guy is what we encourage in prisons. Interestingly enough, however, friendships do develop in prisons, which runs counter to the press of most institutions. My own explanation of this is that there are still very human qualities which some institutions, no matter how inhumane, can not completely subvert.

We teach people to have a low self-concept in prison. Among the many conclusions about prisons one can draw by listening to the experiences of Don Taylor and others is the idea that inmates are taught to feel less than human, that they can be treated with physical and psychological brutality, as much so as in the animal. The long and the short of such an analysis is that over time the physical and psychological oppression take their toll on the way a person views him or herself. (By psychological oppression I mean those parts of the social system which work to lower self-worth and self-esteem, e.g., closely cropped hair, gray or striped suits, being referred to as a "number.") To draw on the concepts of labeling which I presented in yesterday's address, the prison system teaches persons to take the crimes in their lives, even though with many younger offenders the crimes might number only one or two, and use these crimes as the primary means of self-identification. For example, committing burglary, makes one a criminal, who can be treated as an animal, our logic seems to go. The cries from D yard during the Attica rebellion summed up one group of inmates response to this process very well: "We are not animals, and we do not intend to be driven or treated as such." I have no doubt that many in hearing this quotation may hear it as overly dramatic, overly rhetorical. It may be. However, unless we have experienced what it is like to live in prison for a period of time, we would do well to suspend such judgments. The point I wish to make is that prisons clearly teach persons to have low self-concepts. In numerous ways, all the way from the way we dress inmates, the way we feed them, the way we house them and force them to spend time, we give clear messages regarding their self-worth. And, of course, this low sense of self-worth takes its continued toll later on.

We teach persons to hate work. Again we can refer to the experiences of Don Taylor, when he said that he literally developed a physical sickness reaction to the thought of work. This was drummed into him in his days at Ramsey I. Other institutions, while they may not teach persons to have a physical and psychological aversive reaction to the thought of work, clearly teach people to loaf. The activities which are usually encouraged are those of card playing and quietly, slowly, "doing time." Is it any wonder, upon release, that persons don't show up for work at 8:00 a.m., and have a hell of a tough time staying until 5:00 p.m.

In all of the examples given, it is to be remembered that we are talking about target behaviors which are isolated and then reinforced in prison situations. These are behaviors which are shaped, and which by implication the system sees as acceptable ways of doing time. They are rewarded by peers in prisons and by the authorities. These behaviors, however, as I mentioned above, are the very things which are most incompatible with making it on the street or with living a life of a law abiding citizen, free of new crimes. We are left with a situation, then, where one component of the criminal justice system, its system, its corrections component, which is set up to set inmates apart from the rest of society to protect society, actually engenders such hate and bitterness, and teaches such dysfunctional skills, that we increase the probability of new crimes being committed.

Putting persons in prisons, then, as punishment has these consequences. What might be done to change the situation? Again I will refer to the metaphor of victims drowning in a river which I introduced at the close of my address yesterday. You will recall that I drew a picture of a river, and asked you to imagine yourselves sitting beside it on a pleasant summer afternoon. As the story unfolded, I led you through an afternoon in which you ended up pulling several near-drowning victims from the river, trying to rescue them. It was only after rescuing several such victims that the question was raised: I wonder who is throwing persons into this river upstream, and why can't these people swim? The metaphor was spelled out to suggest the difference between prevention of crimes and intervention into the lives of those who have already committed crimes. Criminals, in this story, were those who were pulled from the river. The criminal justice system was pictured as that set of processes and structures used to deal

with persons after they had committed crimes, i.e., after they had been washed downstream. Prevention, on the other hand, had to do with what took place. We discussed these factors as social and economic injustice, and racism. We suggested that unless changes are made on these fronts, we will continue to have the levels of crime we presently have, and more. If we assume that we will have prisons, and if we assume further that while in prison we will work with inmates to help them take their place as productive citizens and not commit new crimes, how might the system be changed?

First, we would have a system which would be aimed at reducing any tendency toward retaliation toward inmates (i.e., trying to pay them back for something that they did earlier.) As the comments of Don Taylor and many others have suggested, the sort of physical punishment leads only to bitterness, resentment toward the punisher, which take a tremendous toll upon release; at best, it simply leads to avoidance behavior, i.e., avoidance of the punishment, not to avoidance of the criminal acts that lead to imprisonment in the first place.

If people are going to be incarcerated for any period of time, the conditions should be humane. The situation in Sweden is illustrative at this point. The Swedes argue that since rehabilitation in prisons does not reduce recidivism, then at least prison conditions should be humane. Why? They contend that criminal behavior is tied to the fabric of the rest of society, and further that those who commit crimes must be viewed as persons. It would be unfair, then, to "harshly punish" deviants simply because society has not yet found ways to prevent the criminal and offensive acts (Slaikeu, D., 1976). Prisons then become means to separate offenders from society, such separation done in a humane spirit rather than in the spirit of retaliation.

Second, in preparation for release (or, as a part of work release) there would be training programs which focus on such basics as the skills of approaching the job setting, staying on the job, living on a budget. In addition, assertion training skills would be taught, the idea being that persons need to learn how to deal assertively (not passively or aggressively) with frustrating situations on the street. Group therapy or group counseling would focus on the behaviors and skills necessary for life on the street, and not on how a person "adjusts to the institution," the latter being recognized

as a destructive adjustment in the long run.

