

NCJRS

JAN 23 1990

ACQUISITIONS

A Proposal for Considering Intoxication at Sentencing Hearings: Part I *Charles J. Felker*

Alcohol and Crime on the Reservation: A 10-Year Perspective *Darrell K. Mills*

Views on AIDS in Probation *Arthur J. Lurigio*

Is It Time to Review the *N.E. Schafer*

..... *Thomas W. White*

90's: A Federal Perspective *Magnus J. Seng*
Thomas M. Frost

..... *Faith H. Leibman*

..... *David B. Griswold*

Intensive Treatment on Reducing Recidivism of Addicted Offenders *Gary Field*

122274
122282

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LIII

DECEMBER 1989

NUMBER 4

This Issue in Brief

A Proposal for Considering Intoxication at Sentencing Hearings: Part I.—What sentence should a judge impose on a convicted offender who was intoxicated at the time he committed the crime? The U.S. Sentencing Commission decided that an offender's intoxication is "not ordinarily relevant" to his sentence. Author Charles Felker proposes, instead, that intoxication is a relevant and important factor in determining an appropriate sentence. In Part I of this article, the author surveys current theories about the connection between alcohol and crime, the responsibility of alcohol abusers for their acts, and the way offender intoxication affects the purposes of sentencing. In Part II, the author will develop a specific proposal based on a survey of state laws and cases.

Alcohol and Crime on the Reservation: A 10-Year Perspective.— Author Darrell K. Mills examines the relationship between alcohol abuse and crime on the part of Indian felony defendants in the Federal District Court in Wyoming from 1978-88. The author characterizes the types of crime and typical defendant from the reservation and focuses on the history of alcoholism, treatment, and prior arrest of these defendants. The article also discusses the issue of alcoholic denial.

Practitioners' Views on AIDS in Probation and Detention.—The question of how to provide humane and effective supervision for HIV-positive offenders or offenders with AIDS is an important issue facing policy-makers in corrections. Author Arthur J. Lurigio reports on a survey of probation and detention personnel in Illinois conducted to examine views regarding AIDS and its impact on policies, procedures, and work behavior. Comparisons were made between probation and detention personnel. Survey results indicated that probation and detention respondents anticipate that the AIDS

health crisis invariably will affect their management of cases. Detention participants were more concerned about occupational risk and precautionary measures. Both groups recommended policy and procedural guidelines governing legal liability, confidentiality, mandatory testing, case contacts, and the education of offenders and staff.

CONTENTS

[A Proposal for Considering Intoxication at Sentencing Hearings: Part I Charles J. Felker	3
[Alcohol and Crime on the Reservation: A 10-Year Perspective Darrell K. Mills	12
[Practitioners' Views on AIDS in Probation and Detention Arthur J. Lurigio	16
[Prison Visiting: Is It Time to Review the Rules? N.E. Schafer	25
[Corrections: Out of Balance Thomas W. White	31
[Crime in the 1990's: A Federal Perspective Magnus J. Seng Thomas M. Frost	36
[Serial Murderers: Four Case Histories Faith H. Leibman	41
[Florida's Sentencing Guidelines: Six Years Later David B. Griswold	46
[The Effects of Intensive Treatment on Reducing the Criminal Recidivism of Addicted Offenders Gary Field	51
Departments	
News of the Future	57
Looking at the Law	63
Reviews of Professional Periodicals	67
Your Bookshelf on Review	73
Letter to the Editor	82
It Has Come to Our Attention	83
Indexes of Articles and Book Reviews	85

Corrections: Out of Balance

BY THOMAS W. WHITE, Ph.D.*

HISTORICALLY, CORRECTIONS has been asked very distinct and generally conflicting missions—retribution, deterrence, and rehabilitation. The relative influence of these objectives on the actual practice of corrections has shifted periodically as society struggled to find solutions for a steadily growing crime problem.

