CORRECTIONAL LAW Reporter™

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CRI Civic Research Institute

Considering the Possibility of a Humane Prison

William C. Collins

Can America's prisons and jails do better? Or are we condemned to a system based on punishment and cruelty, a system that breaks down both inmates and staff? One hundred or so people, representing a wide range of disciplines and who share a concern about incarceration facilities and practices in the United States, followed an ice storm into Austin, Texas in early February to discuss those provocative questions in a one and one-half day long symposium, "Cruel and Not Unusual: Can America's Prisons and Jails Change, and, If So, How?" organized by the Prison and Jail Innovation Lab, part of the LBJ School of Public Affairs at the University of Texas.

The group included lawyers, academicians, representatives from advocacy organizations, prison monitors, both former and current inmates (the latter appearing via Zoom), members of the media, former correctional administrators, students, and the Editor Emeritus of the **Correctional Law Reporter** (me).

This article represents my efforts to combine information presented at the Symposium with thoughts I have gathered in over five decades of experience in correctional law.

Introduction

Prisons and jails can change (for the better) through the voluntary efforts of administrators and state and local governments. An example is the direct supervision jail movement in the early 1980s which was a quantum change in jail design and management coming from work by the National Institute of Corrections and a few forward-thinking jail administrators willing to take their jails where no jails had gone before. More commonly, however, the impetus for change comes from litigation or the threat of litigation in which the claim is that conditions in the prison or prison system violate the Eighth Amendment, *i.e.*, they create a "substantial risk of serious harm" to inmates, **Farmer v. Brennan**, 511 U.S. 825, 829 (1994), by depriving them "of the minimal civilized measure of life's necessities." **Wilson v. Seiter**, 501 U.S. 294, 304 (1991).

Where defendants contest the allegations, the pretrial phase of a suit can last for years, with discovery as well as possible collateral litigation over aspects of the case, all of which can stall the case pending an appeal, trial scheduling, etc. At some point, usually on the eve of trial, the parties agree to a settlement, which often sets out a very complex remedial plan. If no settlement is reached the case goes to trial and, more often than not, results in a judgment for plaintiffs and a remedial order entered by the court. A monitor usually is part of the remedial package, charged with periodically reporting on progress to the court, the parties, and the public.

Once a remedial agreement or order is entered, one might assume that the defendants would promptly begin work on the necessary reforms. However, that is not the common reality. For various reasons, poor conditions prevail year after year, despite court oversight.

Will the Eighth Amendment Disappear?

After a series of plenary discussions, the symposium split into working groups and I participated in the litigation workshop. To provoke discussion, I presented a startling view: the death of the Eighth Amendment. Under an originalist Supreme Court, suits over conditions of confinement and the use of force that rely upon the Eighth Amendment's prohibitions against "cruel and unusual pun-

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ishment" may have no future.

The theory of originalism, in simplest terms, is that the meaning of any provision of the U.S. Constitution must be defined in accordance with the publicly understood meaning of the words at the time of the provision's adoption. The Eighth Amendment was adopted as part of the Bill of Rights in 1791. Justice Thomas's position is that in 1791 "cruel and unusual punishment" referred to sanctions and penalties imposed by a sentencing court and had nothing to do with conditions or practices in prisons. Long-term confinement was barely beginning in colonial times and building penitentiaries did not start until well into the 19th Century.

The Eighth Amendment's demise may not be as farfetched as it first appears, despite a line of cases going back to **Estelle v. Gamble**, 429 U.S. 97 (1976). Abortion precedents did not count for anything in the Court's last term.

Setting the Stage: Case Studies

The Symposium opened by examining three correctional systems enmeshed in prolonged litigation: Rikers Island in New York City and the Alabama and Arizona prison systems. Here are mini-histories of the cases.

Nunez v. City of New York, 11-cv-5845

2011: Case filed. Main issue: use of excess force by staff.

2011-2023: Five different commissioners head the NYC Department of Corrections (including one interim).

Oversight of any form of remedial plan is essential, be it a voluntary agreement or a court-imposed order, and any relief order in today's day and age will include a court-appointed monitor.

2015: Detailed Settlement reached, monitor appointed.

2016: First monitor's report filed.