In summary, we would attempt to teach those behaviors which have to do with living productively in our society. In addition, society would make available resources to practice the behaviors once they are learned; e.g., after learning how to work at a job, having jobs available. I am talking here about federal programs which would move us toward a full employment economy. Another way to look at the issues is simply to take what was presented in Don Taylor's talk and the analysis presented in the beginning part of this lecture on what prisons now teach, and reverse them. We saw, for example, how in many institutions inmates are taught to fight physically whenever conflict between two persons occurs. We would attempt then to teach inmates to talk out problems, or, if needed, to insulate themselves from problems instead of using physical violence. Similarly, we would attempt to reward rather than to punish work. Instead of having work be an aversive concept, we would attempt to make it a positive concept, one leading to monetary and social rewards.

In outlining these ideas under the rubric of "rehabilitation," it should be noted that many people say "that has already been tried and it didn't work." Without reviewing a number of programs this afternoon, I want to suggest to you that these ideas have not been tried. To be sure many rehabilitation programs have failed, but their failure lies in the fact that they usually exclude some major component necessary for success. I recently reviewed the literature and published a paper on group counseling in prisons (Slaikeu, K., 1973). You would be appalled at the number of programs which naively talk about twin goals of rehabilitation: Adjustment to the institution and adjustment to the street. As I said outlined above, these goals are arguably incompatible. Still, groups are run in prison, the programs are called rehabilitation; when people conduct outcome studies on those who participated in the groups, is it any wonder why the results are discouraging. In a similar vein, numerous job training programs are developed with no jobs available at the end of the training. On one cell block at Attica, there existed a "vocational rehabilitation program," which amounted solely to vocational assessment, with little or no resources being devoted to job placement or job development.

The foregoing has to do with pre-release. Needed even more are alterna-

tives to incarceration, and post-release programs. I am thinking here of the work of the Fortune Society in New York City as it assists ex-convicts when they return home from prison. In addition, one might mention the work of Developmental Assistance for Rehabilitation in Austin (devoted to placing ex-offenders in jobs), and to such organizations as the National Alliance of Businessmen's attempts to relate ex-offenders to the business community. In a similar vein, it is critical that support systems are developed for offenders upon release. There is a need to apply what we know from the areas of mental health about crisis theory and crisis intervention to the critical six to nine months after an inmate hits the street (Slaikeu, 1977a; Speer, 1974).

What must be said also about what can be done upstream? Up to this point I have applied the principles of socialization, learning and behavior change to the corrections component of the criminal justice system, pointing out what the system at present teaches, and what might be done to teach more productive behaviors in the future. In my earlier address, however, I emphasized strongly that focusing simply on changes in the corrections component was most limited. Here we are dealing with persons who have already committed crimes, who have already become a part of the system. What about the others? What about prevention of persons even falling into the stream?

As has been mentioned several times, the most critical consideration has to do with moving on a national level in the reduction of the social forces of racism and social and economic injustice, for it is quite clear that their existence contributes to an overwhelmingly large percentage of criminal activity in this country. This is the most basic, the most primary, if you will, preventative stance which we can take. I am quite deliberate in wishing to leave with this audience the understanding that such things as the inability of black, brown, and poor white persons to get education, job training, and participate in meaningful careers, and to buy homes in any part of this or any town that they wish, is related to the perpetration of crimes both upon the middle and upper middle class, and the poor.

We now have data (Brenner, 1976) which shows correlation between increases in unemployment and increases in specific categories of crime. We need further to educate people to understand that there is a relationship

between such issues as: resources for education in lower income neighborhoods, on one hand, and incidence of crime on the other hand; between racial discrimination both in the public and private sectors, on the one hand, and "muggings" on the other.

I am aware that in framing the issues this way I am leaving out some very important categories of criminal behavior: for example, white collar crime, and criminal behavior of emotionally disturbed persons (called "psychopaths" by some). Quite frankly, these issues do need attention, but have been excluded from the scope of this lecture. The attempt today has been to look at a most glaring set of crimes, those which indeed receive more attention than others, those which are tied to the social and economic fabric of American life, and those which have most often been most misunderstood.

The issue which is most crucial, which is of paramount importance, is a very straight forward question: Do we really want to do what is necessary to reduce crime, especially the burglaries, robberies, and muggings which draw so much of our attention? As a society are we prepared to make the adjustments necessary to reduce their occurrence? And, psychologically are we prepared to give up the punishment mentality in the service of protecting our families and homes from criminal behavior? For the fact of the matter is we are now actually talking about "trade-offs." We can continue the way we have been, which is to elect leaders who spout a law and order rhetoric and who talk a punishment line, and allow the continuation of a system which sends offenders through the revolving door of corrections only to more and more embitter them and to reinforce their criminal behavior patterns. If we continue in this way, we will certainly not reduce crime, but we will maintain whatever sense of satisfaction comes from knowing we are punishing those who violate our security and whose life styles offend us.

On the other hand, if we recognize what I and others have referred to as "route causes" of a large percentage of criminal activity, namely economic factors, racial discrimination, and social injustice, and furthermore, if we recognize the basic principles of learning and behavior change which I have outlined in these two lectures, then we would take a very different tack. We would first of all move toward economic reform and reduction of racial discrimination which would allow for a full employment economy. In

other words we would make it truly possible for persons in the United States, no matter what their racial characteristics, to have their share of the fruits of this land. Doing this, remember, means our giving up something. What will we have to give up? We will have to give up the rugged "individualistic" mentality which suggests that even in today's complicated society everyone can pull up him or herself by his or her own boot straps. We will have to recognize that this simply has not been the case, that many of our rugged individuals who made it have been federally subsidized. We then will have to apply this lesson to other disenfranchised groups by creating jobs and real opportunities for advancement. We can, of course, choose not to take the alternate course. But, it is my firm belief that the cost of not restructuring our priorities is, and will continue to be, high--both for those in and out of prisons.

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THE VILLA CAPRI HOTEL was the site of the final session of the Austin seminar. Here, Don Taylor, Development Assistance for Rehabilitation, Inc., responds to the presentation just concluded by John Albach (center), Texas Council on Crime and Delinquency. James McDonough, Travis County Adult Probation Department waits his turn to comment.

