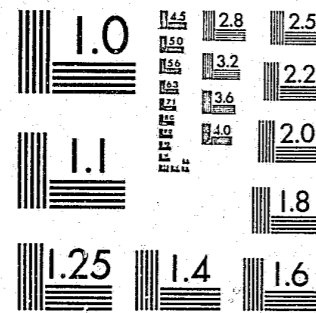


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

5/31/85

95013

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Connecticut Department of
Corrections

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

75013

THE SCOPE OF THE STUDY

1982-83

David Lovell
Philosopher-in-Residence

DEPARTMENT OF CORRECTION

340 CAPITOL AVENUE
HARTFORD, CT 06106

I. THE SCOPE OF THE STUDY

My presentation today will have three parts: in the first, I want to say a few things about what philosophy is, in the hopes of counteracting some misconceptions that I have run across. In the second, I want to talk about some issues which the practice of corrections faces today. Some of these concern the criminal justice system generally, some involve the way that prisons are run, but all of them, I think, are matters on which the Department must take some position, if only by default. Finally, I would like to describe some of the results that I hope will come from my residency this year.

Let me note at the outset that in my discussion of problems and issues, I will not be pointing the finger at Connecticut's Department of Correction with the idea of exposing scandals and corrupt practices that staff and administrators have simply been too venal or too lazy to correct. The problems I wish to discuss are important precisely because they are problems that exist in the best run of departments.

A. Initial Clarifications

This disclaimer brings me to the first misconception of my role that I want to discuss: that I am some kind of secret agent whose job is to sniff out dirty laundry and get a lot of people in trouble. What is most amazing about this misconception, on the part of staff, is that it assumes that administrators don't already know what goes on. It is interesting that some line workers should have this fear, not because it shows that they are making mistakes -- we all do -- but because it raises the question whether there are some features intrinsic to the practice of keeping people under lock and key, which lead to attitudes of fear and mistrust on the part of the people who spend their days and nights in our prisons. I am curious about what happens in our prisons, but only because I want to know generally what prisons can and cannot achieve and what the obstacles are to a more humane and intelligent practice of corrections. In a way I rather like the "secret agent" miscon-

This is a transcript of a talk given on January 11, 1983, at the Connecticut Justice Academy in Haddam, Connecticut.

David Lovell's term as Philosopher-in-Residence with the Connecticut Department of Correction was funded by the Connecticut Humanities Council.

Copyright 1983 by David G. Lovell

I. THE SCOPE OF THE STUDY

My presentation today will have three parts: in the first, I want to say a few things about what philosophy is, in the hopes of counteracting some misconceptions that I have run across. In the second, I want to talk about some issues which the practice of corrections faces today. Some of these concern the criminal justice system generally, some involve the way that prisons are run, but all of them, I think, are matters on which the Department must take some position, if only by default. Finally, I would like to describe some of the results that I hope will come from my residency this year.

Let me note at the outset that in my discussion of problems and issues, I will not be pointing the finger at Connecticut's Department of Correction with the idea of exposing scandals and corrupt practices that staff and administrators have simply been too venal or too lazy to correct. The problems I wish to discuss are important precisely because they are problems that exist in the best run of departments.

A. Initial Clarifications

This disclaimer brings me to the first misconception of my role that I want to discuss: that I am some kind of secret agent whose job is to sniff out dirty laundry and get a lot of people in trouble. What is most amazing about this misconception, on the part of staff, is that it assumes that administrators don't already know what goes on. It is interesting that some line workers should have this fear, not because it shows that they are making mistakes -- we all do -- but because it raises the question whether there are some features intrinsic to the practice of keeping people under lock and key, which lead to attitudes of fear and mistrust on the part of the people who spend their days and nights in our prisons. I am curious about what happens in our prisons, but only because I want to know generally what prisons can and cannot achieve and what the obstacles are to a more humane and intelligent practice of corrections. In a way I rather like the "secret agent" miscon-

ception of my role because it at least attributes to me the power to make a difference.

Things are quite different with the other misconception, which is that philosophers are other-worldly individuals whose gaze is always on the stars and consequently need someone to remind them to tie their shoes. This misconception is aided and abetted by the definitions of philosophy that one gets when one asks what it is: philosophy is the love of wisdom (a love, some have added, that is usually unrequited); philosophy is the attempt to answer ultimate questions about the meaning of life and the nature of the universe; philosophy is simply Man Thinking. The problem with such definitions is not that they are wrong but that they leave you no wiser than before you asked, except that they assure you that whatever philosophy is, it is a Highly Noble Undertaking. If this is all the answer you get, I can't blame you for wondering why I don't simply ascend straight up into the Celestial Spheres instead of mucking about down here with prisoners and their keepers.