2021: Twelfth monitor's report filed. Key conclusion: "The Department's efforts [at compliance] have been unsuccessful in remediating the serious problems that gave rise to the Consent Judgment. Instead, conditions have progressively and substantially worsened." Report, p.6

2022: Monitor sends letter to presiding judge, stating in part: "The practical reality is that reformation of this Department cannot occur in mere months given the level of dysfunction, mismanagement, and decrepit physical plants that exist, and that sustainable institutional reform is inherently both a complex and an extended process." Letter, p. 2. The letter notes that many of the problems are out of the Department's control.

2022 (Nov.): Judge decides against appointment of a Receiver, based in part on the Monitor's statement that he was detecting some positive signs of improvement. However, the door to a receivership remains ajar.

COMMENT: In almost 12 years since Nunez was filed and six years since the Monitor's first report, little or no substantive progress has been made. Is the Monitor's recent cautiously optimistic report a harbinger of positive things to come? One can hope. A unique stumbling block NYC faces is the strength of various powerful officers' unions which will take advantage of mismanagement in the agency and oppose any change they believe not in their best interest. Union power has blocked attempts to impose officer discipline and accountability and has fostered a toxic officer-inmate relationship that will require years to change.

Recently, New York has been experiencing staffing shortages because officers just do not show up for work, abuse a liberal sick leave policy, and there is weak accountability around abuse of leave procedures. These issues are directly related to the several very strong unions representing every level of the custody staff.

Braggs v. Hamm (formerly *Braggs v. Dunn*) and *United States v. Alabama*

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Alabama has not one, but TWO major conditions cases, the first years into the relief phase, the second still in the pretrial phase. **Braggs** deals with an unconstitutional inmate mental health system and includes an order for a major increase in staffing levels. The second, brought by the U.S. Department of Justice (DOJ), alleges Eighth Amendment violations with virtually every aspect of Alabama prison operations except mental health and basic health care (which is a yet-to-be tried issue in the first case and is probably two years from trial).

Braggs v. Hamm, 2022 WL 466998 (M.D. Ala. 2022)

2014: Case filed. Plaintiffs claim Alabama's inmate mental health system violates the Eighth Amendment. A major allegation relates to shortages of both mental health and custody staff.

2017: Court finds in favor of plaintiffs. Subsequently, the parties stipulate to a remedial plan which then is memorialized in a court order.

2019: Alabama defendants move to vacate the 2017 order, asserting it does not comply with the Prison Litigation Reform Act.

2020: Court denies defendants' motion to vacate.

2021: In a 153-page opinion, the court replaces all prior remedial orders/stipulations and enters a new remedial order which, among other things, extends the deadline for Alabama substantially increasing new staff until 2025.

2022: Defendants move to stay the 2021 remedial order pending appeal. With minor exceptions, the motion is denied.

COMMENT: *Braggs* is seven years into a relief phase but "many deeply serious problems remain unresolved." *Braggs v. Dunn*, 562 F. Supp. 3d 1178, 1192 (M.D. Ala. 2021). One of the biggest of these unresolved problems is understaffing. The DOC has made efforts to hire more staff but these have failed to keep up with attrition, so staffing now is actually less than it was a year or two ago. Unless the state can turn this trend around and begin to make substantial gains in staff, a remedial crisis could loom: what can a judge do to when the defendants are simply unable to meet the court's order?

U.S. v. Alabama, 2:20-cv-01971-RDP (N.D. Ala. 2020)

2019: DOJ issues a scathing CRIPA report on virtually all major operational aspects of Alabama prisons except force (then still under investigation) and medical and mental health care, which are addressed in **Braggs**. The report included a list of recommended improvements and invited negotiation of an improvement plan.

2020: DOJ issues a second report, this one dealing with use of force. Like the 2019 report, it is very critical of conditions in the state's prison system.

2021: Settlement efforts (details of which are not known) apparently fail and DOJ files a civil rights complaint in federal court. I am not aware of any information indicating what efforts, if any, the defendants have made to adopt the recommendations from the DOJ reports.

2022: Alabama commits to building two new 4,000-man prisons, hoping to close some older, dilapidated facilities. The new prisons will not come on line for several years. DOC hopes that the new facilities will be a catalyst for improvements.