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American Bar Association Standards and Goals for Corrections

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Ms. Clute, a lawyer and member of the American Bar Association, has done research at the Center for the Administration of Justice and has worked in the area of legal assistance with the A.C.L.U. and also with VISTA. She is currently the Hearings Administrator for the Michigan Department of Corrections at Lansing, Michigan.

As was mentioned, the planners of this conference invited the American Bar Association (ABA) to send someone to discuss the American Bar Association's Standards in criminal justice and particularly those on sentencing. The commentary of the Standards can be a very effective tool for citizen action in the criminal justice system. This conference is on punishment and for the last several days, punishment has been discussed in philosophical terms: What is criminal behavior? Can it be changed? Should it be changed? What is punishment? What is appropriate?

The next topic of discussion is the "vehicle" for punishing people in our society and the sentencing stage of the criminal justice system. In order to have an effect, it is necessary to come to some agreement about punishment issues; thus, it is necessary to become more familiar with the legal and political aspects of the sentencing stage of the system. This will help you "target in" on the points of the system; complaints, observations, and solutions can be stated. The next step after the philosophical discussion concentrates on the system itself. First concentrate on how it should work, and then examine your own local criminal justice system, and observe - see how, in fact, it does work. Then compare these facts, raising questions, proposing changes, and thus, having some real effect.

As it was pointed out in the film, the ABA Standards were written by a large group of experts over a nine year period. There are seventeen volumes of Standards which review the many stages of the criminal justice system (except corrections). They (the Standards) begin with police and

proceed through press coverage, fair trial, free press, and then through all of the court related stages. There are two sections on sentencing: one called sentencing alternatives and procedures, (this is the volume I will deal with today), and another one specifically on probation.

The Standards are an information base for the public. They do two things. First, there are standards which are discussed in the film called the "Black Leather" Standards. Those are particular standards or proposals on specific issues dealing with various areas of the criminal justice system. Each standard is accompanied by a lengthy commentary. The commentary discusses how the standard was developed. As a whole, the Standards are principles or guidelines, not requirements. There are recommendations to be implemented by states in their own criminal justice system, not federal coercion.

The ABA believes the implementation of the Standards would make the criminal justice system more fair, more consistent, and more humane. It should not only bring more fairness, consistency and humanity into the process, but it will make it more of a process, instead of individual isolated happenings to a defendant. It is called a system now, because a defendant goes through it, but no one in the system believes it is very coordinated. The Standards are written and proposed in a very interrelated comprehensive approach to criminal justice; implementing them would make it more of a process, and it is very important to implement each piece for success.

The sentencing standards try to make a rational process of the post-conviction happenings to the defendant. Legislative direction and judicial decision making are approached in these standards in order to make decision making and sentencing accountable. The ABA Standards make many choices and take positions in several philosophical issues regarding sentencing. They then develop guidelines and procedures for the practical implementation of those choices.

Once it is decided that there should be a certain kind of sentence, once the broad philosophical principle is decided upon, those sentences have to be implemented and imposed in particular situations. How do you go about doing that? The ABA believes a number of principles are required for a fair and consistent application of any sentences. No matter what the substance of the sentence is, there are certain principles requiring procedures which

must be followed in order to ensure the sentence is imposed fairly, consistently, and immediately. Sentencing is definitely the most important stage for the vast majority of defendants. In most courts, 85-90% of defendants plead guilty; they do not have trials. Until very recently, even though the sentencing stage was very important, it was largely ignored. Certain lawyers have always concentrated on the fair trials, the "due process" in finding guilt, ignoring the fact that most people admit their guilt, pleading guilty for one reason or another. The issue of sentencing is enormously critical.

The following is a brief summary of the ABA Standards on sentencing. The purpose is not just to process more information, but rather to offer a perspective on how the Standards can be an effective tool for public interests, enhancing the citizens' influence in creating an effective system. The ABA commentary reveals the multiplicity of issues, the arguments, the problems, the "pros and cons" that are rejected or accepted in order to arrive at each standard. So for each specific area under discussion, you have gathered together all the best thinking, including the "pros and cons" on that issue. The ABA presents one conclusion, but you can review other opinions in the commentary. The commentary is a good way to take a fairly in-depth look at the issues, competing values, and alternatives on particular principles, issues, or subjects. The commentary is a tool for changes in the criminal justice system. The more one knows about the criminal justice system (sentencing in particular), the more one realizes how complicated it is. Once discussion is encouraged on issues relating to sentencing philosophy, structure, procedure, and implementation, an unlimited number of questions arise about the issues. The ABA Standards and commentary reviews all of these reasons why certain choices were made and what the various alternatives are, why they were rejected, and why one might reject the ABA position. By processing this information, the public will be more equipped to approach the local criminal justice system and local decision makers. Citizens will have much better insight into why this system is the way it is, and whether it can reasonably be changed.

This conference has been about punishment, whether it is good or bad, whether we ought to change the system, or the criminal, or either of the above. If the behavior of the criminal is to be effected, however, by the

criminal justice system it will be at the sentencing and corrections stages. If society can cause the changes in criminal behavior, it is more likely to be in these areas, rather than in some earlier phase in the criminal justice system. Therefore, the way the sentencing and correctional systems are designed is all important. Until very recently, much less attention has been paid to these stages than to the police and trial stages.

