



Federal Prisons

JOURNAL

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ОФИЦИАЛЬНЫЙ ВИЗИТ



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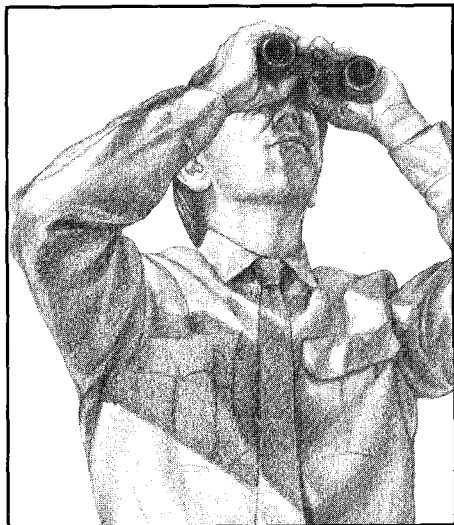
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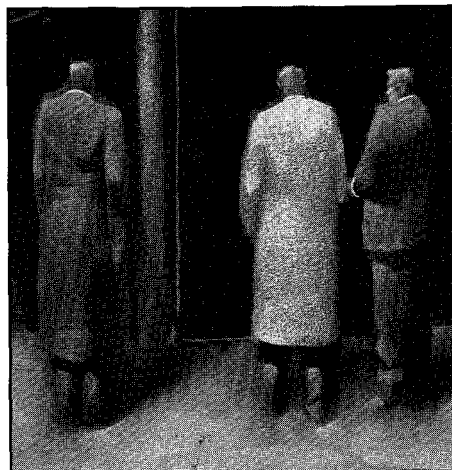
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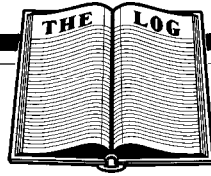
From the editor

We are sorry that, due to the recent budget imbroglio on Capitol Hill, this issue will be in your hands in 1991 rather than 1990.

Despite our lateness, we are pleased to bring you this issue's special report on Soviet prisons. The cover illustration depicts some images from Mozhaik 5 prison (the Cyrillic title translates as "official visit"). The U.S. delegation, which toured five institutions, found particularly supportive interaction between the staff and female inmates, and an impressive prison industry, at this prison. In future issues we hope to continue to provide information on aspects of international corrections work.

As the Soviet Union has been much in the news, so too has Germany. Our next issue will feature an interview with former Bureau of Prisons Director Myrl E. Alexander, who served as head of the German corrections system in the American zone of occupation in the first year after World War II.

Finally, additional copies of the 60th anniversary issue of the *Journal* are now available. Please contact the Office of Public Affairs at 202-307-3 198.



Meeting Death in Prison

Henry A. Pedersen

“This is why I weep and my eyes overflow with tears. No one is near to comfort me, no one to restore my spirit.”

—Lamentations 1:16 [NIV]

“9-3 officer to Chaplain Pedersen, 9-3 officer to Chaplain Pedersen,” my small radio was blaring. I grimaced as I answered, “Chaplain Pedersen to 9-3.” “Please call 360, 360,” the radio blurted again. I knew before I even dialed the number what the person on the other end of the phone was going to say: “Chaplain, Mr. Tomaso wants to see you.” I was right. This was the third time today that Mr. Tomaso wanted to see me.

Louis Tomaso* was dying. He had already lived 24 hours longer than the medical staff thought he would. He had already received the last rites of his church—twice, as a matter of fact.

Once again I stopped what I was doing and went over to 9-3 as fast as I could. I thought about not going, but several things compelled me to go—one more time. Louis was dying alone. I was one of the few people he had related to in these last days—no family, no friends, dying in prison. We all need a friend. The other reason became obvious on the faces of the medical staff as I walked on to the floor. Medical people are oriented toward healing. To face death is in some ways to face failure. There is a sense of relief when I arrive at times like these.

*A pseudonym.



Illustrations by Anthony Woolridge

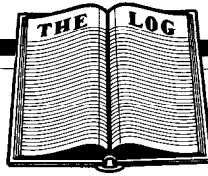
I walk up to his bed and clasp his hand. He opens his eyes and looks at me. I acknowledge what is obvious on his face—he is in pain. We sit quietly for a few minutes holding each other’s hand. The medical staff leave us alone. I lean over the bed so that our faces are about 6 inches apart.