COMMENT: The DOJ case is not likely to go to trial until 2025 at the earliest. I predict that DOJ will eventually win on most, if not all, of its issues. A comprehensive relief order would follow, but its development could extend into 2026. Expect an appeal of any final order. So, at least five years will elapse from filing to remedial order. If the DOC's (Department of Corrections) compliance track record in *Braggs* is an indicator, court oversight will continue far into the 2030s.

Should Alabama lose the DOJ case, an unusual question arises: Its two cases are before different judges; how will two relief orders, which to some extent may overlap, be handled? At the Symposium, a reentry advocate from Birmingham spoke from the perspective of someone who had spent 37 years in Alabama prisons following a robbery conviction at age 21 and three earlier convictions for non-violent property crimes and who was released pursuant to a judicial release order based on his personal development and accomplishments while in prison. He talked about the untrained officer just waiting to thump someone, of constantly being treated as sub-human, and of serving nearly four decades without encountering a single correctional officer being "nice." Endless sentences and dehumanizing conditions inevitably led to a loss of hope, an "I don't care, gimme more drugs, a weapon" attitude. Inmates did not care and neither did officers. Staff was corrupt. Observation posts were often unoccupied.

Speaking from personal experience, he also spoke of Alabama's penchant for very long sentences resulting in aging inmates being released into a modern digital world they are not prepared for — unable to send an email or use a cell phone.

Jensen v. Thornell, 12-cv-00601 (PHV-ROS) (D. Ariz., June 30, 2023) (formerly *Jensen v. Shinn*, 609 F. Supp. 3d 789 (D. Ariz., June 30, 2022)

2012: Case filed, focusing on inmate medical, dental, and mental health services plus conditions of confinement in segregation units in Arizona state prisons.

2014: Defendants appeal the District Court order approving a class action. The Ninth Circuit denies the appeal, the first of several interlocutory appeals taken by the defendants.

2015: Parties reach an agreed-upon "Stipulation," which supposedly resolves all claims, and includes 103 performance measures for health care and 10 for maximum custody.

2015 – 2021: Constant squabbling and litigation over compliance with the Stipulation.

2021: The court decides that further attempts to enforce the Stipulation are "futile," rescinds the Stipulation, and sets the case for trial.

2021: Trial held in November.

2022 (June): District Court finds for plaintiffs, asks parties to nominate experts to assist the court in developing a relief order. The judge in the case noted:

> The Performance Measures [of the Stipulation] were not comprehensive enough and under-evaluated the alleged constitutional violations. Defendants used this to their advantage to both subvert the Stipulation and [to] continue violating prison-

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ers' constitutional rights. **Jensen v. Shinn**, 609 F. Supp. 3d 789 (D. Ariz. 2022).

2023 (January): Relying on recommendations from three experts, court issues a proposed 64-page relief order and gives the parties until March 10 to submit objections. The proposed order includes a monitoring process conducted by a team appointed by the judge.

COMMENT: How did Arizona's compliance efforts fare? The judge presiding over the case, Senior Federal District Court Judge Roslyn O. Silver wrote the following in 2022:

> **In brief, between 2016 and July 2021, Plaintiffs filed twelve motions to enforce the Stipulation, the Court held multiple evidentiary hearings and status conferences, the Court issued dozens of Orders with specific directions mandating Defendants comply with the Stipulation, the Court issued three Orders to Show Cause why Defendants should not be held in contempt, the Court appointed two experts, and the Court held Defendants in contempt twice, resulting in millions of dollars in fines, which were upheld on appeal. At the end of the five-year period, the Court concluded Defendants had consistently refused to perform the obligations under the Stipulation and had offered baseless legal and factual theories for their failures. Imposition of substantial fines, and threats of even more, did not prompt Defendants to make required efforts to perform as they agreed under the Stipulation. *Jensen v. Shinn*, 2022 WL 2911496, at *3 (D. Ariz., June 30, 2022).**

A media representative from Arizona suggested at the Symposium that the defendants simply were never willing to admit problems. So, after 11 years, the case is back to square one, except that there is now a huge record of defendants' noncompliance and a presiding judge whose patience is nearing exhaustion.

I predict the defendants will raise lengthy objections to the court's proposed injunction, the court will deny most, if not all of them, and enter the injunction. The defendants will take yet another appeal to the Ninth Circuit; the appeal will include an argument that the injunction violates the provisions of the Prison Litigation Reform Act, which require than any relief order is "narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right."