The ABA Standards generally were developed to deal with three main concerns. The first two concerns are a little repetitious; these state that the sentencing decisions are both enormously important and enormously complex. The decision whether to incarcerate someone and how lengthy a sentence to impose is critical, if there is to be a purpose to sentencing. Yesterday, the discussion focused on "rehabilitation versus punishment or isolation"; no one mentioned deterrence. Basically, there are four purposes; three were discussed yesterday. If the purpose is just isolation, then we should be "locking up" everyone forever; that would keep them away from us. But our society does not really accept that. There is some fairness built into the system, no matter what the person has done. The sentence imposed is critical. There should be some relationship between what the person did, a consideration of public protection, and the decision about whether they need to be incarcerated, and if so, for how long. But the decision is very complex, because it is the prediction of future human conduct. It is not a science; it is extremely difficult, if not impossible, to identify the relevant facts in predicting or changing human behavior, thus measuring their importance and weighing them against each other to arrive at some kind of sentencing decision. Those are the first two concerns the ABA had: the difficulty, the complexity, and the importance of the sentencing decision.

The third concern is that the sentencing decision (as I stated before) has been largely ignored. There has been no assistance; it is such a difficult procedure that no one has tried to "figure it out." No one has tried to provide guidelines for rational decision-making. From the ABA point of view, sentencing (by definition), is an individualized decision, depending upon the individual defendant and the facts of the specific case. But in practice, more often than not, it often depends upon the individual judge as well. It depends upon who is making the decision. Therefore, probably the major purpose of the ABA sentencing standards has been to gather the facts

concerning the existing state of sentencing laws and practices. The goal of the report is to expose the shortcomings which exist and focus on the issues which need attention, thus generating debate and hopefully, agreement on solutions. The ABA Standards really are a document for study; they are not laws to be imposed. They cover a broad range of sentencing issues, as the following review suggests.

The best place to start is with the ABA Standards on sentencing, sentencing alternatives, and procedures. This section will review five of the major issues which are discussed in these standards and the kinds of impending issues involved in these areas.

The first major position taken by the ABA Standards is that the Judge, not the jury, should set the sentencing. The ABA very emphatically states this position. There are three reasons given in the commentary. One reason is the belief that jury sentencing increases sentencing disparity. One of the most common criticisms of the present sentencing system everywhere, even when a Judge is sentencing, is that there is a great amount of disparity, considering the fact that defendants in similar situations are given very different sentences. There are many reasons for this; some have to do with the broad ranges in the lengths of permissible sentencing. Certainly, offenders are not going to "fall" in the same narrow range. However, there is considerable disparity, and the ABA believes that jury sentencing increases or enhances this. The ABA holds that sentencing should depend upon the characteristics of the defendant. The jury only has an opportunity for information on the offense (i.e., whatever information came out of the trial), not on the particularities of the person. The personal information may be the most valuable information and the most relevant information to the sentence; however, it is not available to the jury in sentencing unless there is another sentencing trial which is obviously a very time consuming and expensive way to sentence.

Another reason the ABA rejects jury sentencing is that it invites compromise on the issue of guilt. A jury doubting guilt might well forget the principle of "proof beyond a reasonable doubt" and come to a reasonable compromise on a short sentence: "We are not sure if he is guilty; we'll give him a short sentence and it will come out all right." The opposite also

occurs. A "hung jury" cannot convict, and such a situation might result, even though there is agreement on guilt, because there is no agreement on sentencing.

The last item to which the ABA referred was the complexity of the sentencing decision. It is really a job for an expert. Many judges are not experts either, but at least if judges are responsible for the sentencing process, the opportunity and the proximity exists such that we could train them. We cannot train the entire population of the United States who might sit on juries. In order to better clarify the issue, the ABA Standards do not deal with capital cases, or capital punishment. The Standards have posed the question whether juries would be appropriate for sentencing those cases, but juries should not sentence a criminal on non-capital cases.

The next major area considered in the ABA Standards is the state of the State penal codes. When was the last time the penal codes were revised in this state? Generally, across the United States, penal codes are typically ancient, very chaotic, and they are done on a "piecemeal" basis. The overriding recommendation is that penal codes be systematic and modernized. Further, the ABA recommends that in accomplishing this modernization, only a small number of categories of crime be created. Although there may be many crimes, all felonious crimes should "fit" into three to five categories. Each category would include a "sentence range." The ABA views this as reducing sentence disparity; there would not be so many possible maximum sentences, and it would be more rational.

Currently, the proposal for presumptive sentencing is popular. The ABA position is in contradiction to that. If presumptive sentencing is to work, every type of crime would have to be very specifically defined, all the elements weighed out and a different element (e.g. a gun as opposed to some other type weapon), makes it a different crime. There are aggravating and mitigating factors which change the sentence. One must be extremely specific for presumptive sentencing to work. The ABA is very much opposed to this. The ABA believes that the legislature cannot predict all the fact situations. When the law tries to become something that specific, something is bound to be omitted. The legislature should think in general terms, make decisions in general terms, and outline categories in order to

affix maximum sentences. The legislature should set up the parameters for classification, but not try to predict all the crimes that might enter into that.

The next issue dealt with in the ABA Standards considers whether the sentence should depend on the criminal as well as the crime. The ABA says "yes," sentencing should be an individualized decision, dependent upon the person involved, as well as on the facts of the incident. Therefore, the legislature should provide sentencing for a wide range of alternatives which may be available in every case. The ABA would give discretion to the sentencing judge, as well as the authority to choose between gradations of supervision, ranging from a probationary type of supervision, to community facilities, to maximum security prisons. Presently, a prisoner is not considered a person; the purpose of a sentence is strictly punishment. The ABA does not support that position. It seems that mandatory sentencing is being much too rigid and inflexible.