Initially, the desire for retribution characterized society's response to criminal behavior. The imposition of mutilation, torture, or even death was universally accepted as appropriate punishment for a wide range of social transgressions. The roots of this philosophy were inextricably entwined in our Judeo-Christian tradition and reinforced by years of biblical teaching which stressed the notion of an eye for an eye and a tooth for a tooth. However, by the beginning of the 18th century the more humane practice of imprisonment slowly began to replace branding, corporal punishment, and execution as the preferred method of dealing with lawbreakers. Under this new doctrine punishment actually served two purposes: to exact society's retribution and to deter the offender as well as others who may consider committing future crimes. Finally, the early 19th century saw the forerunner of the modern day prison system with the development of the Walnut Street Jail, a uniquely American creation designed to not only punish and deter, but to rehabilitate offenders by making them penitent (the penitentiary) for their actions by forced solitude and biblical reflection.

From the early 19th century until well into the 20th century prisons attempted to combine the generally incompatible goals of punishment and deterrence with rehabilitation. The fact that prisons were able to reconcile these basically contradictory objectives at all can be attributed, in part, to the fact that little emphasis was actually placed on rehabilitation, at least as we define it today. Most correctional facilities were still long on work and

short on education, training, or humane treatment. The prevailing attitude in society, despite its rhetoric, was still weighted heavily toward punishment, although it was commonly agreed that prisons should, in addition to providing punishment, be places where change could take place.

It was not until society discovered the value of the social sciences in the 1940's and 1950's that corrections began to implement an actual philosophy of rehabilitation. The model borrowed heavily from the newly emerging field of psychiatry which had gained considerable recognition during and after World War II. Essentially, this model, ultimately referred to as the medical model, viewed criminality as a "sickness" which could be treated and the offender as a person who, once treated, could be returned to the community cured of his social disease. Armed with this new belief, legions of behavioral scientists invaded our prisons with a renewed conviction that crime could at last be brought under control like the great epidemics of the past. They tested, diagnosed, prescribed, and made release from prison contingent upon the successful completion of their treatment programs. Society, with its naive faith in the power of science, had unanimously endorsed the medical model, significantly shifting the emphasis of corrections away from punishment toward rehabilitation.

Given their new social mandate, behavioral scientists tirelessly labored to therapize their patients into becoming law-abiding citizens. However, despite two decades of intensive therapeutic treatment, they saw crime rates increase, prisons become overcrowded, and correctional administrators begin to question the validity of their model. Then, two events occurred which marked a turning point in modern day corrections. The first of these events occurred in 1971 when the state prison at Attica, New York, erupted, culminating in one of the bloodiest uprisings in contemporary penal history. In the aftermath of the death and destruction the public outcry was overwhelming. Surprisingly though, the outcry was not for retribution, but for complete prison reform with a strengthened commitment to rehabilitation programs that would ensure a tragedy such as Attica would never be repeated. The renewed public demand for rehabilitation intensified research efforts studying the effectiveness of various programs. As an outgrowth of this

*Dr. White is chief, Psychology Services, at the United States Penitentiary, Leavenworth, Kansas, and regional administrator, Psychology Services, for the North Central Region of the Federal Bureau of Prisons. The opinions expressed in this article are the private views of the author and should not be construed as reflecting the views of the Department of Justice or the Federal Bureau of Prisons. Correspondence concerning this article should be directed to Thomas W. White, Ph.D., Chief, Psychology Services, U.S.P., Leavenworth, Kansas 66048.

search the second, and most important, historical event occurred.

In the Spring of 1974 Robert Martinson (Martinson, 1974) reviewed the findings of 231 experimental studies on the treatment of offenders between the years of 1945 and 1967. He found, with a few exceptions, these programs "had no appreciable effect on recidivism." As one might predict, Martinson's work hit the correctional establishment with the impact of a nuclear explosion. The conservatives who had never accepted the rehabilitation model as anything other than coddling prisoners used the results to press for more punitive, restrictive prison conditions. On the other hand, proponents of rehabilitation criticized Martinson's work for being superficial, being based upon outmoded rehabilitation programs, and ignoring the fact that prisons had never been able to implement meaningful programs due to inadequate funding and support from prison officials.