Can Litigation Succeed?

The three cases discussed above are not outliers. California has medical and mental health cases now old enough to buy liquor. Despite a disappointing track record, prolonged class action lawsuits remain virtually the only means of forcing a seriously deficient jail, prison, or prison system back to constitutionally adequacy. But such lawsuits are increasingly fraught with hurdles and drawbacks that prevent such lawsuits from being the effective vehicle for change they were once hoped to be.

Receiver appointments are rare.

Causation

Overcrowding, lack of funding, and mismanagement, separately or jointly, are the major factors that compromise an agency's ability to provide the basic human needs of the inmates, "adequate food, clothing, shelter, and medical [and mental health and dental] care," and personal safety — to the point of violating the Eighth Amendment. **Farmer v. Brennan**, 511 U.S. 825, 832 (1994).

All three factors may also contribute to Eighth Amendment excessive force claims. Are staff held accountable for their actions, particularly uses of force? Do reviews of use of force carefully examine what happened or are they rubber stamps for officers' reports, that is, long on conclusory statements and short on detail?

Poor management that allows an "us vs. them" culture to flourish between officers and inmates will contribute possible Eighth Amendment problems. Poor management may also manifest itself in an agency's failure to hold itself accountable for problems; that is, for doing what is necessary to uncover them and then failing to initiate corrective action once the problems become visible.

Elected officials may lack the political will to address prison or jail problems before they reach crisis proportions. "Let's see, which will get me more votes — increasing funding to improve conditions in our prisons or cutting taxes?"

The Remedial Phase

Even if the doom and gloom talk about Eighth Amendment protections for inmates vanishes or never materializes, the problems that are the stuff of Eighth Amendment claims and which stifle and stymy relief in major conditions cases remain. As the Arizona and Rikers cases demonstrate, defendants commonly go through a "good news and bad news phase." The good news is they enter into an agreed-upon remedial plan which includes some form of monitoring. This implies a recognition of problems and a promise of a good faith effort to correct them. The bad news is that over time, perhaps starting almost immediately, the monitor begins to document the defendants' persistent failure to comply with the commitments they made and a downward spiral begins. New adversarial hearings are scheduled, where plaintiffs ask for tighter monitoring and possible sanctions on the defendants for not meeting their progress commitments under the relief order. Defendants may shift into be in full defense mode, hemming and hawing, refusing to admit the existence of problems, but the court finds a serious lack of progress. And so forth.

Civil Rights of Institutional Persons Act (CRIPA): Litigation Light

Two things that a director of corrections dreads:

1. "Mr. Director, the head of the ACLU National Prison Project is on the phone.

2. A letter from the Civil Rights Division of the United States Department of Justice indicating a concern about conditions or practices the State Penitentiary and asking to conduct an investigation under CRIPA.

Most administrators' first reaction to a DOJ letter is to fight it. But on sober reflection, inviting DOJ into the Big House might not be a bad idea, especially if the CRIPA letter and the call from ACLU arrive at about the same time.

The ACLU alternative involves a very large lawsuit, with all of the adversarial

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trimmings — arguments over discovery, hearings over various procedural matters, a public trial with plenty of unwelcome media coverage, and, ultimately, court-ordered relief. Add the fact that it is exceedingly rare for a major conditions of confinement case to end in a judgment for defendants and digging in for a long, expensive, and acrimonious fight seems like a loser. Then, too, administrators who truly want to improve their systems may find it convenient to argue that changes they are implementing are being done because a federal court has commanded it.

The CRIPA process begins with a thorough inspection of the institution by one or more experts followed by a detailed report outlining the problems the investigation identified and recommending that DOJ and the agency negotiate a remedial course of action.

If the agency refuses to negotiate or an agreement cannot be reached, DOJ's alternative is to file a civil rights action in federal court. If a remedial plan is agreed to, DOJ may still file a lawsuit but then immediately ask the court to put the suit on hold as the remedial plan is allowed to run its course. The remedial plan does not require the agency to admit liability. DOJ retains the right re-open the case if it is dissatisfied with the agency's progress but the case would have to start from its normal beginning point, *i.e.*, complaint, answer, discovery, etc.