“Shall we talk to God again, Louis?” I ask. Louis whispers, “Please.” I pray. I end with the “Lord’s Prayer.” Louis prays with me, each phrase slowly and deliberately. He says “Amen” after praying “forgive us our trespasses as we forgive those who trespass against us.” As I add my Amen, Louis squeezes my hand and requests that I leave him now so I won’t see him die. An hour or so later, Louis dies.

For me there is something cold about the thought of dying in prison. In the Federal system every effort is made to release a dying inmate so that he or she

can at least die in a more homelike environment. Those who die with us, unless it is sudden and unexpected, have committed too serious a crime to be released, have been declared too much a risk to be returned to their community even though terminal, or have absolutely no resources or family to assist them.

I feel there should be several guidelines for ministering effectively to the inmate who is dying in prison. The first is to be nonjudgmental. I am not saying that God does not judge—I am saying that we ought to let God do the judging. I don’t pretend to understand many of these situations myself. We currently have an inmate who will die with us. I know that he is a murderer, a tale bearer, a thief, and a snitch, yet somehow all of that does not interfere



with our relationship. We communicate well, we share deep feelings, we help each other, we laugh together, we cry together, we allow ourselves to be human together.

A second guideline is to be in touch with one's own feelings about death and life. That is not to say that we have to have all the answers or even *an* answer, but I do believe that we have to work out a faith relationship with our God that allows us to trust him to take care of the future for us.

A third guideline is to be in touch with one's feelings about sexual orientation. This is necessary because some of those who are dying have one of the several diseases that are the common manifestations of Acquired Immune Deficiency Syndrome. Some of them have acquired AIDS from contact with another male.

A fourth guideline is to be in touch with touch. There is a common deprivation of touch in prison. This is especially true of the inmate who receives no visits. I had to work through the process of gowning up in protective garments to visit some of these patients. My initial reaction was not to do it, until I realized that the purpose of my gowning up was more to protect the inmate patient than to protect me. Now when I am required to do this, I do it and explain it at some point to the patient. As our relationship grows, I will ask him if he feels comfortable with me taking off the gloves so that we can hold hands.

The rest of the guidelines are these: be there, listen, don't feel you need to have all the answers, validate the

patient's emotions, appreciate the therapeutic worth of tears.

At the Federal Medical Center in Rochester we try to find a volunteer to visit the inmate if the inmate wishes it. We are presently working on a program of training inmates to minister to other inmates in these circumstances. We also spend time with staff, inviting them to express their feelings.

When the time comes, we conduct a memorial service in the day room on the hospital floor for each inmate who dies. Not only does this allow any inmates who were the deceased's friends to work through their grief; it also allows staff members who have invested a great deal of their efforts and emotions to grieve. Furthermore, it assures each inmate who has been diagnosed as being terminally ill that he or she will not be forgotten. Finally, it also declares our faith and trust in God and allows us as chaplains to deal with our own grief.

"It is not the external circumstances, but the spirit in which we face it, that

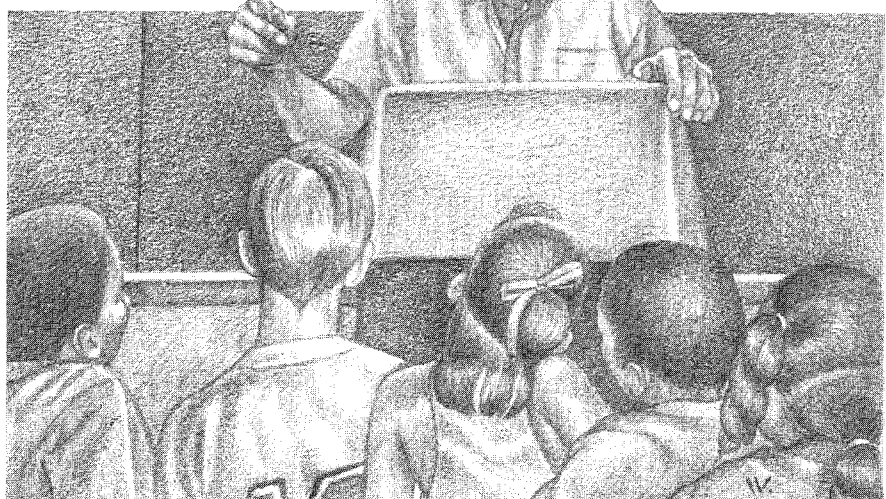
makes death what it can be, a death freely and voluntarily accepted."
—Dietrich Bonhoeffer, *Letters and Papers from Prison*.