Philosophy does, of course, have a long and respectable tradition as an intellectual discipline, practiced primarily in universities. As such, its relation to other fields has been described according to the analogy: It is a radiant sun, which from time to time throws out masses of flaming gases, which when they harden and congeal have become the sciences - physics, biology, psychology, and sociology; but which never loses one whit of its own radiance. Historically, there is some truth to this conception, which is why advanced degrees in other disciplines are called Ph.D.s - Doctor of Philosophy Degrees - and in some European departments, chairs in physics are entitled chairs in Natural Philosophy. Philosophical questions remain, however, when methods of solving scientific questions are adopted, and they must be confronted whenever those methods begin to lose their power or their coherence.

But philosophy is not only a body of literature, the writings

of the great thinkers, with which students of philosophy are expected to become acquainted. Nor is it just a set of perennial unsolved problems such as the Existence of God, Free Will and Determinism, the Nature of Truth, and so forth. It is an activity, a practice, which has its own rules-- although those rules, like the rules of any practice, can always be held open to question. And it is as a human activity which need not be restricted to universities or to professional philosophers that I would like to present it today.

B. Some Illustrative Stories

One of the great teachers of philosophy in this country was Morris Cohen, who held forth for many years at the City University of New York. According to one story, he was approached after class one day by an extremely exasperated student. "I signed up for this class," said the student, "thinking that I would get some answers to my questions about the meaning of life and the nature of the universe. Instead, all I get is more questions. One of the most irritating things about you people is that you never give a direct answer; you always answer questions with questions. Why do you have to do that? Why do philosophers always answer questions with questions?" To which Cohen replied, "Why shouldn't they?"

One of Cohen's best lectures was his presentation of the First Meditation of Descartes. Most of you who have heard of Descartes know that he declared, "I think, therefore I am," but many of you may not know the background of this doctrine. Descartes lived during the age of Galileo, who had been forced by the Church to recant his doctrines about the solar system because they seemed to conflict with Biblical teachings. It was a time when many of the certainties of the age were doubtful or in conflict with each other. In an attempt to construct a firm foundation for the edifice of knowledge, Descartes set about in his First Meditation to doubt every belief that could be doubted. If you have a basket full of apples and know that some of them are rotten, you dump out the whole

basket and put back in only those that are free from blemishes. To the end of dumping out all of our previously held beliefs and making a fresh start, Descartes employed a series of skeptical arguments with the result that none of our beliefs -- not even the fact that I exist -- is immune from doubt. It would take me too far afield to go over these arguments here, but the last of them is worth mentioning: that in place of God there is an evil deceiver who implants experiences and convictions -- that I exist, that there are bodies, that two plus two is four, that there is a universe in which things happen -- without there being anything real to correspond to these images. In a more modern vein, you may imagine that there is a brain in a vat, to which a mad scientist has attached electrodes, and that your entire life experience and the world you imagine yourself to exist in is simply the imaginary product of his machinations--how could you show otherwise? Cohen's presentation of Descartes' concluding doubts about one's own existence so unnerved one of his students that she came up to him afterwards, practically in tears, pleading, "Tell me, Mr. Cohen, do I exist?" Naturally, Cohen responded with a question: "Who's asking?"

One final story about another New York philosopher, Sidney Morgenbesser, sitting in the back of the room while a junior colleague earnestly presented a paper on some point in the philosophy of language. Evidently his whole argument depended on the fact that you can use two negatives to express a positive assertion; e.g., the meeting between Reagan and Speaker O'Neill was not unfriendly -- but you can never use a double positive to deny something. He was going on and on about this when from the back row Morgenbesser chimes in, "Yeah, yeah..."

C. The Socratic Model

These stories illustrate the continuity of philosophy with other human activities, as well as the distinctive habit philosophers have of questioning the assumptions on which those activi-

ties, including their own, are based. Any time you try to unmask a person who claims to know what he doesn't know -- or more subtly, who claims not to know what he does know (as in the second story) -- you are doing the kind of thing philosophers do.

The role model for many philosophers, Socrates, never wrote any books but engaged in the relentless sort of questioning that is illustrated by these stories. There is some evidence that the habit of engaging in such dialogue in ancient Greece had its origin in a form of game or contest, eristic moots, in which the disputants would be evaluated by their ability to ask questions that the opponent couldn't answer, or playing the defense role, to maintain a position in spite of the argumentative thrusts of the adversary. Philosophy then has much in common with high school debate teams and, in a different cultural context, with playing the dozens.