Again, this recognizes that the legislature cannot predict all criminal situations. It is not a feasible kind of task. The ABA believes the mandatory sentences will inevitably end the unwelcome choice between justice and nullification of the law. In order to have a mandatory sentencing for armed robbery, everyone who "fell" into the category would get two years (for example) in prison. There would be some cases in which it would be unfair to do that. When you see the facts of the case, mandatory sentencing is not appropriate. The choice has to be made whether to impose the penalty even though it is unfair, because it is required by law, or to not impose the penalty, even though it involves nullifying the law. The courts would be put into a strait jacket and yield great injustices.

In Michigan, the usual complaint centers around some judges putting more people on probation than should be on probation, and other judges sentencing extremely severely. One common consequence of mandatory sentencing is that the discretion it removes from the judges is not assumed by the legislated system of sentencing. This discretion just moves to the prosecutor, who makes the decision what to charge, which sentence to request, and usually enforces the common practice of plea bargaining. If the object is to take the discretion out of the system, it does not do that; it just

moves it, making it more invisible and less accountable.

The fourth major issue in regard to sentencing is whether punishment should be the primary goal of sentencing. The ABA Standards say "no." They recommend that the sentence imposed in a particular case be a minimum amount of custody or confinement, which is consistent with:

- 1) The protection of the public;
- 2) The seriousness of the offense;
- 3) The rehabilitative needs of the defendant.

Imprisonment should not be the sentence unless there are affirmative reasons in that particular case which indicate its real necessity. The typical practice is to think of probation as a matter of "grace." Normally the defendant would be expected to go to prison, and only if there is some reason for leniency, will the "privilege" of going on probation be granted.

The ABA rejects this for the main reasons discussed in the commentary. First, studies (found in the commentary) show that non-incarcerated dispositions are likely to be more effective than imprisonment. One major impetus in coming to this conclusion is the realization that almost everyone who goes to prison will return to the community. They will be back on the streets in a relatively short period of time, averaging two and a half years. Just isolating someone for two years does not really serve society's purpose very well. The ABA's position is to work with the person in the community to which he will return; this is more sensible and less costly than lengthy incarceration. Also, the ABA recommends a partial confinement alternative or halfway house situation (a compromise between incarceration and freedom). But these do not exist in very many places.

The last but often ignored question is an important one. The question is, should the sentencing scheme be designed for the worst possible criminal or for the typical offender? The ABA says the "typical" offender. But in practice, sentences are usually determined with the "worst" offender "in mind," resulting in such high maximum sentences, and so many offenses which carry life sentence. When sentencing systems are being designed, everyone thinks of the worst possible case and adds thirty years to keep that offender incapacitated. But those types of offenders are relatively rare when the United States prison population is considered as a whole.

The Standards also recognize that a small number of offenders are extremely violent and extremely dangerous. Thus, the ABA provides procedures for dealing with these "special offenders" in a dual type of system. It would take the "special offenders" out of the "mainstream," in order to avoid "overpunishing" other offenders. Therefore, each offense would have two distinct sentencing alternatives. The first alternative would consist of a sentence, normally no more than five years for the typical offender, but most offenders would probably receive probation or some type of partial confinement. These would be "ordinary terms." The second sentencing option available, in every case, would be the "special term." This could consist of a sentence twice as long as the "ordinary term" for that particular offense. This "option" should be available for application to particularly dangerous offenders. The judges would have to give reasons for their "special term" decisions, and they would have to establish a procedure concerning their sentencing practices. This point (reasons and procedure) is a very critical one.

The preceding discussion outlines the basic principles of the ABA sentencing standards; the remaining sections of the ABA Standards concern themselves with recommendations for implementing these five basic principles. These recommendations include:

- 1) suggested sentencing procedures;
- 2) informational services (such as pre-sentencing investigation units);
- 3) whether the judge should be able to modify the sentence after it is imposed;
- 4) education for judges (emphasizing seminars);
- 5) judges visiting prisons.

In conclusion, all the ABA Standards on sentencing can be summarized as coming from the basic premise: sentences should be individualized. This premise determines the kinds of procedures and positions taken by the remaining ABA Standards. The facts of the case make all the difference, but the facts are always different.

The Standards are very readable; they are not written for lawyers. Everything is documented, all the reference sources are documented as well as other available sources in order to provide a solid information base.

After reading the ABA Standards, inquire and observe how your local criminal justice system is actually working. At this point, investigate the following things:

- 1) Find out whether pre-sentence reports are required in your courts, whether they are required for every case (or only for every felony). The sentence cannot be individualized if there is no pre-sentence investigation.
- 2) If there is a pre-sentence report, is it disclosed to the defendant, so as to discover erroneous information? Can erroneous information be contested?
- 3) Does every court have a probation department? Do the probation officers work for the court or do they work for the state?
- 4) Is there mandatory sentencing in your state?
- 5) Is there consecutive sentencing?
- 6) Are there provisions for "habitual offenders"? At what point in the sentence does the person become eligible for parole?
- 7) Are there community correction facilities? If not, why not? Is it because there is not legislative authorization, or is it because the community has been opposing the correctional facilities and it is impossible to establish them?
- 8) How old is your state's penal code?
- 9) Can a judge change a sentence after it is imposed? If it can be changed, is it completely at the judge's discretion or only for certain reasons?
- 10) Is there any sentencing training for your judges? If there is such training, does your judge attend it?
- 11) How often is restitution ordered? How and when (what type of offense) is it collected?
- 12) Is there sentencing disparity; what kind is it, and is it geographical disparity? Urban areas are more likely to have disparity than rural areas.
- 13) Lastly, how much is the cost to keep somebody in prison, or on probation, or in a community facility?

These are all questions that will help you find out how your system is working, and conclude if it is operating the way it should be under present law. Maybe the laws are being ignored or denied. It is very important to go out and monitor your criminal justice system decision-makers, systems and procedures, and challenge them in the effort to make them accountable.

