

RESPONSES

JOHN IRWIN*

I have very little to say about the paper delivered by Mr. Solomon because I find myself in complete agreement with most of his suggestions. I will comment, however, that the most important suggestion related to reducing prison populations was for prison administrators to become much more active in the political process. Although this is the most important line of attack against overcrowding, there is a strong reluctance on the part of prison administrators to influence the political process in this direction. They are more comfortable asking for more money to expand.

The area that I want to talk about, which was not touched upon in the preceding paper and which is the most serious problem, is managing the crowded prison. Prison administrators are now faced with the reality of an exploding prison population and the aggravated problem of running a prison under totally new conditions. I am very pessimistic about how they will accomplish this.

There are two deeply rooted tendencies that will prevent administrators from avoiding disasters, from harming prisoners unnecessarily, and from treating prisoners cruelly. I look to the observations of Erving Goffman for these conclusions. Feeling very sentimental about Goffman since he recently died, I restudied his book *Asylums*¹ and rediscovered not only how much I owe him in my own writing (much of which I never acknowledged at the time), but also how relevant his observations on the problems of managing "inmates" still are. He recognized that the managers of asylums, prisons included, tend to develop a client stereotype that is inaccurate and counterproductive. The managers embrace this type and refuse to let go of it, in spite of its failures. The type stems from two organizational concerns. One is general: all organizations develop a conception of their client that is convenient for management purposes. In the world of asylums there is another, special tendency. The client must be seen as a moral inferior. It is one of the major premises of Goffman's study, that all the undesirable outcomes he describes stem from the operation of the convenient and inferior conception of the client. Prison administrators divide prisoner populations into two convenient inferior types: "troublemakers" and "good" inmates. Both are distorted simplifications and counterproductive.

Further distortion results from viewing prisoner types as permanent. Troublemakers, for example, are perceived as permanent troublemakers. This is because the type, e.g. troublemaker, is a determined type. Forces operating in early life, maybe even before birth (biological determinism is

* Professor in the Sociology Department at San Francisco State University.

1. E. GOFFMAN, *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* (1961).

back), determine the type. This distortion leads to a variety of practices that are self-fulfilling. Persons are treated as permanent troublemakers, and they become more like permanent troublemakers.

In California this practice has had disastrous effects. In the 1970's, the troublemaker was a revolutionary. (Categories of troublemakers change from era to era.) Persons suspected of being this type were segregated in special housing sections called "adjustment centers." The classification and segregation were often based on hearsay, rumor, suspicion, and other unreliable types of information. Prisoners viewed the classification as arbitrary and the segregation and extreme deprivation as unjust. The result has been that rage and the sense of injustice has converted many persons, some of whom were acting as troublemakers, into permanent troublemakers. The prophecy has been fulfilled. The circle of troublemakers has grown and grown. Now the suspected type is a gang member. Persons suspected of gang membership are segregated and in similar fashion converted into gang members. California now has more than 3,000 persons segregated in special housing units.

The "good" inmate is also a distorted conception. According to the conception, good inmates are pliant, passive individuals who behave. They cannot be trusted too much and too much cannot be expected of them. But they are easy to manage.

As Goffman pointed out, many, usually most, inmates assume the role of the good inmate, but maintain some separation from it. The good inmate is not a dignified role; it means accepting deprived and unfair arrangements. Most prisoners persistently, covertly militate against it. They "play it cool." They appear to conform, but carry on a variety of surreptitious undertakings while hiding their hostilities towards management. They usually become cynical and manipulative.

There are a few prisoners who approach the concept of good inmate too closely and are real disasters. The trouble with their orientation is that being a good inmate equips one for doing one thing only, being a good inmate.

I would like to make some recommendations that flow from this analysis, though I remain pessimistic about their being accepted. The first is that prisoners be treated with respect and given dignity. I do not mean privilege. I have recently listened to several talks David Ward has delivered about Alcatraz. Ward, the head of the Criminal Justice Department at the University of Minnesota, has recently finished a lengthy study of Alcatraz. One of his discoveries is that in spite of the extreme deprivation and isolation at Alcatraz, the former convicts and guards whom Ward interviewed look upon it as a good prison. The major reason for this seems to be that the Alcatraz prisoners demanded, and to a great extent received, respect. They had dignity, which can exist even in a highly punitive setting.