The Director's knee-jerk reactions to the letter may be to circle the wagons, mutter about unwarranted federal intervention and refuse to cooperate with DOJ. However, there are several factors to consider before telling DOJ to pound sand:

- Do the negative facts and opinions in the letter make a strong case that there are serious problems at the Pen? Be honest, how bad are conditions?
- Are the problems being corrected, or ignored and allowed to worsen? Are there some problems beyond the Department's ability to correct?
- A settlement with DOJ does not admit liability and if a remedial plan with DOJ fails, the Department has probably bought itself at least a couple of years to make improvements and thereby lessen liability exposure.
- If DOJ reopens its lawsuit because the remedial plan failed, the suit still must start from scratch, probably adding a year or two more before it would be ready to go to trial.
- Would a remedial plan under CRIPA be easier to work than one imposed by the court? The former should be substantially less adversarial, and the Department may find itself working much more with experts than with lawyers in a CRIPA investigation.

Monitor or Receiver?

Oversight of any form of remedial plan is essential, be it a voluntary agreement or a court-imposed order, and any relief order in today's day and age will include a monitor who may be chosen from names submitted by the parties, but will be appointed by the court. A multi-issue class action may require a monitoring team, with various types of specialists.

Appointment of a receiver, even consideration of such an appointment, reflects years of massive failure by government officials and agencies from both the legislative and executive branches of government.

The monitor is an agent of the court and has the power to inspect, report, and make recommendations, but stops short of the power to issue orders. Under a CRIPA agreement, the monitor would report on progress or the lack thereof and DOJ would decide whether to continue with the monitor or default back to restarting the lawsuit.

Any time a remedial order is entered, the defendants should have someone in-house and close to the Director who is charged with organizing and overseeing compliance efforts: Who is supposed to be doing what? Is "what" getting done and, if not, why not? Comprehensive internal monitoring enables the agency to detect and address many compliance problems instead of learning about them in a report from an outside monitor; an internal monitoring function with real authority helps demonstrate the agency's commitment to compliance.

But what if inspections and reports continually show no progress or worsening conditions? What if defendants actively or passively oppose reform efforts, or legislative bodies ignore the need for additional funding for the prison or department to cure staff shortages? What if other internal or external forces continue to resist improvements? In other words, the defendants seem immune to periodic negative reports from the monitor, or scolding from the judge, or even contempt fines. What if, over time, the agency demonstrates it lacks the will and/or ability to make progress toward compliance? What then?

The nuclear option available to a court is the appointment of a receiver. Receivers have traditionally been appointed in order to protect property or assets involved in litigation while reorganizing distressed corporations.In the case of a prison or jail, the receiver may be given the power to literally take over operation of the facility, set aside existing contracts or union rules, hire and fire staff, and, in essence, seize the operation away from the state or municipal government. A receiver was appointed in 2006 over the California Department of Corrections inmate medical system. In the earliest days of his tenure, he was quoted as threatening to "back a Brinks truck up to the state treasury" to get the resources he might need.

Receiver appointments are rare. In 2022, the Brennan Center was able to identify the appointment of just eight prison receivers over the years. The most notable examples include Alabama, where, in 1979, Alabama's governor was appointed receiver of the state's prison system, and California, where a receivership over the state's inmate medical system began in 2006 and continues today.

Currently two other jurisdictions are close to a receivership. Last year, a federal judge in New York City considered appointing a receiver in the **Nunez** case discussed earlier. This would place the Rikers Island collection of jails under a receiver, but that decision was deferred, in part because of a cautiously optimistic report from the long-time monitor.

Late last year a federal judge in the Southern District of Mississippi appointed a receiver over the Hinds County (Jackson) Jail. Judge Reeves wrote that

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the receiver will "have the power to hire, fire, suspend, supervise, promote, transfer, discipline, and take all other personnel actions regarding employees or contract employees who perform services related to the operation of RDC." *https://www.mississippifreepress.org/28827/hinds-county-jail-receivership*. The receiver was to have taken over control of the jail at the first of the year, but the defendant appealed to the Fifth Circuit and has been granted a temporary stay.

Appointment of a receiver — even consideration of such an appointment — reflects years of massive failure by government officials and agencies from both the legislative and executive branches of government.