-- -----DISCUSSION-----

Question: You have given us a wealth of information, and perhaps you "touched" on this and I missed it, but does the ABA address itself to having the judges held accountable to one another, such as one judge's sentences being reviewed by (for example) three other judges? Also, does the ABA recommend a written explanation by the judge, explaining how the sentence was determined? Most of our judges are elected; most "lay people" know nothing about the judge in question except that the Bar Association recommends this person be elected.

Answer: The ABA very much agrees with you and recommends both of these things. They recommend the judge state all his reasons (on the record) for whatever decision is imposed, and to accept standards called the "appellate review of sentencing." The ABA recommends that the defendant be able to appeal the sentence. If the sentences can be appealed, we could make judges more accountable. One of the "drawbacks" of such an ideal is that it is time consuming, but it does have the tendency to cause lenient judges to be less lenient and the severe judges to be less severe.

Question: By treating the people individually, aren't you violating "equal protection of the law"?

Answer: The equal protection applies to similar people in similar situations. The present process is an individual process, considering pre-sentence reports. That is what it is all about, looking at the characteristics of the defendant as well as the crime.

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A Model For A Rational Criminal Justice System

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First of all, as has already been pointed out this morning, it would be better to describe it as a non-system of criminal justice. Various components independently play their roles in dealing with the problem of crime. But in fact, one of the major problems is that the "non-system" is not set up in a coordinated way. This coordination is one of the efforts the ABA and the National Council on Crime and Delinquency (NCCD), is making.

I should tell you a little about what the NCCD is in order to "clear up" some confusion about it. The NCCD has existed for about 70 years as a non-profit, non-governmental private organization, working to improve the criminal and juvenile justice system. It has been compared to "Common Cause" or the "Nader's Raiders" of the Criminal Justice System. The organization has attempted to bring together the best research and thinking in the field, make proposals for change, carefully studying many of the presumptions made concerning crime, and in the areas they feel it is warranted, challenge some of those presumptions. The organization is often criticized for being too negative, and quite often criticized for making proposals which seem outlandish. Yet, if you go back into the last seven years, many of the proposals which were described as "outlandish", when they were first propounded, are now part of the program which we are talking

about today. The system of parole is one that was propounded by NCCD after research in a number of European countries where it was introduced, and it has probably been expanded in this country, because of the work of NCCD and others. Many of the present functions of our sentencing system are the result of NCCD. The irony is that many of the proposals we made years ago, we are now attacking on the basis of more recent research.

Most of the things being discussed and presented are little more than "tinkering" with the present system. We are proposing a little change here, a few changes there, and as a result, that even if many of these proposals were accepted, there would still not be much change in the crime rate. No matter how much you "tinker" with the system, no matter how much it is improved, the fact still remains that probably ten percent (10%) of those who commit some kind of crime are processed through our judicial system. We are dealing with the "tip of the iceberg" when the criminal justice system is discussed. Most crimes go unreported, hence the police are not aware of most of them. Many arrests made by police never result in a trial, and many offenders are not even incarcerated. Even so, more people are incarcerated in the United States than in any other country in the world, for longer periods of time and at greater cost.

NCCD, in working with community organizations, civic organizations and agencies and governments, is trying to identify what the problems are, and find some solutions. I wish we could say that we could hand out a booklet here that would outline all of the solutions to all of the present crime problems and the problems existing in the criminal justice system, but I cannot because we do not know all of the answers. However, there is a continuing effort to find solutions, and this is the main concern of this presentation.

Consider the irrational non-system now in existence. At the present time, police in the United States in many respects are our "front-line" defense against crime. They are horribly "hamstrung" by a number of problems which they have brought on themselves, some of which are functions of the way in which our society as a whole operates. The police generally are not well-trained. It is a tremendous handicap for them to try to make an arrest which will hold up in court, and find out that because of their lack of training and understanding of the criminal justice system itself,

they are unable to succeed because of the mistakes. The major focus has to be on training the police, so they may in every possible instance apprehend and prepare a case which our judicial system can handle. Another major problem is that many of our laws, (which the police are required to enforce), are outdated. These laws are anachronisms in our present social values; they are tremendously time-consuming in their efforts.

A study which NCCD recently completed in New Mexico is a good example. They compiled a cost analysis of police time for various types of offenses. Murder is probably the crime which most people fear the most. On the average in terms of police resources, approximately \$43.00 was spent by the police in order to apprehend each murderer in New Mexico. Marijuana offenses cost the police department (in terms of their resources) approximately \$93.00 a day, and the highest cost category of all came in public indecency, voyeurism, and other types of victimless crimes, ranging up to \$250.00 for apprehension. With statistics such as these in New Mexico, we begin to see some of the problems which face the police. We quite often insist on enforcing laws which are meaningless, in terms of the overall crime problem, and here is a built-in failure rate for police doing their real job, trying to protect the public. A great number of police activities are in areas which generally fall into the category of "victimless crimes." A tremendous amount of police time is spent in serving in more of a mental health capacity by picking up alcoholics, putting them in squad cars, taking them down to the police station, and booking them into jail. Studies indicate that slightly less than an hour is spent in police time for every case that is picked up for public drunkenness. It must be tremendously frustrating for a police officer, knowing that there will be no real result from that effort, except possibly that someone will be taken off the street for a night or two. It is very expensive to leave an individual in jail. A number of innovative ideas are emerging which can be applied to other victimless crimes.