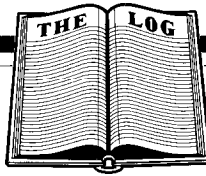
Reverend Henry A. Pedersen recently retired as Chaplain at the Federal Medical Center, Rochester, Minnesota. A different version of this article was published in NM Dialogue, a newsletter for Baptist chaplains and counselors.

The First Offenders' Program at FCI La Tuna

Rudy Franco

The First Offenders' Program at the Federal Correctional Institution, La Tuna, Texas, was born from an effort to help the community in combating drug abuse among the young. As a result of meetings with the Chief State Juvenile Probation Officer, Southern District of New Mexico



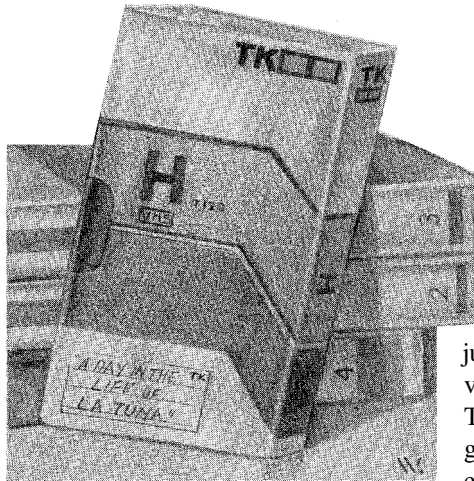


(the institution is located on the Texas-New Mexico border), it was decided that FCI La Tuna would be a "tour stop" for first-time, adjudicated juvenile offenders. In addition to the tour, inmates would present lectures on the consequences of drug abuse and the negative lifestyles associated with drugs. The tour and lecture program would supplement an ongoing diversion program, run by the Juvenile Probation Office in southern New Mexico, which certain adjudicated juveniles and their parents were required to attend.

La Tuna's participation was initiated with the agreement that the institution would provide an educational drug abuse program conducted by inmates and supervised by staff, with the goal of teaching juveniles the consequences of drugs and their effects on loved ones, and the associated lifestyles as evidenced by the incarcerated status of the presenters. The program was to aid the community by supplementing its resources in combating its local drug abuse problem.

Inmates who wished to volunteer were considered if they met several criteria:

- No history of violence.
- No sexual offenses.
- No recent history of incident reports within the institution.
- Recommendation by the unit team that manages the inmate's housing unit.
- Recommendation by the institution's psychologist after an interview and psychological testing.



In its present form, La Tuna's program includes a tour conducted by the inmates, lectures of about 5 minutes by four to six selected inmates in a large group setting, then smaller group dialogues with two to three inmates per group. Staff continually supervise these activities but do not take an active part in the discussion. The emphasis is on "responsibility for actions, choices to be made, the consequences of these choices, and resistance to peer pressure."

A typical large group segment begins: "My name is Joe. I'm serving 15 years for trafficking in cocaine because of a choice I made to involve myself in drugs." The inmate participants are given some specific directions: profanity is never used, there are never any references to sex, and the participants are never threatened (this avoids the problems associated with "Scared Straight"-type programs). The format is strictly educational; the inmates meet for an hour on the day following the program to discuss and improve their presentations.

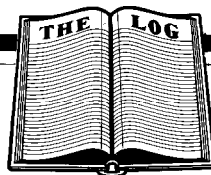
When the program started, all sessions were videotaped (juveniles' faces were not shown) to safeguard against potential liability. From these tapes grew the idea of producing a videotape

for use by staff when presenting community drug abuse programs. Three different tapes were produced: a 5-minute version aimed at elementary school children; a 10-minute version for the junior high age group; and a 30-minute version titled "A Day in the Life of La Tuna," for high school and adult groups. These videotapes have been extremely well received in community presentations by staff.

