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NUMBER 2

110525  
110536

THE PRISON COPY

# Future of Corrections

IN C. 81.0

MAR 24 1988

ACQUISITIONS

FALL-WINTER  
1987

THE PENNSYLVANIA PRISON SOCIETY

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# The Future of the Local Jail

*Merlyn Bell\**

In the early 1920's, Joseph Fishman wrote a scathing denunciation of local jails, entitled *Crucibles of Crime* (Fishman, 1923). Fifty years later, Charles Silberman wrote that jails were "cesspools of crime" (Silberman, 1978). Also in the 1970's, Hans Mattick, perhaps the most knowledgeable recent critic of jails, noted that "construction is often a substitute for jail reform" (1974). If he is correct, then history may be repeating itself.

In the 50 years intervening between Fishman and Silberman, many jails were replaced or renovated. Half the nation's jails were constructed between 1950 and 1978 (Mullen, 1980). And jail construction is again a booming business. In the early 1980's, nearly 500 new jails were being built, at a cost of over \$3 billion (Nelson, 1983).

Given the apparent life cycle for jails, replacement of the most recently constructed jails will start in 2020. Since it can take fifteen to twenty years for a new jail to go from the talking stage to full operation, the beginning of the 21st century should bring rumblings about needing new jails. When the discussions about constructing new jails begin, will we also hear the usual accompanying comments about the "sad state" of the nation's jails? I choose to argue that we will not, for four reasons.

One, the jail is more visible to the public, to elected officials, to criminologists, and to correctional professionals than it was even ten years ago. Two, standards for jail confinement have taken legal form and are being adopted by jails of all sizes. Three, jails are more often part of the correctional system and less often an adjunct of law enforcement. As a result, jails are increasingly managed by a professional staff who are trained for that task and aware of case law and standards for care. Four, the jail's inmates, and consequently its functions, are changing and will continue to change.

## *Increased Visibility for Jails*

Jails will be superior in 2012 because of their increased visibility. In the early 1900's, Fishman hypothesized that the citizenry knew little about their local jail, not even its location. He tested that hypothesis by standing in front of jails and asking bystanders where the jails were located. He proved to his satisfaction that no one knew. Even in the 1970's, citizens knew little about the jail. Prisons were much more visible, albeit in a somewhat disreputable fashion, as the scene of a riot or the home of the Birdman of Alcatraz.

Today's citizen may not know where the jail is located, but he or she has seen inside it and talked to its prisoners and to its staff via television. They have observed the new facility being constructed, heard about cost overruns and security systems that do not perform, and watched dignitaries tour before it opened and inmates settle into new quarters after it opened.

Elected officials share the citizen's burgeoning interest in jails. The National Association of Counties is an active participant in the Coalition on Jail Reform. The Advisory Commission on Intergovernmental Relations, which includes elected representatives from federal, state, and local government as well as citizens and federal

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executive branch officials, reported on the jails in the study, *Jails: Intergovernmental Dimensions of a Local Problem* (ACIR, 1984).

The fact that jails have attracted the attention of locally elected officials is not surprising when one learns how large a piece of his/her tax dollar goes for criminal justice activities. In Washington State, counties are estimated to spend over half of their unrestricted tax funds on criminal justice. With each passing year, the jail takes a larger share of that 50 percent.

The scientific community has paid the least attention to the jails. Theoretical research, such as was done in prisons and on prison problems, has not been done in jails. But when current research funding is directed toward solving major policy problems, the jail has been included. The work of Steadman and his colleagues on mental health in correctional settings has not been restricted to prisons (Steadman, 1982). The Institute for Economic and Policy Studies recently completed a study of *The Organization and Management of County Jails* (Guynes, 1985). Much of this work has been funded by the research and policy development arms of the federal government; all of these agencies have come to include the jails and their problems as part of their areas of interest.

The correctional professional has renewed interest in jails. Richard McGee, better known for his long tenure as director of California's prison system, managed a jail and wrote about jails (McGee, 1939). The Wickersham Commission included work on jails done by Hastings Hart (Hart, 1931). Professional magazines are again featuring jail issues. *Corrections Today*, the publication of the American Correctional Association, devoted its entire February 1987 issue to jails. The occasional arguments about confusing prisons and jails, usually initiated by those who have worked in both, are a signal that the professional has an interest in jails as separate from the prison. Jail administrators now have a single organization of their own, affiliated with the American Correctional Association.

Prisoners' rights, telephone privileges, TV cameras, overcrowding, and suicides have redirected attention onto jails, much to the discomfort of some local officials and administrators. Despite the embarrassment public attention has created for some jail officials, the newer administrators are cognizant of the value of publicity and solicit exposure. They encourage the media to film crowded cells, talk readily to reporters, take representatives of interested citizens' groups on tours, and offer judges and county attorneys overnight stays in new, unoccupied facilities.