In one community the police made arrangements with a local taxicab company to report public disorder and public drunkenness. At the same time that a police car was dispatched, they called a local cab company on a rotating basis. At about the time the police arrived, and sometimes even earlier, the taxi was there. If there were no other violation than public drunkenness, the police would put the individual in the taxi and send him

home. That was tremendous savings to the city, even though they had to pay for the taxi, because of the savings in police time. The police were pleased because of all the people that they apprehended in their normal routine, drunks often made the biggest messes in their squad cars, quite often became violent, and took up a lot of time and correctional resources. Police time is spent on victimless crimes like prostitution, certain types of gambling and drug offenses; they do not have time to work the more serious offenses. Maybe we should be considering some serious proposals, such as decriminalizing a lot of the "victimless" crimes, taking some of the unneeded burden off our criminal justice system, and putting the burden where it belongs, in the health field. This would allow our police force and corrections to deal with some of those problems more realistically.

In terms of our irrational non-system, the courts are faced with tremendous backlogs which, as you have heard in the film today and in the comments, has led to a system of "slow-motion justice." Thus, the effect that any real punishment could possibly have is diminished by the fact that cases may never get to trial because of the delay, and when they do, there is a diminished chance of conviction. Any real understanding of the relationship between the sentence imposed and the act committed is diminished by the tremendous time lag that is involved. There are many proposals, including those from the American Bar Association, which would help us speed up this process. The federal court is already using the omnibus in Texas on an experimental basis. It appears to be working very well. That is something we should be doing much more of.

Another problem is that it is not just defense attorneys who are seeking delays, but quite often the prosecutors are willing to wait. The longer the person stays in jail, the more likely he is to plead guilty, and avoid a trial, just so they will not spend more time in the jail. These particular problems of delay are seriously hampering the way in which our courts operate, and are defeating the basic purposes we have, constitutionally and socially, to provide a speedy trial and speedy punishment when necessary. The problems that the criminal justice system is facing right now are probably the most critical, the population in the prisons and the jails is rising at a phenomenal rate, and at tremendous cost to the taxpayer. Nationally, it is estimated that it costs between \$60.00 and \$70.00

thousand dollars per bed to build new prisons in the United States. It is estimated that the cost of keeping an individual, including some of the secondary costs, in prison for a year in the United States, is between seventeen and twenty thousand dollars, and in our youth prisons, (like those operated by the Texas Youth Council), the cost is often quite higher. Thus, corrections is presently really at a "crossroads." We have to decide if we are going to make massive investments of public funds to build hundreds of new prisons (In fact thousands of new prisons, if some of the proposals that are being made right now are adopted), or if some of the radical changes and alternative placements are made for those who would otherwise be filling our prisons. A community-based corrections bill was proposed that would begin to develop community alternatives to the massive incarceration that exists in Texas. The bill passed the House of Representatives and the Senate; however, it never got "off the floor" before the session closed. I hope that some similar efforts will be made this session. This is the sort of thing we need to be watching closely.

The basic question that must be considered is the number of people incarcerated, the time period involved or length of sentence, and the conditions under which they are incarcerated in the United States. The American Bar Association has been examining the issue of corrections, and as a part of that, they requested that the National Council on Crime and Delinquency prepare a tour for some of their staff to go to the Scandinavian countries to look at what was happening in their criminal justice system. The Scandinavian countries had probation services long before they occurred in the United States; they developed parole long before it was introduced in the United States; and they had indeterminate sentencing long before this country moved out of the frontier. Also, Scandinavian countries had systems of community based corrections many years before it was ever really discussed in this country. A number of things the United States has just adopted into their corrections system, the Scandinavian countries are already discarding. Indeterminate sentencing is "on the way out" in the Scandinavian countries; parole is being abolished in most of them; the use of massive institutionalization no longer exists; and alternative methods of sentencing which we are only beginning to discuss here are already being

used with a tremendous degree of success.

The following statements by NCCD resulted from this study of Scandinavian countries: "Public opinion polls have consistently shown that the American public believes that the police and courts are not being harsh enough in dealing with criminals. Although it has never been the subject of an opinion poll, most Americans would undoubtedly express the belief that in the United States, we have a court system which is one of the most lenient in the world in dealing with offenders. The fact is, this is not true. The sentences of Americans serving in prisons in 1974 were harsh indeed. Twenty-four per cent of them were sentenced to serve one to four years in prison; seventy-four per cent were sentenced to serve five years or more; the largest single group, fourteen per cent, were sentenced to serve from five to six years in prison; and seven hundred were sentenced to death. Except possibly for political prisoners in totalitarian states, no other country metes out this harsh a punishment to offenders. On January 1, 1976, the United States had an imprisonment rate of 215 people for 100,000 population, the highest in the world, and it was still rising. The length of sentences for people in the American criminal justice system is several times longer than that of its counterparts anywhere else in the world.

Let us look at three countries that take a different approach to dealing with their citizens who break the law. In the Netherlands, during World War I, the Nazi occupiers of the Netherlands incarcerated a large number of leading Dutch citizens in Dutch prisons. When the Dutch citizens were released after the liberation, they resolved not to tolerate the kind of prisons which had been established. Since that time, the number of Dutch prisoners has declined steadily, until the Dutch have the lowest number of imprisonments in the world. In 1976, the imprisonment rate in the Netherlands was eighteen persons to every 100,000 population, an incredible rate of eight per cent.

I should point out that this is not because the Netherlands has always had a low incarceration rate. Before the War, they had a rate of imprisonment very nearly approaching ours. However, criminological research

in the Netherlands clearly demonstrated the stigmatizing and depersonalizing effects of imprisonment, and its futility. The research has made its impression on the press, on the public, and on the judges. First offenders are rarely jailed at all. Prosecution of more than half the reported crimes is waived, and only the more serious offenders are detained before trial. The prisons in the Netherlands are very small, with the largest holding only 152 prisoners.