I am not suggesting that we construct prisons with the same degree of deprivation as Alcatraz, but that we learn from the one characteristic of

Alcatraz that was positive, prisoners were respected. Now, they were respected for strange reasons. They were respected mostly because they were considered to be high-powered criminals. Hoover himself (and it was Hoover who created Alcatraz) respected the type of criminal, the Alvin Karpises, for whom he built Alcatraz.

Today the high-powered criminal is gone and we have a variety of despised and condemned prisoners. We must find a new basis of respect. I would suggest that prisoners be respected as human beings. This concept will not require the accompanying extreme forms of punishment that were previously present in places such as Alcatraz and are now being built into the new maximum security prisons, such as Marion, which are designed for "troublemakers" and which are certainly going to produce a lot of troublemakers.

My second recommendation is that prisoners be allowed areas of self-determination. As in the case of respect, this will be hard to achieve because it, too, is inconsistent with the management conception of the inmate. It is believed by managers that all phases of the prisoners' lives must be totally controlled by the administration. This is true even when management is pursuing what it believes is a positive, humanitarian program. For example, two years ago, faced with the overuse of maximum security, Normal Holt, the director of classification for the California Department of Corrections, devised a scheme that would reduce the classification of large numbers of California prisoners. The scheme was based on points given and taken for length of time left on the sentence, prior prison behavior, and present prison behavior. The scheme became policy and prisoners who had low scores and were being held in maximum security prisons were transferred to medium or minimum security prisons. Those with medium scores were transferred to medium or minimum security prisons. Those with high scores were transferred in the other directions. However, most of the movement was towards lower security. This was met with a lot of resistance from prisoners, even those who were being transferred from places like Folsom and San Quentin to Chino. Why would they complain? The fundamental reason was that nobody had asked them if they wanted to be transferred. It was either assumed that they would want to be transferred, or that their desires were not worthy of consideration. As a matter of fact, many had good reasons for not wanting to be transferred, such as involvement in programs at the prison in which they had been held, family in the area, or preference for the maximum security prison.

California's work incentive program is also based on the management conception of the client and will continue to cause prisoners and management a great deal of difficulty because it ignores prisoners' own views and particularly their need for some self-determination. The administration divided the prisoners into four categories according to their participation in work or training programs. Persons engaged in a program full-time received full privileges, persons engaged half-time received fewer privileges, persons

on the list to get into programs received even fewer, and those refusing to become part or who could not become part because they were in segregation received the least. California legislators also passed a work incentive law giving prisoners one day off their sentence for every day they worked full-time. The administrators linked this to their new classification system.

Several problems have appeared. First, there were not enough full-time jobs, so the department fabricated "make work" assignments, such as a work crew that cleans the same walls over and over. Second, the department interpreted the law so that prisoners must be at their assignment the full shift to receive the one day sentence reduction. This means that they cannot participate in any other activity during work hours, including visits. If a visitor arrives during working hours the prisoner cannot see him or her. Extra evening hours for visits have been provided, but the daytime hours are still the best-suited for many visitors, particularly those who travel long distances, such as from Los Angeles to San Quentin—400 miles. (Most of San Quentin's prisoners are from Southern California.) Moreover, many of the other activities in the prisons occur only in the daytime, when most persons who are involved in the work incentive program have assignments. They must give up their day of good time to engage in these other activities.

Furthermore, the law has been administered with a punitive spirit that flows from the management model. The department has put in place many punishments for not participating, and has added punishments for rule violations by those who do participate. Under the old good time procedure, for example, there were statutory limits on how much good time could be taken away; under the work incentive program the administration was given discretion to take away good time with few restrictions.

So, instead of having a program that would benefit both the administrators and the prisoners, the present program embitters prisoners and causes trouble for management. Already there has been one work strike at San Quentin.