These jail managers argue that visibility of substandard conditions and of adequate conditions will foster appropriate public expectations about jail conditions and increase the probability of their support for funding for such conditions. Only time will tell if they are correct or if the jail will return to the obscurity and wretched conditions of Fishman's era.

#### *Standards on Conditions of Confinement*

Actually, the courts may dictate that a return to wretched conditions is impermissible. Judicial investigation of correctional institutions has not been restricted to state prisons; jails have also been scrutinized and found wanting. Two areas have received particular attention: medical care and crowding. In 1984, 22 percent of the larger jails (those over 100 beds) were under court order for crowding and 24 percent for conditions of confinement (BJS, 1984). And standards for local confinement have been prepared by numerous bodies: the American Bar Association, the American Medical Association,

and the Commission on Accreditation. By December 1984, 25 states had adopted mandatory correctional standards, and 31 states had an inspectional process for jails.

Jails of all sizes are slowly coming into compliance with the standards. Washington State, where this writer works, has had legislatively enacted standards since 1979. These standards are maintained by a state agency, the Corrections Standards Board. The Board asserts that both the existence of standards and new jails (almost all the state's jails are new and a few have been remodeled) have protected the counties and their jails from the litigation that has become commonplace elsewhere. With the exception of crowding, once the Washington jails came into compliance, they tended to remain in compliance.

The claim can and has been made that the most pervasive effect of the standards has been the development of policies and procedures, a process without meaning unless these policies are followed. For example, unless implemented, of what value is a policy which specifies that all inmates are to receive a physical within 14 days (Guynes, 1985)? Unquestionably, standards without inspection and inspection without meaningful enforcement are valueless.

Because court rulings about certain conditions, such as crowding, have resulted in ambiguous or debatable standards, some jurisdictions believe that standards may be unenforceable. However, it is reasonable to believe that this uncertainty will stabilize, and norms for jail conditions and operations will be generally recognized.

Assuming that the current standards do become the norm in the jails of 2012, then inmates should not face nights of wakefulness because they fear their cellmates. Standard practice of classification, number of inmates per sleeping area, and surveillance should mean that assaults of inmate on inmate should be rare. The jail should be similar to the better prisons in these areas. There should be no more complaints about poor medical care, such as prompted much of the jail litigation and led to the development of custodial care standards. Those few mentally ill prisoners who remain in the jail should receive mental health care as good as in any other nonhospital setting. They should be under appropriate levels of skilled observation and receive necessary and monitored medications on schedule. The physically ill should receive care equivalent to that available in a neighborhood health clinic or in a limited infirmary caring for partially ambulatory patients.

Activity dominated by television, broken by a few hours of leisurely work, and interrupted by long periods of sleep during the hours of poor television programming will be replaced by more stimulating activity. Exercise of both the large and small muscles will be a regular routine. Other leisure activities should be readily available, such as reading materials and games. The ever-present television could be replaced by a combination VCR and computer offering the capability of playing games, writing notes, doing legal research, and serving as companion to the isolated inmate. Even in those jails with a largely pretrial population, work will be available as an alternative to the boredom of idleness. Inmate volunteers will run the laundry and sweep the corridors.

In some facilities, staff will be expected to take a proactive role, managing the inmates rather than simply guarding them. Programs may then become an adjunct of security, the argument being that prisoners who are occupied with interesting activities are less likely to engage in problematic behavior. Although some of the newer jails are not designed to facilitate this approach, operational changes could be made that would allow variations on proactive control. The long-term effects of training and profes-

sionalization of corrections officers will determine whether or not most jails will adopt proactive controls or remain reactive into the 21st century.

### *Operation as a Correctional Agency*

By 2012, jails will be recognized as correctional agencies and no longer be adjuncts of law enforcement. Mattick, for one, considered the local law enforcement operation of jails as a primary reason for their disrepute (Mattick, 1974). He argued that guards were the beneficiaries of the patronage of an elected sheriff and changed when a new sheriff was selected. Scarce resources went to patrol rather than the jail. Deputies placed on jail duty felt punished and often that was the intent of their assignment.

The operation focused on law enforcement's interests, that is, on detention or safety and security, rather than on corrections or services. Often there was such a division of responsibility that no one was truly responsible. The common interest of the many with some responsibility, Mattick concluded, was to "keep things quiet, divert public attention, and maintain political advantage" (1974).

During the last decade, most analyses of optimal organizational arrangements for local jails have concurred with Mattick and recommended that jails be independent of law enforcement. This independence has taken several forms. Jails are found in a distinct semiautonomous branch of a law enforcement agency; in a separate department of corrections, sometimes operated by the state; or combined with human services or with other criminal justice activities. All these structures exist in some places.