Although crime in the Netherlands has not declined, there has been a decline in the number of persons sent to prison and in the length of sentence imposed. That particular statement is important because of the research done by Bob Martinson (with his monograph "Nothing Works") and others who have led many to accept the idea that since we have no demonstratable evidence to prove that alternative placement, community placement and other such programs are effective then they are not effective in terms of reducing overall recidivism rates. There is certainly nothing to indicate that they are more effective, and certainly they are no less effective, and certainly they are cheaper. Due to the sentencing policy, numerous prisons have been closed, and the trend is expected to continue. Further drops in the number of inmates are expected in the future as the Netherlands is achieving a reduction in the prisons. It is unlikely that they will ever abolish all of them since there are still dangerous criminals in the Netherlands, as well as here.

There are a number of reasons for these developments: Shorter sentences, an increase in the use of fines, heavy reliance on probation, cooperation between prison administrators and the judiciary. The fundamental, underlying reasons for all these developments, however, is stated to be the trend toward more tolerance in society. Denmark had its last execution in 1898. An indication of respect for civil rights and human lives, is given by the use of firearms by the Danish police. These police unlike, for example, the English police, are armed. From 1965 to 1975, on only seventeen occasions were shots fired toward a human being by the entire Danish police force. Seventeen bullets in an entire decade by a police force of 11,000 men and women. Prison sentences in Denmark are short, institutions small, and the prison staff ratio high. Danish inmates have enjoyed rights and privileges that may not be enjoyed by American inmates for many years to

come. A long term inmate in Denmark is considered to be one who serves more than three months in prison. Of 2,408 men imprisoned in Denmark in 1972, twenty-two percent were sentenced for three months, fifteen per cent for more than a year, and the remainder for between three months and twelve months. Only ten persons were sentenced to serve more than eight years in prison. On December 31, 1973, there were 1,409 prisoners in Danish prisons at an imprisonment rate of 28 per 100,000 population.

The report discusses further the opinion in Denmark concerning the types of prisons which exist, and new efforts in Denmark to go even further in humanizing the type of institutions that they have. They do not maintain many institutions that we would consider maximum security, although there are a few such prisons. Prisoners are allowed to take vacations; there is even a transfer system in Sweden where you can transfer from your present institution to another one in order to be with your family and friends. There is heavy reliance on training and work release, and in one Danish prison they even manufacture pre-fabricated houses, making a profit, thus competing in the private sector. They do pay the inmates the same wages that they would make on the outside. The same type of things that I have discussed in the Netherlands and Denmark occurs in Sweden. Sweden has probably gone further than any of the other countries mentioned in terms of its institutionalization of people, and of course one of the conclusions which you have to reach is that the type of procedures which they are using in the Scandinavian countries are being successful, less expensive, and have no demonstrable effect of increasing the crime rate, and possibly it could be argued, (although I tend to distrust statistics), that these procedures might have the effect of decreasing the crime rate.

In looking at the Scandinavian countries, of course, we have to consider the differences in these societies, as compared to the United States. At one time, all of these Scandinavian societies were violent societies, much like the United States now. But for some reason, a number of changes were made. In these countries, unemployment is almost unheard of, poverty in a large measure does not exist. These people believe that it is the changes that they have made in their social and economic structure in providing the basic necessities of life for all their children which have

had the greatest impact on their crime rate. Until we can handle the unemployment problem, the problems of poverty in the United States, major changes will not be seen in the crime rate. But that does not mean that in the meantime that we should not be working on changing some of these particular areas in the operation of our system. NCCD has made a number of policy statements in this area, and NCCD has made some model acts.

The primary proposed changes that NCCD has made are in the area of sentencing. Those recommendations are probably "gathering dust" like many of the recommendations made by previous commissions. I hate to say so, but those recommendations on the shelf of the legislative reference library have collected considerable dust in Texas, and newer reports have come out which have challenged some of the suppositions made by the Bar Association. An important report that all of you should be familiar with is the report from the National Advisory Commission on Criminal Justice Standards and Goals. In a number of areas this Commission has gone beyond what the Bar Association suggested, and in other areas they have taken up stands which are contradictory to those of the Bar Association. But all of those recommendations look toward a lower degree of incarceration in the United States, more uniformity in sentencing, and a great reliance on our social structure and social systems in our communities to deal with crime problems.

The concept of presumptive sentencing, as was mentioned this morning, is important because it is "sparking" a lot of debate. There are two different reports that have been published which call for a system of presumptive sentencing. The first report issued by the Twentieth Century Fund of America, states that a system of presumptive sentencing that would require the legislature to set certain harsh sentences for the typical offender. Again, as the ABA has recommended, we should be looking at the typical offender, not the particularly dangerous one. Under that system, there would be the presumption that the proper sentence would be a harsh sentence. However, it would vary for various broad categories of crime. Once you have that initial presumptive sentence, you look at aggravating circumstances which, by percentage basis, increase the sentence. For example, the use of a firearm might increase the presumptive sentence by fifty per cent, or mitigating circumstances, such as the particularities of

the individual, circumstances under which they committed the crimes, and other types of mitigating circumstances could, on a percentage basis, again lower the sentence called for by the presumptive sentence. There are various categories which should be kept in mind. All of these sentences are intended to be rather short sentences as compared to present sentencing standards.

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Question: Where is the Federal omnibus experiment being tried?

Answer: I do not know what particular region that is taking place, but it is in one of the federal district courts. I have a report on that if anyone is interested. As a matter of fact, anything I say today I should have a report on it in my office if anyone wants more information. At least in the report I read initially, they seemed happy with that particular method of dealing with the problem of "backlogs."

END



"PUNISHMENT CONFERENCE" CLOSES with final remarks by Isabelle Collora, National Council of Catholic Laity. Panelists Dorothy DuBose, National Organization of Women and Robert Tapscott, Texas Board of Pardons and Paroles are to her left.