This program was so well received by the Juvenile Probation Office that it was offered to the Gadsden (N.M.) School District. Two of the Gadsden junior high schools have brought students (troublemakers, suspected drug users, and potential dropouts) to the institution program. The reaction from school administrators has been overwhelmingly positive. In addition, the program has been used by the Texas Youth Commission for a group of adjudicated delinquents in a halfway house, and by the El Paso Job Corps for a group of potential dropouts. For this last group, the program was changed slightly to include motivational reasons for staying in school.

To date, about 200 youths and 150 parents, staff members, teachers, principals, and administrators have attended and participated in this program. An estimated 350 people in the area have seen "A Day in the Life of La Tuna."

One of the positive, unanticipated effects of this program has occurred among the inmate participants. Inmates articulate and share more of themselves "for the kids," and have achieved some real psychological growth—at least as



positive, if not more, than many staff and peer counseling programs. Inmate participation has become one of the treatment activities offered at La Tuna in support of the long-held notion that positive personal growth occurs through helping others. Because the First Offenders' Program has evolved into an inmate treatment program that is as much for inmates as for the community, the institution is also beginning an evaluation component to assess the psychosocial changes made by the inmate participants.

Rudy Franco is Associate Warden at the Federal Correctional Institution, La Tuna, Texas.

In the past, inmates in segregation units and hospital wards were fed from portable serving carts that were wheeled from the food preparation area to these units. Individual food trays were prepared and delivered to the inmate's cell. Under this system, the quality and the quantity of the meals varied greatly compared to meals on the main serving line.



During the early 1970's the Bureau adopted a microwave food service system for inmates confined in Metropolitan Correctional Centers. Later the microwave-based system was expanded to include use in hospital wards and segregation units. Under this system food is prepared, placed on plates, and moved to the housing units in refrigerated and heated food carts. Those foods requiring reheating prior to serving are heated to the appropriate temperature in microwave ovens. The microwave system allowed the food service department to control portion sizes and serve all food at appropriate temperatures, increasing the quality of the meal.

While the microwave system greatly improved the quality of meals and reduced the amount of time that the unit officers were involved in the feeding process, some problems remained. The food carts were difficult

to move around in multifloored housing units, and the time required to prepare and individually pre-plate and wrap each serving added to the demands already placed on food service staff. Additionally, some foods do not reheat well; care must be taken in the reheating or the food suffers.

Within the high security operation at the U.S. Penitentiary (USP), Marion, Illinois, more than 80 percent of the inmates are fed in their cells. The microwave food service system had been an institution-wide operation at Marion since late 1983. By fall 1986 the food service department began exploring alternatives to the microwave-based system.

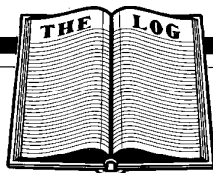
After visiting other correctional institutions, local hospitals, and some schools, staff decided to implement a pilot feeding program in the most secure unit in USP Marion (and in the entire Bureau of Prisons) that used thermal trays. The thermal tray design allowed hot and cold foods to be placed in a single covered tray and delivered to the inmate without reheating. This would decrease the amount of time that unit officers would be involved in the feeding process, ensure consistent food quality, decrease waste, provide good heat retention, and improve the nutritional value of the meal (Breedon, 1982).

The pilot project was intended to determine whether appropriate food temperatures could be maintained throughout the tray preparation and delivery and to assess the inmates' reaction to the new feeding system. It

Innovations in Satellite Feeding: Improving Delivery and Food Quality

Stewart Rowles and Elmer L. Knowles

The importance of maintaining a high-quality food service program within our correctional facilities cannot be overstated, especially as overcrowding places greater demands on other operational areas. Ensuring that all inmates receive palatable and nutritious meals—both those who can go to the main serving line and those who must have meals delivered to them—requires complex food service programs. The need to provide high-quality meals to inmates not eating in the inmate dining room has motivated the Bureau of Prisons to develop innovative delivery systems and use evolving food service technologies.



was abandoned after about 1 month. Proper food temperatures could not be maintained, the design of the tray did not allow for sufficient food portions, and the inmates reacted negatively to the new program. Staff also found the thermal trays bulky and hard to handle.