The people with whom Socrates engaged in dialogue came from the privileged class in Athens, many of them young men who were going places. "Surely, you, who are about to become a lawyer, or an assemblyman, or a judge, can tell me what it is that you practice, what is this thing called justice that you claim to be upholding by your activities, can't you? As for myself, I don't know what it is, and my only claim to wisdom is that I know that I don't know..." At least this is the image that Socrates apparently sought to present. He only asked that his interlocutors answer his questions honestly, that they not adopt positions simply as debating tactics, and that they admit it when they did not have the answer. These, in a crude and idealized form, are the rules of the activity of philosophy as he claimed to practice it. The truth is what survives this process of questioning, not a set of words on a page which cannot be interrogated. Ideally, the role that I have pictured Socrates playing is the role that I would play in the Department of Correction. Unfortunately, the Department neglected to provide me with an olive grove with curved benches and earthenware jugs of wine around which we might

sit and discuss these questions at length. In any case, what might be the result of such an activity?

In Plato's dramatic portrayal of the dialogues of Socrates, a frequent result was an extremely distressing state -- *aporia*, for you fans of the Greek -- in which Socrates' target would find himself confused, unable to speak, angry, upset. This state Socrates compared to the pains of birth. The essential knowledge we have within us already, but in order to bring it out we must undergo the ordeal of shedding our comfortable illusions. Unless you have spent your life so far on a different planet from the one I've been on, you have all experienced *aporia*, perhaps during a crisis in a love affair, perhaps in a counselor's office, or in trying to explain yourself to your boss. The result of this state is, at least sometimes, an increase in self-knowledge, the beginnings of wisdom, and it consists just as much in the question that you can't answer as it does in the answer you come to when you are able to gather your wits again; (e.g., what I should have said was. . .). Since coming to Connecticut, I sometimes think that I have gone through some version of this experience every day, like a regular wisdom vitamin.

II. THE PRACTICE OF PUNISHMENT

To sum up: philosophy is a human activity with much in common with other activities, which we all engage in from time to time. It does not have to be seen as an arcane body of writing about unreal problems. Philosophy looks for connections and resemblances between various human practices, it questions assumptions, and it seeks the truth wherever it finds itself. The results of philosophical reflection are recognitions that any rational person can achieve, not doctrines on which we must accept expert authority. It is now time to illustrate this activity in connection with the practice of corrections.

A. Justice and Social Defense

In Connecticut right now, as in many other states, the major problem on the mind of everyone involved with our system seems to be overcrowding. The present state of congestion, it seems, is not so clearly related to an increase in crime as to an increasing endorsement elsewhere in the system of the common-sense assumption that locking more people up for a longer period of time will result in a reduction of the extent to which individuals are victimized by crime.

You do not need a philosopher to tell you that this practice is questionable on empirical grounds; it is estimated that in order to reduce the crime rate one-third by stricter penal measures, the prison population would have to increase by 450 per cent! Furthermore, it puts an unconscionable strain on the daily lives of prisoners and staff to engage in this practice without providing the resources that are needed to cope with the growing population. In responding to these practical urgencies, it is vital that the Department of Correction articulate a vision of its role that will enable it to say something other than "You're causing us a serious problem here," a complaint to which the response, from the Judicial Department and the legislators, is likely to be "Tough Noogies!" (Or perhaps, "Yeah, yeah..."). It is part of my job this year, I think, to help the Department develop a consistent conception of its role, but it is not a task that a philosopher can do for the Department. Members of the Department themselves must engage in the philosophical task of, for example, questioning the assumption that it is the job of the criminal justice system to reduce the crime rate, if for no other reason than that the issues will remain after I ride off into the sunset come July.

The idea that our job is to affect the crime rate is already doubted by many who work in the Department, generally on practical grounds. I want to suggest another ground for such doubt: to make decisions about the lives of individuals solely on the basis of some social good that those decisions are supposed to serve is to

betray the ideals which justify the existence of the system in the first place.

I am not doubting here that the existence of a system of punishment for individuals who break the law is part of a social order that reinforces law-abiding tendencies in the general population. What many studies have demonstrated is that manipulation of sentence lengths seems to have no bearing on this "general deterrence" function of the system. Manipulation of sentence lengths does have a bearing, however, on the lives of the individual who waste extra years in prison because someone has decided that we will appear to be tougher on crime that way. There are, I am suggesting, two kinds of criticism that can be made of the tendency to respond to the crime problem by increasing lengths of sentences: one is that it doesn't work; the second is that even if it did work, it would be unjust, because the extra suffering imposed on the individual lawbreaker represents society making use of him to serve ends in which he is no more implicated than the rest of us. If he is responsible for the harm he has done, his suffering may be justified as an appropriate response to what he has done; he has brought it on himself. But he is not responsible for the general problem of crime in the streets, the exaggerated fear of crime in the general population, and political pressures to do something about it. To impose extra suffering on him in an attempt to meet these problems is to use him as a means to an end.