A good work incentive program would combine management needs and some prisoner self-determination. There would be real incentives, such as time off and meaningful work and training, but there would be no additional punishment for not participating or added liability in the possible loss of good time for those who do. The spirit of the program would derive from a more humane conception of the inmate, one which considered dignity, respect, and self-determination.

Since I have run out of time, let me quickly mention several areas of self-determination that would be important and beneficial both to the prisoner and management. I have already mentioned housing. Management could, with no loss, combine space availability, custody classification, and self-determination. A prisoner would request location of housing and be transferred there when his custody classification was appropriate and space was available.

Another important area is contact with outsiders. At present most prison systems are entangled in determining the nature of visits: contact, noncontact, conjugal, etc. A solution is to allow "private visits" and let the prisoner determine the nature of the visit. This would avoid the mess that many systems are creating by allowing conjugal visits. Many marriages are being created just for the sake of obtaining conjugal visits not otherwise allowed.

The state should not be concerned with this facet of behavior, which is usually regulated by individuals in private. Management should only be concerned with security. If a prisoner can be trusted to not breach security, then they should be allowed private visits in which to manage their own interpersonal affairs.

There are a host of other areas in which the state presently encroaches, that should be left to the prisoner. These include participation in vocational training, education, formal organizations, and recreation.

Finally, to make a management routine based on this different conception of prisoner work, a grievance procedure is necessary. Such a procedure should provide for the possibility of carrying a disagreement outside the correctional organization to some independent decision-makers. Without opportunities for self-determination and a real mechanism to appeal management's arbitrary encroachments into these areas, prisoners will have no dignity, and management goals will be defeated.

ANTHONY TRAVISONO*

The subject is one about which I think most of us have a great deal of interest or we wouldn't be here on a Saturday morning, trying to figure out a new answer to an age-old question. I think we all recognize that governors are elected for various reasons and that legislators have various views of what they conceive of as their mandate from their constituents. There are also correctional directors who don't think alike, expounding a wide variety of views on the important factors of correctional reform. Many of them have very short terms of office; the average professional life span for a correctional director is about two years. In our society the correctional director becomes a scapegoat for some of the larger concerns of the public, and is particularly subject to the political process that John Irwin began to mention. The more we get into that process, the more difficult it is to stay in it and to deal with it. So, at the root of all of this is a major problem: the use of punishment and the role of punishment in our free society.

I don't think we really know how to administer punishment. I think there is a tremendous contradiction in our culture regarding its use. We show a great deal of inconsistency, whether it's in our homes, our schools, our colleges, or, as we are discussing today, our prisons. I am sure that at this university people fail for a variety of reasons, and they then use the appeal process. They also enjoy knowing a professor who perhaps gives them a D rather than an F, for whatever reason. Punishment is attached to every phase of life. Prison, as the ultimate negative sanction a society can impose upon its citizens, gives us the greatest concerns. Incarceration is here to stay in a democratic society. However, we're still debating the issue of for whom incarceration is appropriate and probably will debate it for as long as any of us are alive.

Yesterday we did not discuss, nor does any of the literature indicate, how many beds a free, open, and democratic society, such as our United States, should have for punishment purposes. Larry Solomon's paper stated that we are the third largest incarcerator in the world. Playing devil's advocate, I say, so what? Are there many other societies similar to ours that are trying to deal with some of the things we are dealing with? Who is to say how many beds we should have? I think that we should talk about it more often than we do, because I don't think there is yet an answer.

Yesterday, we did not really define the violent and dangerous offender. We all have preconceptions here. Generally, we only speak of the predator as the person who offends us personally. Many of us, however, take a different look at this and say maybe the corporate executive is a violent and dangerous offender because he knows better; maybe the politician is a violent and dangerous offender because he violates the public trust on which we stake our democracy. But, most middle-class liberals suggest that I talk

*Executive Director, American Correctional Association.

about non-incarcerative alternatives for these people. We seldom hear of the use of alternatives for the person who is considered a predator because he attacks us personally. But if we expand the interpretation of the word predator, we have a whole different ballgame to discuss.