Martinson's findings, regardless of their scientific merits, were instrumental in initiating a national debate within the correctional community over the value of rehabilitation, and, more specifically, compulsory rehabilitation. His results made it painfully obvious to those who would look that rehabilitation, and particularly the medical model, had been conceptually flawed and fundamentally ineffective in changing offenders. Much like the fairy tale about the king's new clothes, Martinson had looked critically at the medical model's cloak of rehabilitative success and found the king naked, or at best in his underwear. Nevertheless, these results, while comforting to those with a less liberal view, did not give license to return to the days of inhumane treatment and corporal punishment, for society, despite its growing disillusionment with rehabilitation, still demanded that correctional institutions be operated humanely and do more than simply warehouse inmates.

The public's steadfast refusal to abandon the goal of rehabilitation placed correctional policy makers in a difficult position. On the one hand they were being told to implement innovative new rehabilitation programs, while on the other, they were acutely aware that they had no new programs to implement. Moreover, Martinson's review, which for the most part confirmed their personal experience, told them that, at best, the programs they did have were minimally effective. Clearly, they were in a no win situation. Thus, over the next several years, whether by design or necessity, the correctional establishment began to openly challenge the efficacy of rehabilitation, particularly compulsory rehabilita-

tion. In the forefront of this assault was an emphasis on a more voluntary approach (Morris, 1974). Authorities advocated creating a new system in which rehabilitation would represent only one part of a total, integrated correctional package. This initiative stressed the need for a "balanced" approach with equal emphasis being given to retribution, deterrence, and rehabilitation (Carlson, 1975). In this context, reliance on the medical model, the primary vehicle by which past programs were delivered, was denounced as the major cause of the failed rehabilitative efforts. It was argued, and probably correctly, that inmates could not be coerced into treatment and that criminality was not a sickness to be cured by psychotherapy. From this perspective, inmates would change only if they wanted to change, and therefore, inmates seeking change should be provided programs, but only on a voluntary basis. Although subtle, this philosophy set a new and very significant course in corrections. For the first time in almost 200 years it was the offender and not the system that was primarily responsible for the success or failure of rehabilitation. Now, it was the offender who must seek out and utilize available programs. The prevailing assumption was that programs having anything to offer would be utilized, while those not utilized would be terminated and the resources redirected. In this way effective programs would eventually emerge to be expanded and replicated.

This bold new balanced approach introduced a unique concept to correctional rehabilitation, namely, the free market system. Much like the economic law of supply and demand, rehabilitative resources would now be supplied based upon inmate demand or participation—in short, no participation, no need for the program. Now, without an endless supply of inmates, social scientists had to provide services that were viewed as helpful and attractive by offenders or face reductions in staff and funding. By wholeheartedly embracing this perspective the professional correctional administrator was no longer saddled with the responsibility of changing recalcitrant offenders. If the social scientists could not develop successful programs, they were at fault. On the other hand, if inmates did not avail themselves of programs, they were at fault. Administrators, now freed from public accountability for ensuring rehabilitative success, focused their efforts on providing a more "balanced" approach to the correctional process and left rehabilitation in the hands of the social scientists.

Now that we have had more than a decade to evaluate the efficacy of the balanced, free market

approach to correctional programming, what have we learned? To begin, it is undeniably clear that it has been no more effective at stemming the rising crime rate than the discredited medical model. While the available data are subject to considerable variation regarding specifics, the general trends are inescapable. Statistics available for 1979 through 1985 show a clear and consistent increase (19 percent) in arrest rates for violent crime, a more than 60 percent increase in rates of incarceration, and additional expenditures of more than 34 percent for state and local corrections, with no indication of an abatement in the years to come (U.S. Dept of Justice, 1988). Although the statistical evidence provides empirical validation for our subjective experience, most Americans do not need statistics to tell them that violent crime on our city streets has made citizens virtual prisoners in their own homes, that massive increases in drug interdiction rates have not decreased the supply of drugs in our communities, and that harsh sentencing laws have not reduced the number of crack houses or the incidences of gang violence in our major cities. In light of these facts, can we honestly say that the balanced, free market system has been more successful at deterring crime than past philosophies? I think the unfortunate answer is no.