The most common organization remains an alliance with law enforcement with buffers to protect the jail from interference and other problems enumerated by Mattick. And in some instances, there are buffers to protect law enforcement from the jail. The appointment of a separate jail administrator with separate staff may be the most significant buffer now in existence (Guynes, 1985). In 2012, the jail, whether still under the sheriff's jurisdiction or not, will be managed by a professional staff trained as correctional officers and administrators.

One significant result of recent judicial intervention into corrections has been the training of staff. Although there is a tendency to see training as something which is completed after a specified number of hours, the evolving requirements for correctional operations will ultimately result in continuing training. As with law enforcement officers or members of the bar, corrections staff will be expected to increase their understanding of the field, to update their knowledge, and to improve their skills.

The necessity of specialized training implies that the staff is hired for employment in the jail alone. The use of road deputies on temporary, punitive assignment in the jail is not congruent with 40 hours of pre-employment training. Jail guards, increasingly called correctional officers, are now commonly civil servants, hired from a different register than deputies, paid on a different scale, and receiving different benefits. Even in the smallest jails, the rotation from patrol to jail to patrol appears to have stopped (Guynes, 1985).

Once there is hiring for jail employment, there can also be selection of candidates with important skills, screening for desirable characteristics, and descriptions of the attributes desired in a jail corrections officer. These kinds of careful hiring practices are also possible because there are more candidates for these jobs than there are openings in many jurisdictions.

Being a corrections officer has become a desirable job. The pay is good. Although it is shift work, a person with seniority can request preferred shifts. It is almost never demanding, physically or in any other way. It is stressful in that danger seems to be omnipresent, although in well managed jail facilities, violence against staff is unusual. Still there are jobs within a jail that are more pleasant toward which staff can aspire.

The promotional opportunities are also improving. The larger jails are adding supervisory layers because accountability is required if standards of care and effectiveness are to be met. Even the smaller jails increasingly have a permanently assigned commander (overall supervisor) with a second-in-command. Mid-level supervisors from larger jails can become commanders of smaller jails. There is a career ladder developing across the jails. After all, there are more medium to large jails than there are prison systems.

Jail administrators have had several associations for many years. Within the last decade, these associations have merged, and recently the American Jail Association (AJA) became an affiliate of the American Correctional Association. The AJA's Training Conference in May 1987 had the theme: "Beyond the Trends: Building for the Future." Their brochure notes that this is the first year that AJA has had a permanent home, has had an appointed executive, and has published its own magazine. AJA has gained over 500 members in a year, and several states are organizing their own jail associations.

These are truly remarkable developments in a field where thirteen years ago Hans Mattick could write about the sheriff's patronage selection of deputies. If these trends continue, by 2012, the jail's management and staff will be markedly different from today.

With these changes, sheriffs who still have responsibility for the jail may feel that patrol is losing out to the jail. In the larger urban counties where the jail is under court order to improve conditions, any additional tax funds go to the jail. If that is still not sufficient, other government services are reduced to pay for increases jail services. In those counties, sheriffs may well wish to be rid of the jail since it is a drain on their budgets.

An increasing number of jails would be removed from the sheriff's jurisdiction and established as separate agencies if it were not for what is happening to sheriffs otherwise. Sheriffs have been responsible for law enforcement in unincorporated areas of counties. Municipal police chiefs are responsible for law enforcement in their own incorporated areas. In the major urban counties, where larger jails are located, the duties of the sheriff are shrinking in unincorporated areas as urban counties diminish in size. As sheriffs are responsible for less and less law enforcement, they take an increasing interest in jails. For some, it is their major responsibility. It could well mean that in 2012, the urban sheriff will be exclusively a jail administrator.

### *Changes in Inmate Populations*

In 2012, the jail will house different inmates and serve somewhat different functions than it does now. For one it will no longer be the social service agency of last resort. Instead it will house (1) those pretrial detainees who fail to appear for trial or are a serious threat to public safety, and (2) sentenced offenders who have proven themselves intractable participants in community sentences.

Critics of the jail have often commented on its propensity to house the unwanted (Goldfarb, 1975; Flynn, 1973). Flynn called these the "sociomedical cases: the mentally

ill, the alcoholic, and the drug addict." A social worker in a local jail tagged these and many other typical jail inmates, "the socially incompetent." Moynahan and Stewart have noted that, in this country, combining the jail with the workhouse resulted in this multiplicity of functions and inmates (1980). Although the sociomedical inmates are and were accused of or serving time for crimes, their social service needs were acute. If those needs had been met, it is reasonable to assume that they would not have been in jail.

A good example is the stand-up or common street drunk. The drunk-in-public statutes came under heavy criticism in the work of the President's Crime Commission in the 1960's. Gradually, that and other street offenses were either decriminalized or rarely enforced, resulting in the removal of many of those inmates from the jails.