We also know that basic to this problem of crowding is the public attitude, the public perception of what a prison should be. We have so far discussed the new surge of criminal sanctions being placed on the books. We have not discussed how the added sanctions affect jail populations.

I think everyone is aware of all the new drunk-driving laws that call for a minimum of 48- or 72-hour mandatory sentences. The majority of our metropolitan jails are crowded beyond capacity because of these new laws. Some jail administrators are refusing to take drunk drivers because of the number of people they are supposed to incarcerate. Because of this they are suspected of being anti-law enforcement. Also, some of our jail administrators are saying that the driving-while-intoxicated offender will need a reservation and will be called when a bed is available. A tidal wave of these driving-while-intoxicated laws has flooded the country. If we were honest with ourselves, we would desire that these sanctions be in place. The federal law mandates two days of incarceration or ten days of community service, yet the second part of the law is generally ignored.

We do know, however, that this effort is being orchestrated from the grass roots in every state. The entire issue of continued punishment or continued use of incarceration as punishment is not coming from the leadership; it's coming from the people in small towns, as are many other new community concerns that will change national policy.

As John Irwin mentioned, correctional officials are trying to manage prisons, jails and community programs at capacity. At best, it is difficult. The "big house" that epitomized the old days is gone. Times have changed from when silence prevailed and inmates did not bother one another; one just did time. Some of the inmates who are now in the system might feel that in retrospect Alcatraz was pretty good: "We worked all day long, we didn't talk to anybody, no one screwed us around, we got our three squares, and we got out." Some might feel it wasn't such a bad deal compared to the way it is today in some of the places that are severely overcrowded.

The institutional response has been a very difficult one for all of us who have been involved in the area. History shows that there has been overcrowding since the beginning of the American jail and prison. We all know that whenever there are prisons or jails, they get used. After the Civil War, there was a huge surge of prison building. Peacetime came and society was not able to assimilate or provide jobs for all. Similar occurrences took place after our other wars. After World War II there was a huge resurgence of prison building. And, after the Vietnam conflict, the same phenomenon repeated itself. All of our nation's peacetime economies have been unable to deal with the upsurge in incarceration. A case can be made that prisons are used to solve the unemployment problem. On the other hand, one could

argue that a period of liberalism during wartime is immediately followed by a period of conservatism. Both arguments can be traced as far back as the Civil War. Therefore, whatever we have or have not done in the past 113 or so years, we have yet to really find a formula. None of the theories that have been considered have helped the culture at the time they were suggested. Prison administrators and John Irwin have indicated that there is no research available to anyone who manages a prison or prison system which states that length of incarceration is related to future success. Some administrators, however, subscribe to a "burnout" theory; that is, when a person reaches forty or fifty years of age, he begins to "burnout" on aggressive behavior. Perhaps we are just too wrapped up in punishment theory to recognize this phenomenon.

Maybe the best response for correctional administrators and those who try to help correctional administrators is to look at sentencing. If we are unable to control the "front gate," there is very little a correctional administrator can do. But most correctional administrators just control a small piece of the correctional system. Governors and legislators need to look at plans for entire systems in order to make effective changes. From a correctional point of view the best immediate response is shorter sentences.

In the early 1970s, many of us were trying to get rid of the "Bastilles." The Law Enforcement Assistance Administration (LEAA) invested a great deal of money in trying to do just that. However, with all the good intentions of the federal government, correctional administrators, and the national prison project, only five major "Bastille" institutions have been closed in the United States since 1970. These were in Alabama, Idaho, Montana, Nebraska, and Vermont. The Folsoms, the San Quentins, and the Leavenworths are still with us and probably will be for some time to come. Correctional administrators would like to close those places if they were given the opportunity, but they lack the alternatives to enable them to do so.

Reducing sentences will not affect community safety, and the proper use of community sanctions will allow our communities a great deal of safety. Collectively, we have been talking about such programs for years. Intensive probation, community work, and small half-way houses can work extremely well. But, they concern and scare people, and it is not easy to get popular appeal.