As I read these words, it strikes me that I'm speaking as if there are two kinds of issues: practical issues and moral issues; and it may be thought that if we could only solve the practical ones, we can leave it to philosophers to worry about morality. But I do not think that inmates and guards are devoid of a sense of justice, so encouraging the feeling that they are pawns in a cynical political game has serious practical consequences in the running of our prisons.

Let me mention two considerations which may reinforce the point I am trying to make, and then adopt a pose of appropriate humility

and express it as a question. The first consideration is that we live in a society which proclaims that individuals have rights that society is not entitled to interfere with, simply in order to make life more convenient for the rest of us. Suppose that a plan could be developed that would deny freedom of movement to every Black and Puerto Rican male between the ages of fourteen and twenty-two in Hartford. Such a plan, if it could be made to work, would probably have a significant effect on the crime rate in Hartford. It would never work, you say; but aren't you raising practical objections to it because you already know without benefit of experiment that you don't want such a plan to work? The fact that you do know it already is the kind of thing I had in mind when I mentioned Plato's doctrine that the essential knowledge we already have within us.

Second, in terms of dollar value, white collar crime costs us far more than the crimes for which people are typically sent to prison -- burglary, robbery, assault, rape. Some have claimed that the whole system is just another example of capitalism reinforcing itself: it is the crimes that poor people are able and likely to commit that we punish, not the crimes of the rich and powerful. If there is any response to this line of argument, it is that we are right to punish such crimes more severely because of the emotional effect on the victims of these crimes. I would rather have \$500 taken from me quietly as a result of price fixing than to have \$5 taken from me at knifepoint, by putting me in fear for my life. It is because the mugger treats my humanity with so little concern or respect that we feel he deserves to be punished. There is a moral judgement here, reflecting assumptions about the inherent worth of the human being. If we say to a lawbreaker: we know that society is just as safe if we release you now as five years from now; we know that you have suffered enough for your crime; but we are going to keep you locked up for another five years because we think there is a chance that imposing extra suffering on people in your situation will lead others to think twice before they do what you did, what vision of social morality are we offering him as an alterna-

tive to the selfishness for which we are punishing him?

I said, a couple of minutes ago, that I would be appropriately humble and express these ideas in terms of a question. According to one classical conception of political order, the state exists to protect each of us from the deprivations of others. Acceptance of the rule of law is the price we pay in order to maintain a sphere of choices within which we are immune from interference. By breaking the law, has the offender forfeited this fundamental right? Is he literally an outlaw, to whom we can do anything we please, whom we can use for whatever purposes suit us, without injustice? If so, execution is a legitimate response to any crime, and our choice of a range of punishments running down the scale through banishment, flogging, and so forth, may be determined by political convenience, mercy, or caprice, but we owe nothing to the outlaw. Nor should we be indignant if he resists by whatever means lie at hand when we come to seize him, and regards himself as a prisoner of war during his captivity.

If, on the other hand, we recognize the lawbreaker as one of us, in spite of his crime, we have the difficult task of designing institutions that live up to this view. The punishment determined elsewhere in the system must be an appropriate response to the act for which he is responsible, not just a number of years of confinement selected by uninformed intuition or, worse, by political convenience. During the course of his punishment, the offender must be treated as one who will return to the community when he has "paid his debt;" we must strive to provide conditions under which his deserved suffering will not appear meaningless.

I am not pretending now that the slogans I just mouthed are solutions to the problems of corrections; at most, they frame a perspective within which the solutions to the problems are to be sought. The first view, that the criminal no longer has a claim on society, is not just a "straw man theory" that I mention in order to discard. Our modern institutions of punishment are the descendants of institutions which did embody the "social defense"

view. I think it is still reflected in many of our institutional practices -- which creates inconsistency where it coexists with the second idea -- and that it shows up in the rhetoric of many of the critics who think we are simply not tough enough on criminals.

B. Rehabilitation and Incapacitation

Let us assume a recognition that the Department of Correction has the task of administering a punishment, ideally as part of a just framework of laws and judicial procedures. Let us further assume a recognition that it is individual offenders, not social conditions, upon which the Department's activities have any substantial impact. Should it content itself with attempting to provide safe and secure custody, or should it devote itself (also?) to the task of rehabilitation?

Let me canvass some standard criticisms of the rehabilitation view, and then consider some consequences of the Department's endorsing an incapacitation model. The validity of the criticisms of rehabilitation forms a major part of my agenda this year, and my failure to say more about each of them is motivated only by a desire to finish this talk in time for the Superbowl.