The deinstitutionalization of the mentally ill without a comparable increase in community services had the opposite effect; many mentally ill went from long-term stays in state hospitals to temporary, periodic stays in jail. Now provision is being made to place the mentally ill jail inmates in community settings that meet their mental health needs and reduce the chances of their going back to jail.

The drunk and the mentally ill are only two examples of the inmate with short and frequent jail terms. As the jails become more crowded and more visible, inmates of these types will increasingly be handled in settings that are more appropriate to their needs.

The short-term "socially incompetent" inmate will not be the only type absent from the jail in 2012. It will no longer house offenders for whom another correctional setting already exists. For example, the Office of Juvenile Justice and Delinquency Prevention has invested much of its effort in insuring the removal of children from adult jails. At the other end of the spectrum, state correctional agencies, who have solved their crowding problem by delaying transportation of state prisoners to state facilities, are being ordered to expedite transfer.

Other changes in inmate composition are quite possible. Some jail managers, faced with court-imposed ceilings on their populations, anticipate holding fewer and fewer misdemeanants of any kind (Bell, 1981). They doubt that misdemeanants require cells that cost \$60,000 to construct and over \$30 a day to operate. Some jurisdictions have never integrated their pretrial and sentenced facilities, continuing to operate them separately. Other jurisdictions are in the process of separating them on the theory that the sentenced facility can be built and operated more cheaply than the pretrial felony facility.

If misdemeanor and sentenced prisoners disappear from the traditional jail, then the jail of 2012 will be quite different from the one we know now. The most startling difference will be the absence of inmate labor. Pretrial prisoners cannot be forced to work as can sentenced prisoners. If jails become primarily pretrial felony facilities, then there will be no inmates to wash the dishes, cook the food, sweep the halls, run the laundry, scrub the showers, and perform the myriad of other housekeeping tasks. The implications of this change for operational costs are considerable. Although inmates are not as productive as regular employees and do not spend a full eight hours on the job, replacing even three inmate workers with one paid employee would add substantially to a jail's budget.

The other notable difference will be in operational style. A jail that has mostly high risk felons awaiting trial must be a much more secure place than most present jails. This change will be most evident in the restrictions on movement. Most jails have not had the freedom of internal movement associated with prisons. In part this is due to

the jail's limited space: no yard, less program area, perhaps no dining hall. In part, it has been the result of the rapid turnover of inmates and their preoccupation with their cases and possible release. The jail inmate is not a good candidate for extended programs.

The 21st century jail will see these tendencies exacerbated by jail personnel concerned with possible escapes, with interaction between antagonistic codefendants, with violence between members of rival street/prison gangs. Jail administrators are already beginning to assert that the jail inmates are like the worst prison inmates. And in many ways jails may be run much like the intensive management of segregation units that prisons now reserve for their most intractable inmates. If the jail of 2012 houses primarily high risk pretrial felons and operates like a prison segregation unit, then it will be a very different place from the jail of 1975.

### *Conclusion*

As positive as these prospects are, they could rapidly erode through overcrowding. Overcrowding may be the largest single threat to improved jails, and it is a very real threat.

Citizens in both urban and rural areas are upset about the extent of crime in their neighborhoods. They perceive arrest and detention of criminals as the solution to the problem of crime. So there is enormous pressure on the current criminal justice agencies that decide who goes to jail and for how long. Any indication that new jail space is available appears to tap a pent up demand, and jail populations jump. In many jurisdictions, there seem to be more potential inmates than there are beds, and often there are more actual inmates than there are beds.

Crowding ultimately has a deleterious effect on all other standards of confinement. Even the most basic services, such as food and sleeping space, become difficult to provide when crowding is severe. But the negative effects of crowding are not restricted to inmates; staff also suffer from crowding. Their ability to perform their duties in a decent and humane manner decays.

Crowding is a problem that cannot be solved by jail management as it has little or no control over admission or release. Even when selected services, such as pretrial release, are within the jail's organization, the policies under which they operate are determined elsewhere -- by the courts, prosecutor, and police.

Crowding is symptomatic of the root problem with jails. Jails are powerless to manage the size of their workload while being held accountable for how well they perform that work. Until this imbalance is addressed, jails can careen into substandard conditions despite the best efforts and intentions of their managers and staff. Visibility, standards, separation from law enforcement, changes in the inmate population: none of these changes will protect the jail of 2012 if it remains powerless to control its workload.

Jails have rarely been noted for their achievements. More often and with good reason, jails have been notorious for their failures. History would tell us to expect such egregious performance in the future. Continued exposure of the jail's inner workings to the public eye may reverse that trend. Certainly vigilant insistence on adequate conditions will help.

Only the imminent possibility of enormous court imposed costs will persuade some policymakers that jails, jail staff, and jail inmates merit better conditions than they have had in the past. For now, every jail manager and every county commissioner should feel the sword of litigation poised over their jail.

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