Judicial Reforms Do Not Stick

One of the presenters lamented that "judicial reforms don't stick." Post-litigation backsliding is nearly inevitable unless officials take heed of the Collins First Law of Corrections: The natural tendency of every place of incarceration is to deteriorate.

The evil forces that dragged the jail or prison down in the first place may retreat into hiding but when the judicial heat is off, they will crawl back out, looking to do their evil again. The inmate population starts increasing. Staff shortages begin. Medical and mental health staff may become almost impossible to hire. The "us vs. them" cultural antagonism that leads to misuse of force, ignoring inmate needs, filing intentionally inaccurate reports, etc., grows back like a weed. Accountability begins to suffer.

Funding may be cut, perhaps because the elected overseers respond to constituent pressure over spending money on prisons instead of schools, highways, tax cuts, etc.

The leadership that learned the hard way through litigation about what was needed to offset the Collins First Law of Corrections moves on, and is replaced by new leadership that lacks that historical knowledge. This may be particularly true in jails, where a new "tough on crime" sheriff is elected, but knows or cares little about jail operation and then doubles down by appointing a patrol captain to head the jail.

Avoiding the Lawsuit: What Can an Agency Do?

Know thyself. And let the public know as well. By now, the problems that fuel a major conditions class action are no secret. Is the agency constantly examining itself to know where the evil forces are at work and then moving to push them back into their holes?

Data. We live in a data-driven world. How many decisions are not made until "I get to see the data"? But the agency needs to know what data to collect and for what reasons. Asking around can help provide answers before hiring a consultant. Can the National Institute of Corrections help? What do other agencies do?

Collecting the data is one thing, maximizing its value may be something else. Is the agency collecting the right data? What trends are showing? Why are cell extractions at the Penitentiary up 23% from last year? Why do two prisons with similar classifications of inmates have vastly different sick-call rates?

Grievance systems can signal developing problems unless the grievance officers at the institution level see their unstated mission as exonerating officers.

Internal Oversight. Grievance systems can signal developing problems but that signal will be dimmed if the grievance officers at the institution level see their unstated mission as exonerating officers. Inmates can also appeal some decisions, such as disciplinary hearing results, but these appeals also can become biased toward upholding the hearing officer's decision.

In addition to processes that look at individual decisions, agencies should have internal auditing and monitoring processes such as Inspector General sections that consider larger, "system" issues, such as comprehensively reviewing use of force incidents or diving into ad hoc problems that arise. Because this auditing and monitoring come from above the institution level, they can be considerably more objective.

External Oversight. External oversight systems also may exist, such as state level ombudsman offices and/or Inspector General programs. Families Against Mandatory Minimums (FAMM) reports that nine state legislatures were considering oversight legislation in early 2023 but none had yet become law. See *FAMM.org*. Such agencies typically have the power to inspect and issue reports but rarely have enforcement powers.

Symposium presenters emphasized that the success of these types of oversight mechanisms depends on the agency's willingness to make information available and its willingness to accept and act upon the inspector's criticisms. One presenter commented that Rikers Island has had decades of outside oversight and then asked why things were no better.

While external oversight programs may not be able to order change, they at least can become honest reporters of problems. Even the recalcitrant agency may be shamed into adopting improvements when dirty laundry keeps being hung out for all to see.No one likes to be told what to do, but it may be easier for an agency to be told by another agency than to be dragged through a long and bitter adversary fight and told by a federal judge.

Some policymakers may fear oversight as being a litigation generator, and suggested using a community organizer. Inmate legal advocates will certainly look at reports of oversight agencies but there is a good chance they are already aware of the problems. The advocates will also look at the agency response to critical reports: is it a remedial effort or stonewalling?

Transparency: Shine a Light Into the Darkness

Jails and prisons lack a natural support base outside the walls except for family. Few prison "customers" will write a positive YELP review upon release, but forging ties with the community can benefit the institution which often intentionally and unintentionally tries to isolate itself from the community.

Symposium presenters spoke of the value of building partnerships groups from outside the walls. One described this as "playing offense." These groups could include universities, researchers, other social service providers and activities that involved both inmates and the public. Several examples were offered. They included a prison with a debate program that competes with college teams, pro-

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grams, podcasts, newspapers, on-line radio stations, and training inmate as mentors in crisis intervention and substance abuse counseling. One presenter urged "anything" that brings members of the public into contact with inmates in a positive situation as an effective strategy for making "macro change" in prison culture.