The options for relief which this conference is trying to address are the control of the "back-door" and the building of more prisons. We have not been able to close the "front-door" because of community attitudes that have been with us for several years and will probably continue to be with us, and not just for the next seven years. The year 1990 will not suddenly become a magic number. Crowding will be around for quite a while beyond 1990.

The inevitable conclusion is that excessive time in a correctional institution does not have a great deal of merit as a punishment tool. We can live safely and reduce sentence length. John Irwin said maybe a ten percent

reduction will be appropriate. Well, that ten percent can be a tremendous tool in reducing crowding. A few months ago, I heard Ben Ward, the Director of Corrections in New York City*, talk about one thing that they tried to do here in the city to reduce pre-trial time. Presentence reports for those in jail were completed on a priority basis. The remarkable idea eventually averaged a saving of five days per inmate.

In conclusion, the American Correctional Association has produced standards for the operation of jails and prison; we do not advocate population control as a part of our standards. If we are to have prisons and jails, however, they should be operated decently.

Alvin Bronstein, Executive Director of the National Prison Project, who is in the audience this morning, operates from a different perspective. The American Correctional Association and the National Prison Project are trying to accomplish the same goal, but are using different methods. The American Correctional Association has a love-hate relationship with the National Prison Project. Correctional administrators do not like being hauled into court to defend correctional systems. Mr. Bronstein continues to say that a baseball bat is needed to get the attention of legislators and governors and that he is going to use the heads of correctional directors to get the attention of these people. The American Correctional Association continues to feel differently. We would like to have professionals use their expertise to get the job done. We believe this process will have far more lasting effects on the correctional system. Thank you.

Editor's Note: In January, Mr. Ward was named Police Commissioner of New York City.

JOHN MANSON*

I'm going to try to stay with Gottfredson's paper. It's always difficult for me to get into the subject of overcrowding because of definitional problems. It is better to first define crowding and then go on to discuss overcrowding. You might consider crowding as a situation that develops when an institution reaches 90% of its rated capacity, an arbitrary figure at best, but I think one that may be acceptable. At that point your classification system is put to its supreme test. That's the point that your classification system becomes frustrated by the fact that you do not have adequate beds available, for example, in special housing units. As a consequence, inmates designated for special housing receive makeshift housing assignments while placed on waiting lists for special housing.

When you reach that 90% of rated capacity level and beyond, the usual result is increased idleness. Therefore, some institutions resort to featherbedding in efforts to get people out of the housing units for longer periods of time. Unfortunately, the process prostitutes whatever meaningful work activity you had for prisoners before you chose to featherbed.

With increased crowding, there's proportionately less program time and space for academic and vocational offerings, and for medical services and the like. As the numbers increase, there's a general reduction in the amount of inmate supervision and monitoring, an increase in terrorization, an increase in assaults on inmates and staff, and a general decline in inmate and staff morale. Overcrowding, in some situations, creates a long term climate of fear which affects inmates and staff alike.

What are the institutional responses to overcrowding? Probably the first response is a clamor for more staff, that is, more custody staff to meet security and safety concerns. More often than not, institutions are able to add custody staff in proportion to the higher number of inmates. The problem with this is that if institutions are severely overcrowded, the introduction of more staff does not clearly alleviate the problems created by housing more people in the same amount of space.

Institutional responses to overcrowding also usually involve nominal increases in program staff. Certainly such increases are not proportionate to the inmate increase experienced.

Occasionally institutions try to deal with the problem of more inmates by increasing recreational time for those idle inmates that are not "featherbedded." Those who are honestly and candidly idle are given extra recreational opportunities because other kinds of program activities are unavailable. That's certainly a more honest approach than featherbedding.

Another pro-active measure seen in some systems is the increase in training hours to aid correctional personnel in dealing with the special

* Mr. Manson, who died on September 17, 1983, was Commissioner of the Connecticut Department of Corrections when he participated in the Colloquium.

problems of overcrowding. In addition—and I'd better mention this with our correctional ombudsman in the audience—increased population increases geometrically inmates' perceptions of inequities, making necessary the enhancement of grievance mechanisms. This also holds true for the provision of civil legal services to prisoners.