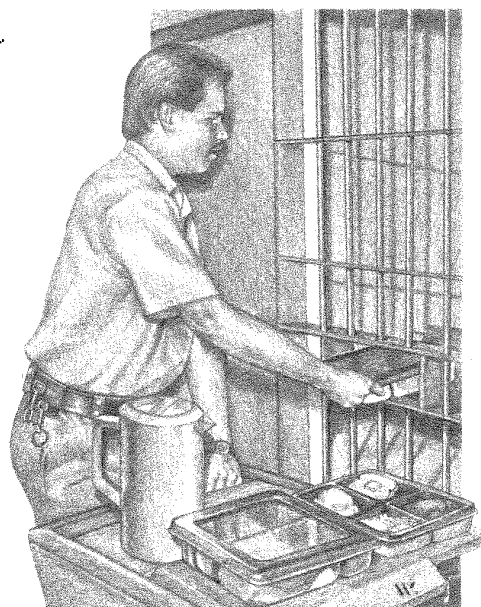
While the thermal tray project was temporarily abandoned, the benefits of a feeding system that eliminated the need for food to be reheated at the feeding location seemed obvious enough to encourage further effort. Although the original thermal tray was abandoned, new trays, more suited to the Marion operation, were designed by the institution's Food Service Administrator. The new tray design included one cold food tray and one hot food tray for each meal; the trays were smaller and easier to handle than the original thermal tray.

The trays were constructed of clear Lexan plastic and the lids were interchangeable between hot and cold trays. Constructing the trays from a clear plastic allowed the unit officers to inspect the trays without removing the lids. Thermal bags were also designed and constructed to insulate the food as it was moved from the food service area to the housing units. The thermal bags provided insulation for the food trays and eliminated the need for the more expensive refrigerated and heated food carts.

A conveyor system and hot and cold serving lines

were necessary to fill the trays efficiently. The hot food items are prepared and loaded into the trays according to housing units; the trays are then placed into a thermal bag to maintain the proper temperature. The cold trays are then prepared and the hot and cold trays for each housing unit are loaded into thermal bags and placed on flat carts for delivery to the units.

The "two-tray" feeding system was implemented institution-wide at USP Marion during August 1988 after a training videotape was shown to all correctional staff. The tape clearly explained the roles of all staff involved in the preparation, setup, and delivery of the meal. An additional videotape was prepared and shown to the inmate



population via the institution's educational closed-circuit television channel. The inmates' tape stressed the nutritional benefits of the new program and attempted to explain the "two-tray" process in detail sufficient to answer any questions.

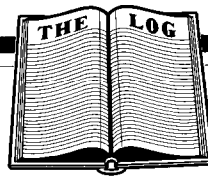
The "two-tray" system has been in operation for more than a year at USP Marion. The response from both staff and inmates has been favorable. Unit staff spend less time in delivering meals to the inmates; the inmates receive a meal that is more appealing and higher in nutritional content. As a side benefit, more time is available for activities within the living unit due to the considerable time savings offered by the "two-tray" system.

This food delivery system, developed within a high security environment, could well be adapted to other settings with populations having restricted mobility, such as disciplinary segregation units, pretrial detention facilities, or hospital areas. It is another example of how staff initiative can shape technology to provide better inmate services—demonstrating once again that innovative staff are the Bureau's best resource.

Stewart Rowles is a Research Analyst and Elmer L. Knowles is Food Service Administrator at the U.S. Penitentiary, Marion, Illinois.

Notes

Breeden, Howard E. "Food Service for the Future," *Corrections Today*, 44:64, June 1982.