These interactions will help humanize the prison environment and contribute to creating a culture of openness and excellence. Community groups may become allies who can help build support for prison improvement and stand up in public when a correctional agency is forced to defend positive inmate programming against legislative attempts to cut back on prison spending.

A former state prison director encouraged prison administrators to cultivate better relationships with members of the media. I ran into an example of how this might work two days after returning from the Symposium when I saw a story in *The Daily World*, the paper of record in Aberdeen, a small city near the Washington coast where the 2,000-bed Stafford Creek prison is located. The paper contained a very positive double page spread extolling a new Amend program at the prison (see more on Amend below). The article praised the program from both and inmate and staff perspectives. Somehow, a reporter and the prison administration linked up, provided the reporter access to the program, and the result was good press — and a good example of how correctional agency can "play offense."

Re-Forming the Prison

Prison "reform" litigation attempts to bring a facility or system back to basic constitutional requirements. But once those requirements are met, judges can go no further. They lack the power to force fundamental institutional change beyond that which is required by the constitution. It is the agency that has the power to truly reform, as in "re-shape" the prison. The symposium looked at one such reform model "Amend," which describes itself as "a public health approach to addressing prison harms." See *https://amend.us*.

The Amend executive director, Dr. Brie Williams, described the program, which has its roots in the Norway prison system and attempts to instill a public health approach to reducing harm into the prison's operations and culture. Amend begins with a recognition that inmates and staff often share similar chronic health problems, such as PTSD, depression, suicidality, and burnout, that can be traced directly to an unhealthy physical and psychological environment. Through lengthy training programs and technical assistance, Amend works to change the fundamental cultural relationship between inmates and staff. I know, this sounds like pie in the sky, but . . .

In North Dakota, adoption of an Amend philosophy contributed to a nearly 75% reduction in the use of solitary confinement between 2016 and 2020. Violence rates also decreased. Solitary confinement is a source of both controversy and litigation, and some agencies have begun to find ways of moving away from the use of prolonged litigation. A study of the North Dakota experience, which should be mandatory reading for correctional leaders responsible for overseeing a solitary confinement unit, concluded:

> Immersing correctional leaders in the Norwegian Correctional Service's public health and human rights principles motivated and guided the ND DOC to pursue policy changes to decrease the use of solitary confinement in their prisons. Ensuing reductions in solitary confinement were experienced as beneficial to the health and wellness of incarcerated persons and staff alike. This case-study describes these policy changes and the perspectives of staff and incarcerated persons about the reforms that were undertaken. Findings have implications for stakeholders seeking to reduce their use of solitary confinement and limit its harmful consequences and underscore the need for research to describe and assess the impact of solitary confinement reforms. (Cloud, 2021)

Forging ties with the community can benefit the institution which often intentionally and unintentionally tries to isolate itself from the community.

Amend programs, working in one prison housing unit at a time, attempt to normalize relationships between officer and inmate, to decrease or end the "us vs. them" dynamic, and to humanize life in the unit. Pictures during the presentation showed officers and inmates sitting around a table having coffee, playing games together, sharing meals cooked in the Amend unit kitchen.

A captain spoke about his initial skepticism, but found his job satisfaction had improved and he was getting a better sense of self-worth. He spoke of having the freedom to do more that "just follow marching orders" and of working as a peer mentor with a "client" in segregation and being able to help the inmate break down walls he (the inmate) had.

In Closing

In reflecting on the Symposium, perhaps the topic that resonated most with me was that of a "humanized" model of prison operation. This requires new levels of enlightened leadership capable of changing the hearts and minds of many of today's officers, who in turn will become tomorrow's supervisors, wardens, and agency directors. This will not be accomplished through litigation, but through the "macro change" in philosophy and operations alluded to by one of the presenters.

Litigation as a tool for change may be nearing extinction at the hands of the U.S. Supreme Court. Whatever criticisms can justly be leveled at the excesses of class action lawsuits, if they go away, what will replace them as a tool for at least trying to assure prisons are even minimally humane?

References

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