(1) What is there to re? To put it quite bluntly, the lives of many of the candidates for rehabilitation have been wreckage from the beginning. Family abuse and neglect, failure in school, heavy use of drugs, alcohol and other palliatives such as sex and combat, immersion in the Hobbesian world of the street -- given this typical history, there seems to be no former condition of health or integrity which we would serve them by restoring. This criticism is not worth the time it takes to mention it if it is no more than a quibble about the original meaning of the word "rehabilitate," which might be met simply by changing the word to reform or correct. It is worthwhile if we mean to ask, "What is there in the lives and attitudes of the individuals we encounter that we might build upon?" And I wonder how many of the critics of rehabilitation have seriously pondered this question.

(2) Rehabilitation programs have not demonstrated any significant, measurable success. Some of the negative findings can be qualified on the grounds that the programs in question were not enacted in a thoroughgoing or committed fashion. And there is some evidence that programs run by exceptionally sensitive and enthusiastic individuals do make a difference. But the infrequent success of treatment programs, as measured in terms of whether they make a difference to recidivism, does suggest that we possess no technique of rehabilitation that can be applied systematically. And it may be doubted whether there are systematic ways of ensuring that exceptional individuals staff programs in our prisons. The scarcity of measurable results, in short, does not settle the issue; the question remains, why have the programs apparently not succeeded?

(3) The third criticism attempts to answer this question by attacking the theory by which rehabilitation programs have been justified: that crime is the product of a combination of social and psychological disabilities which correction agents, like doctors, have the job of curing. The people who populate our courts, jails and prisons, say the critics, are not sick or abnormal. They are there as a result of foolish or selfish choices, not as victims of circumstance. Programs which view them as victims will either be rejected out of pride or cynically manipulated. In any case, they are likely to fail.

Again I wonder whether critics of rehabilitation go far enough in considering the implications of this charge. To the extent that the lawbreaker is a responsible agent, not a patient, could we not design correctional programs which take his agency seriously, which offer him the chance to change through his own efforts rather than by doing something to him? Indeed, in the administration of prisons generally and in many programs within the walls, the alternative view of the lawbreaker as a responsible agent is often proclaimed. But if all we are doing is saying that because our clients are not victims, they are therefore fully responsible for everything that happens to them, I doubt that any serious attempt has been made to

understand the individuals with whom we are dealing -- save, occasionally, by a few committed agents of correction. But whether we see our clients as pathetic victims of social abuse, or as inherently wicked, we may yet doubt whether it is within the power of mortals to redeem them.

(4) We may particularly doubt whether it is possible to redeem them while they are in captivity: the idea that rehabilitation and imprisonment are incompatible is the most persuasive of the criticisms of the rehabilitation model, and the one that seems to explain most adequately why past attempts to reform criminals have had such slim success. I am not saying that nothing good happens, ever, to the people in our prisons; but that where it does, it seems to be almost by accident, not as a product of institutional design. We have no way of making good things happen.

The experience of captivity does present a brutal shock and a perception which cannot be denied; I am a prisoner. It is probably the fervent desire to avoid repeating the experience that produces much of the "success" that prison does have. Yet most inmates seem to accommodate themselves to being where they don't want to be, and staff to keeping them there, in ways that subvert the possibility for change. The major goal of prisoners is to get out as soon as possible, and since they can't get out, to escape fictitiously, often by manipulation and violence. Relatively insignificant matters, such as how quickly an overloaded counselor responds to a request for help in applying for a new work assignment, are exaggerated so that the inmate can maintain the illusion that he would be "straight" if only he could obtain this or that minor privilege, if only someone would pay enough attention.

The week that I spent my evenings at the Hartford jail, there was one prisoner scheduled for a reentry furlough. Attempts to release him were made beginning Monday, and he was finally released on Friday. The problem was that nobody was willing to come and pick him up or give him a place to stay (not even his mother), and the counselor responsible was - quite reasonably - not willing to

to help the individual contact a total stranger (whose name he thought he could get from another inmate) to come and get him. All of this inmate's anger was directed at the counselor in question, in an attempt to avoid the recognition that he had been acting like such a jerk that nobody wanted him. To respond to each inmate with trust and concern is, it seems, beyond the resources of an overloaded system; it is perhaps beyond the resources of a system of confinement, overloaded or not. In any case, an employee who takes it upon himself to deal with every single inmate in this way is asking for a nervous breakdown; long before he gets to that point, he is likely to adopt a cynical, time-serving attitude in which those inmates who cannot be ignored will be mistrusted -- often with good reason. To me it is a continuing surprise, and a tribute to human nature, that so many COs -- that's Correction Officers, for the laymen in the audience (they used to be called guards) -- and other workers show as much concern as they do.