Finally, the classification system had better be finely tuned to allow the culling out of the maximum security setting inmates requiring less security, and to move them to lower levels of security which can better address overcrowding. You can certainly obtain minimum security beds much more quickly and at lower cost than maximum security beds.

Gottfredson suggests that prison administrators can reduce overcrowding by (1) reducing admissions to prisons, (2) building more prisons, (3) tolerating the status quo, and/or (4) accelerating releases. As for the first option, reducing admissions, I would suggest that this option is not so limited, depending upon the ability of the correctional administrator to persuade the legislature and other criminal justice practitioners that bail reform frees beds, as do shorter sentences. I can't help believing that if every judge in a given judicial district or a given state would agree to discounting a sentence by ten percent—ten percent is not a great deal—within a year overcrowding would be pretty well under control, perhaps in half the jurisdictions where there is now overcrowding.

Building more prisons is another option suggested. The problem, of course, is that prison construction is expensive and doesn't answer the immediate problem. Construction also brings with it the dilemma that Blumstein and others warn about—the downward projection of prison populations in the late 1980's and into the 1990's which would lead to the white elephant prisons of the 1990's. They will not be as readily convertible into bowling alleys as were the movie houses of the 1960's.

Tolerating the status quo, in my opinion, may be preferable to new construction, up to a point. And that point is the precarious one of having a prison out of control, unsafe and no longer capable of providing for basic human needs—in short, the unconstitutional prison. However, if one could manage to remain short of that hairline edge of unconstitutionality for the duration of the crowding crisis, this would, in my opinion, be preferable to new construction. In the interim, present-day staff, present-day inmates, and present-day administrators bear the burden of crowding for the benefit of future prisoners, future taxpayers, and future clients of other social service systems. Of course, it's easy for me to say that present-day persons bear that burden!

The correctional administrator probably has the most control—as has been mentioned—over the last option, that of accelerated release. Creative administrators, when allowed by the legislature, can ameliorate crowding via back-door methods if they have a sound classification system that will get them through the woods. And I couldn't care less whether it's a scientific, empirical classification system, or whether it's a subjective one, so long

as it will predict with reasonable success who you can move toward the community. When you have a sound classification system, you have the vehicle to ameliorate much of the overcrowding. With sound classification, your halfway houses are at capacity, not half empty, and your minimum security facilities are utilized to capacity. You can move into programs such as house arrest for inmates previously taking up valuable space in institutions, and you can do some creative things with furloughs, especially near the end of the sentence. With the support of the community, inmates on furlough can represent a sizable proportion of the prison population, at considerable savings of beds. Such programs are not for correctional administrators who are faint of heart. Neither are they for correctional administrators who are constantly looking over their shoulders for political shadows.

When all of these options fall short, emergency release mechanisms should be considered. Accelerated release mechanisms put a relatively small number of inmates, who are highly screened, into the community for relatively long periods of time. With emergency release mechanisms, large numbers of generally unscreened inmates are moved into the community for short periods of time. I think it preferable to have the well-screened people out over longer periods.

But all of these methods are still reactions to overcrowding. The proactive programs will probably be initiated over the next decade as alternatives to costly prison construction. More states will adopt guideline sentencing. Other states may flirt with the concept of a resource model, the seed of an idea which I developed and which Al Blumstein and his people at Carnegie-Mellon have refined so beautifully. This resource model would, very simply, follow the model of the budgeting process utilized by private industry and most governmental agencies. An assessment is made of corrective resources—"punishment pieces," if you like—which are available in a given fiscal year. These punishment pieces are allotted to the judiciary in the form of "man-bed" days. If a given judge, or judicial district, finds it necessary to overuse the allotment, a corresponding adjustment in the form of early releases must be made by the judge or judicial district involved. I look to the day when some variation of this model is used. The state of the prison system, the economy, and the cost of construction will get us there, one way or another.

I yield. Thank you.