One might ask if the free market system does not deter, has it at least been successful at punishing offenders? Again, the evidence seems to say no. The data on recidivism, although again subject to considerable debate and permutation, will vary from 60 percent to 80 percent depending upon your criteria (U.S. Dept. of Justice, 1988). Regardless of the numbers you choose, it is obvious that punishment, if that is what incarceration actually is, does not persuade offenders to return to society and become law-abiding citizens. Although simplistic in its logic, the high rates of recidivism make a very compelling argument that imprisonment is not perceived as punishment by most experienced lawbreakers. If it were, they would not be willing to return to prison in such large numbers. This is a difficult concept for most Americans to accept, particularly those who have never had any direct contact with the criminal justice system, for they view imprisonment not only as punishment but as a deterrent for them. Therefore, they assume that if it deters them, it should deter others. Regrettably, this logic, while understandable, is not true and becomes pivotal to understanding the abysmal failure of our correctional process to either deter or punish offenders (Walters and White, 1988). Today we have created a correctional system in which a

man has little or no obligation to provide restitution to his victim, to the state, or to the community for his transgressions. Moreover, he can enter prison with no education, no job skills, no motivation to change, and suffer no adverse consequences for remaining that way. As a result, many offenders leave prison no more prepared to cope with the demands of free society than the day they were incarcerated and, upon release, readily choose to resume their criminal lifestyles.

At an average cost of \$15,000 per inmate per year we must ask if we want or can afford to perpetuate this system any longer. Furthermore, does it really make sense to leave the choice of rehabilitation programs in the hands of inmates who have repeatedly demonstrated their inability to make responsible life decisions? Do we really feel that the majority of offenders who never become involved in any programs while incarcerated will leave prison with more prosocial attitudes than when they arrived? Do we really feel that inmates will voluntarily choose programs that will force them to confront their self-defeating lifestyle without some incentive to do so? Finally, do we really feel that prison make-work jobs teach either the skills or responsibilities necessary to compete in the community? I am afraid the logical answer to all these questions is no. Until correctional policy makers admit and the public accepts the fact that prison, although undesirable, is not aversive to the vast majority of offenders, we will continue to squander our resources building more and more prisons to house more and more offenders without having any appreciable effect on the crime rate. In light of these facts we must ask why the balanced correctional approach has been so unsuccessful.

Without appearing overly simplistic, it can be argued that the system's lack of success stems from the ungarnished fact that, despite its rhetoric, it has never actually provided a balanced approach. Over the years, rather than provide balance, the free market approach has done little more than steadily erode the number and variety of meaningful rehabilitative programs which could have introduced an element of aversion or psychological change into the offender's time in prison. Although unintended, the seeds of the present imbalance were sown by correctional decision makers in the mid-1970's when they replaced compulsory programs with a totally voluntary emphasis, while knowing they had no new voluntary programs to offer. As a result, they turned a basically neglectful eye to the whole concept of rehabilitation, hoping that something constructive would emerge from the supply and

demand approach to programming. Regrettably, this environment did not favor increased program efforts. Inmates did not see the need for rehabilitative programs, and administrators, basically skeptical of existing rehabilitation models, did not support them because they feared repeating the painful mistakes of the past. In essence, the inmates and the administrators had, for their own purposes, collaborated unwittingly to create an environment in which an emphasis on rehabilitation had become unpopular. Consequently, as program participation dwindled, staff members were redistributed to other areas. This first took its toll on the quantity and then later on the quality of available programs, making it very difficult to provide basic program needs, not to mention experimenting with innovative new treatment approaches.