Lester Maddox once said, "If you want a better class of prison, give me a better class of prisoners." Many prisoners seem to believe that if you wanted better prisons, you should have better guards. I do not think that either of these perceptions is correct; the essential problems, it often seems, would exist no matter whom we had within the walls. But I must confess that I am not confident about my view of this matter, and that it is the major unresolved question on my mind as I visit and work within Connecticut's facilities.

One of the hardest matters for me to understand then, is the extent to which the conditions I have mentioned are inherent in the nature of confinement, the extent to which they result from the kind of people we lock up, and the extent to which they could be affected by changes in training, institutional rules, and job definitions (I am not including as a possibility here a massive infusion of resources). As things have always stood in prisons, however, the message received by the inmate -- partly as a result of his own distorted perception -- is that he doesn't matter, can't be trusted,

and has very little worth. The predominance of this communication, it seems, will defeat most efforts at treatment, whether one sees treatment as the diagnosis and cure of an ailment or as the awakening of the individual to a recognition of his responsibility for his actions.

In light of these criticisms of the rehabilitation model, it has been suggested, we should frankly admit that all prison can succeed in doing is putting people away, for a while, whom we no longer want in the streets. Our reformist efforts should be directed at accomplishing the goal of incapacitation in the most efficient, rational, and humane manner possible. Protection of the public will be served by ensuring that only the most dangerous, active criminals are sentenced to long terms, and reserving short terms or alternatives to incarceration for the others. One advantage of accepting incapacitation is that it enables administrators to know when they are doing a good job. They are doing a good job if prisoners don't escape, if prisoners who are likely to commit further crimes are not given furloughs or community release, if prisoners are physically safe and comfortable while they are locked up, and if riots and disturbances are avoided. Isn't this hard enough to achieve without worrying about changing criminals into law-abiding citizens or making a difference in the crime rate? Isn't this all the prison administrators can realistically aim to achieve? Let me suggest several logical consequences of such a view.

The first would be the incorporation of scientific methods of predicting dangerousness into our judicial system. A recent Rand Corporation study claims that active, long-term criminals can be distinguished from the others (who will receive much shorter sentences) according to seven criteria: a previous conviction for the same crime; having spent more than half of the previous two years behind bars; having spent more than half of the previous two years unemployed; a history of heroin or barbiturate addiction; conviction before the age of sixteen; incarceration in a juvenile facility; and drug abuse as a juvenile. Satisfaction of four or more of these

prediction variables makes an offender a candidate for selective incapacitation.

I have it on informal authority that the author of this study, Peter Greenwood, had originally considered criteria of a more purely socio-economic nature as a means of distinguishing active criminals from others. I don't know what they were, but my experience suggests that the following might be candidates: being Black or Puerto Rican; being an early school drop-out; having grown up on welfare; having an alcoholic or abusive parent.

Suppose that we discovered that my set of criteria were good predictors of a high level of criminal activity. Would not the logic of selective incapacitation dictate that these, too, should be taken into account -- formally, as a matter of principle -- by prosecutors and judges? Then we would have indeed removed the inefficient blindfold from the eyes of justice, once and for all. The "predictors" I have mentioned may not be good ones, or may have been left out for political reasons. But in principle the first group I mentioned seem no different from the second. In both cases a person is subject to additional suffering on the basis of features of his life which are not crimes, and in some cases beyond his control. The problem I am raising is in the form of a *reductio ad absurdum*: Incapacitation to be effective must be selective, and if it is selective it cannot be just.

Second: does acceptance of incapacitation really allow those who work in our prisons to know when they are doing a good job? Surely it is a bit odd to spend thousands of dollars to ensure that an offender doesn't escape, while recognizing that he will be every bit as dangerous when you do finally release him. In the heyday of American heavy industry, it was fashionable to bemoan the problems of morale on the assembly line, autoworkers being the most prominent example. Imagine what the problems of morale would be if the workers knew that half of the cars they produced were going straight to the wrecker, and that nothing they could do would make any difference! This consideration may be enough to raise doubts whether

are simply proposed as cheaper ways of doing what could be better done by imprisonment -- whatever that is -- if only we had the resources. The alternative punishments must be advocated as appropriate responses to the crime for which the individual is responsible. In order to promote alternatives as appropriate punishments, however, the Department must have a view on the meaning and purposes of punishment.

Second: one of the underlying themes in many proposals for alternatives is that the response to crime should be decentralized, so that it is located in the community which the offender has harmed rather than in remote institutions. Along these lines, if we take them seriously, attempts to develop plans in which the offender and the victim are brought together, so that amends are made to the individual who has been offended, are promising in two respects: as an essential step in the development of moral consciousness in the lawbreaker, who otherwise is insulated from the consequences of his actions; and as a means of quieting the exaggerated fears that result from anonymous violation. People who have been burglarized, for example, tend to picture the burglar as a rapacious predator who would have attacked them had they been present. In most cases this image is far from the truth and it might do some good to see who these so-called monsters really are.