With rehabilitation programs in disfavor but a clear and firmly established social mandate against harsh punishment, the correctional system had little choice but to focus its efforts on the one function at which it had become overwhelmingly successful, incapacitation. Clearly, if nothing else, the balanced approach has done a very good job of keeping people locked up. A review of any criminal justice statistics reveals the incontrovertible fact that prisons are locking away increasing numbers of offenders, and, for the most part, these offenders do not escape custody. However, while we are incarcerating more offenders for longer periods, our decreased level of programming is reducing our ability to have an impact on the basic attitudes and values that put offenders in prison in the first place. Even more disquieting is the realization that without new rehabilitation programs, it is unrealistic to expect the offenders we do have incarcerated to change, even if they are sentenced for longer periods of confinement. From a very practical standpoint, it is pure fantasy to believe that the present prison environment will return an offender to society to live crime free. In fact, most prison environments can be viewed as a subculture with a shared value system that actually reinforces criminal thinking. It is as if we gave up, admitting that since we could not "cure" crime we simply became content to warehouse criminals in clean, comfortable environments hoping they would change. Today, faced with that very prospect, we are building more prisons and keeping offenders for longer periods of time, still hoping they will change. Unfortunately, until we concentrate our efforts on changing offenders rather than simply confining them, we will continue to rely on incapacitation as our primary correctional tool. However, while clearly important, incapacita-

tion cannot be the sole answer to our crime problem unless we are willing to lock offenders away forever.

Before concluding let me make it clear that I am not advocating a return to the old treatment models. Those of us who have the responsibility for developing rehabilitation programs must go beyond the antiquated, psychodynamic, medical model remedies of the past, for there is no doubt that they have, by and large, been unsuccessful. However, new programs cannot be developed without the full support and cooperation of correctional administrators. In this context, policy makers must be willing to rethink their established assumptions about the purpose of imprisonment. They must not only ensure that prisons are secure and humane, but also conducive to change. Furthermore, for those who are incarcerated the experience must be made sufficiently aversive to deter future criminal activity and break the cycle of recidivism which currently exists (Walters and White, 1988). Regrettably, none of these reforms can, or will, occur until correctional officials give rehabilitation a creditable role in the overall correctional mission.

Today, corrections is experiencing unprecedented growth with our nations prisons expected to more than double in the next 5 years. These conditions will pose challenges to administrators that were unforeseen only a few years ago. But, in these times of rapidly increasing social demands and shrinking fiscal resources, can we be content to conduct business as usual? That is, can we, or should we, continue to incapacitate offenders for longer and longer periods knowing they will eventually be released no different than when they were initially confined? And, more importantly, can we continue to let the public assume that prison is having any positive impact on our current offenders when our daily experience tells us otherwise? Regardless of the short-term success, correctional policy makers must have the vision and the courage to develop a truly balanced approach which will actually punish, deter, and rehabilitate offenders as well as merely incapacitate them. However, this cannot be achieved by clinging to outmoded philosophies. In addition to new facilities we need new ideas, new rehabilitative programs, and a new willingness to risk failure by experimenting with innovative concepts. Clearly, some programs will fail, but others will succeed, and it is by the successes, not the failures, that our future will be measured.

REFERENCES

- Carlson, Norman A. "The Federal Prison System: Forty-Five Years of Change." *Federal Probation*, 43, June 1975.
- Martinson, Robert. "What Works?—Questions and Answers About Prison Reform." *Public Interest*, 35, Spring 1974.
- Morris, Norval. *The Future of Imprisonment*. Chicago: The University of Chicago Press, 1974.
- U.S. Department of Justice. *Report to the Nation on Crime and Justice*. Washington, DC: Bureau of Justice Statistics, March 1988.
- Walters, G.D. and White, T. W. "Society and Lifestyle Criminality." *Federal Probation*, 52, December 1988.