Finally, I want to suggest a paradox that underlies the difficulty of enacting alternatives. Offenders, it is said, should be dealt with in their communities so that the people they have harmed can have the salutary experience of seeing justice done, and the offender can be accepted as a member of the community when he has paid his debt. The difficulty is that this notion seems to assume a functioning, well-integrated community. If that were the case, however, we would not suffer from crime to the extent that we do. A friend of mine once said that our society is unique in two respects: schizophrenics are officially represented in formal, nationwide organizations; and people do not help their neighbors. Community-based corrections has a chance only as part of a broader attempt

are simply proposed as cheaper ways of doing what could be better done by imprisonment -- whatever that is -- if only we had the resources. The alternative punishments must be advocated as appropriate responses to the crime for which the individual is responsible. In order to promote alternatives as appropriate punishments, however, the Department must have a view on the meaning and purposes of punishment.

Second: one of the underlying themes in many proposals for alternatives is that the response to crime should be decentralized, so that it is located in the community which the offender has harmed rather than in remote institutions. Along these lines, if we take them seriously, attempts to develop plans in which the offender and the victim are brought together, so that amends are made to the individual who has been offended, are promising in two respects: as an essential step in the development of moral consciousness in the lawbreaker, who otherwise is insulated from the consequences of his actions; and as a means of quieting the exaggerated fears that result from anonymous violation. People who have been burglarized, for example, tend to picture the burglar as a rapacious predator who would have attacked them had they been present. In most cases this image is far from the truth and it might do some good to see who these so-called monsters really are.

Finally, I want to suggest a paradox that underlies the difficulty of enacting alternatives. Offenders, it is said, should be dealt with in their communities so that the people they have harmed can have the salutary experience of seeing justice done, and the offender can be accepted as a member of the community when he has paid his debt. The difficulty is that this notion seems to assume a functioning, well-integrated community. If that were the case, however, we would not suffer from crime to the extent that we do. A friend of mine once said that our society is unique in two respects: schizophrenics are officially represented in formal, nationwide organizations; and people do not help their neighbors. Community-based corrections has a chance only as part of a broader attempt

to alter prevailing patterns of community life.

More generally: I have said, in connection with each of the issues discussed, that the Department's position must be based on a consistent conception of its purpose rather than simply on administrative convenience or economic cost. The last point about the breakdown of community life should remind us that there is no penal solution to the problems of drugs, unemployment, and decaying communities, and that the Department should not pretend that its proposals for new programs will alter that fact.

III. THE RESULTS OF THE INQUIRY

What might happen as a result of my residency this year? At a minimum, David Lovell publishes a book and a few articles about his experience, which may or may not receive any attention.

The most I could hope for is that having solved all of the problems I have raised, Connecticut's Department of Correction develops a clear vision of its purpose and leads the way in a total regeneration of all our institutions; the war machine is dismantled and social resources are devoted to providing everyone with an opportunity to while away the hours in philosophical reflection; sanitary napkins are no longer advertised on TV; and the trains run on time.

I think it is safe to say that the actual results will fall somewhere between these two extremes. In a slightly more serious vein: as a result of my participation in committees and informal discussions, I would like to see more members of the Department become philosophers, themselves. I do not expect that they will spend very many hours agonizing over the meaning of justice, but that they will become more sensitive to the implications of their decisions, and to the messages about the meaning of their actions that are daily communicated to workers and inmates. In illustration, let me go over again the three problem areas I have discussed with two aims in mind: first, to show how commitments to a particular view in one area may involve commitments in the others; second, to show that although I have presented three sets of opposing concepts -- justice

and social defense, incapacitation and rehabilitation, incarceration and its alternatives -- they are not simple opposites.

It is not the case, for example, that the ideal of individual justice is incompatible with social defense. Under both theories, protection of society is one of the justifying aims of the criminal justice system. But in the case of social defense, one tends to think of protecting one abstraction, Society, from another abstraction, The Criminal, who is seen as alien to society. Under the ideal of individual justice, the framework of laws and penalties exists to protect each of us, lawbreaker and law-abiding alike, from our fellows. (Perhaps I should mention in passing that there is also a hopeful side to the idea of protection by law: that it enables us to predict what others will do and plan our lives so that we may build things together.)

If the Department endorses a theory of punishment in which the restoration of the offender to the community is one of its aims, then "punishment" and "rehabilitation" cannot be opposed to each other as they are so often in political rhetoric. We may no longer pretend that we are curing a criminal disease, but we must treat individual offenders with attention and respect if their suffering is to be experienced as just punishment rather than meaningless captivity. In this connection I have said a lot of bad things about incapacitation, but it must be recognized that for very many of the people we deal with, locking them up -- at least for a brief time -- is the only way to get their attention.

Before I conclude I want to emphasize that I am aware that, whatever conception of its role the Department develops, there are very strong obstacles to moving decisively in any direction. Even in the best of times, the public and the legislature do not want to spend a lot of money on corrections. Understaffing in both treatment and custody areas is already seen as a serious problem, and to try to pay more attention to each individual committed to the Department may seem impossible in an era of growing populations and shrinking budgets. But I suspect that confusion about prior-

ities is currently leading to a lot of wasted effort by some workers, and lack of effort by others. The problem is not simply one of resources, but of defining the goals of those who work in our prisons so that better work could be done by the same number of people.

If I am right -- and I must confess I feel on very shaky ground here -- much more could be done with the resources we have if we were sure about what we wanted to do. But the individuals who daily enact our system, who make it real -- the COs and the inmates -- have accommodated themselves to the system we have, in spite of its defects and absurdities, and will resist any drastic change in their roles. The internal political barriers to change may be just as stubborn as the budgetary ones.

To these obstacles we must add the fact that the fears of the public, the attitudes of legislators, and the practice of the courts are deeply entrenched; arguing against them on either philosophical or practical grounds will not make them go away. Whatever position the Department favors on the issues I have raised will have to be compromised. I hope that my residency this year will enable more members of the Department to recognize it when they are pushed to compromise the values that the system exists to uphold. If, for example, the Department must accommodate those who assume a "social defense" view, it must find ways to limit such compromises to areas where they will do the least damage to the Department's reconciling mission.

The problems of legislative politics, shrinking budgets, rising crime and fear of crime, overcrowding, and a widespread sense that the system is failing, are not simply obstacles to change. They also create pressures that are leading to change: things cannot continue as they are. When the time comes, when the crisis peaks, I hope that my contributions will have helped the Department decide which way to jump.

* * * * *

Now I want to leave all these topics behind and leave you with a reading of several literary passages on a theme that runs through everything I have said this afternoon: What is the human nature of the people we see in our courts and prisons? Who are these people?

The first quotation is from Pico della Mirandola, Oration on the Dignity of Man. In this passage God is explaining to Adam why we have been endowed neither with special strength or speed nor, like the birds and the fish, with a particular area that is our exclusive domain:

Finally the Best of Workmen decided that that to which nothing of its very own could be given should be given, in composite fashion, whatsoever had belonged individually to each and every thing, and He spoke to him as follows: We have given thee, Adam, no fixed seat, no form of thy very own, no gift peculiarly thine, that thou mayest possess as thine own the seat, the form, the gifts which thou thyself shalt desire. In conformity with thy free judgment in whose hands I have placed thee, thou art confined by no bonds, and thou wilt fix the limits of thy nature for thyself. Neither heavenly nor earthly, neither mortal nor immortal have We made thee. Thou art the moulder and the maker of thyself. Thou canst grow downward into the lower natures which are brutes. Thou canst again grow upward from the mind's reason into the higher natures which are divine.

The second quotation is from the South African novelist J. M. Coetzee, in Waiting For The Barbarians:

The barbarian tribes were arming, the rumour went; the Empire should take precautionary measures, for there would certainly be war.

Of this unrest I myself saw nothing. In private I observed that once in every generation, without fail, there is an episode of hysteria about the barbarians. There is no

woman living along the frontier who has not dreamed of a dark barbarian hand coming from under the bed to grip her ankle, no man who has not frightened himself with visions of the barbarians carousing in his home, breaking the plates, setting fire to the curtains, raping his daughters. These dreams are the consequence of too much ease. Show me a barbarian army and I will believe.

As the story continues, it becomes clear that the real source of these dreams, of our image of the barbarian -- or the criminal -- is the barbarian who lurks in each of our breasts. And this barbarian we are each happy occasionally to release, in the mid-right hour. If there were only one recognition that I could communicate, it would be this: that each of us, whether criminal or sober citizen, partakes of both natures -- that of the creature whose exercise of freedom is the source of dignity and transcendence, and that of the barbarian.

NOTES

I have not gathered together the many sources of ideas that should be included in a bibliography, believing this task unnecessary for an informal oral presentation. Specific notations are as follows:

1. For the theory of selective incapacitation, The New York Times, October 6, 1982; p. 16.
2. The quotation from Pico della Mirandola is from P. O. Kristeller, "The Philosophy of Man in the Italian Renaissance," Italica, XXIV (1947), pp. 100-1. Cited in Steven Lukes, Individualism, New York: Harper & Row, 1973, pp. 53-4.
3. J. M. Coetzee, Waiting For The Barbarians, Penguin Books, 1980, p. 8.

END