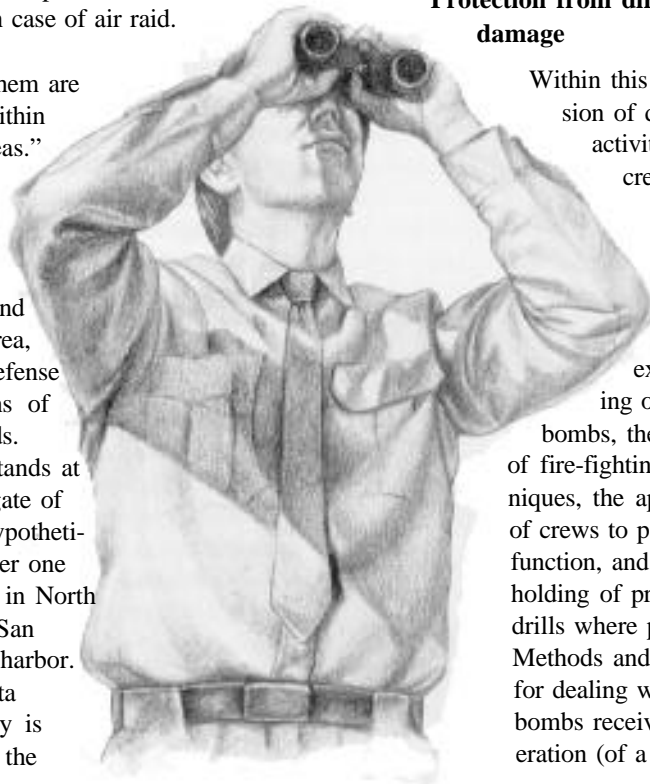
Wartime Precautions

Editor's note: This article is reprinted from *Gearing Federal Prisons to the War Effort*, published in 1942. While German or Japanese air attacks may seem outlandish from the perspective of the 1990's, they were very much on the minds of defense planners including the Bureau's, as Federal Prison Industries put its factories to work producing war goods.

The Federal Prisons Journal will occasionally reprint other articles that reflect the history of the Bureau of Prisons.

Large or small, remote to national frontiers or close to them, all of the federal correctional institutions have taken steps to protect life and property in case of air raid.

Many of them are directly within "target areas." McNeil Island is directly within the Puget Sound military area, close to defense installations of many kinds. Alcatraz stands at the front gate of Japan's hypothetical "number one objective" in North America, San Francisco harbor. The Atlanta Penitentiary is situated at the



major railhead of the Southeast, in the midst of industrial and military concentrations. Danbury, Petersburg, Lewisburg, Chillicothe, Tallahassee—all of these and others are within range of possible enemy air invasion. The Detention Headquarters at New Orleans and at New York City are both located in large metropolitan centers which are reasonably conjecturable objectives for attack. All of the institutions, however, no matter what their location may be, have carried out intensive programs of preparation for any and every eventuality.

Measures taken fall under three classifications: *Protection from Direct Damage*, *Medical and Surgical Preparations*, and *Morale Stimulation and Instruction*.

Protection from direct damage

Within this subdivision of defense activity falls the creation of equipment and materials for the extinguishing of fire bombs, the teaching of fire-fighting techniques, the appointment of crews to perform this function, and the holding of practice drills where possible. Methods and measures for dealing with gas bombs receive consideration (of a limited

nature). In the federal prisons, those responsible for such protective programs have foundationed their activities upon the basis of thorough surveys of their local physical plants.

Medical preparations

Under this heading comes the establishment and equipment of emergency operating rooms and first aid stations in sections of institutions least likely to suffer raid damage; also the training of first aid and rescue squads. Considerable attainment has been made in respect to such activities.

Morale stimulation and instruction

Every effort has been made to inform inmates of federal penal institutions of the exact nature, effect and extent of jeopardy of air raid attack. Lectures have been given, information has been published (via institutional magazines and bulletin boards) and government-issue movies have been shown. News broadcasts and war bulletins have been made increasingly available, for such information is regarded as importantly contributive to good morale. Committees have been formed to undertake morale-stimulative activities that will be carried out if and when attacks occur.

In these and other ways, the Federal Bureau of Prisons has met the challenge of the times, has taken steps to insure the safety of every man and woman confined within its various institutions, has fallen in line with the American institutions and groups, public and private, who are not waiting for a first attack to do the things they should have done long before.

Letters

J. Michael Quinlan
 Director, Federal Bureau of Prisons

Dear Mike:

I just got a chance to look at your 60th Anniversary issue of the *Federal Prisons Journal*. It is really an excellent and thoughtful issue.

I particularly appreciated your article attempting to get the public to be realistic about what prisons can and cannot do. I have just one minor nit to pick. One facet of public perception that seems to contribute to our horrendous prison crowding problem is their over-expectation of how effectively prisons can assure public safety. It seems that whenever we have a difficult and intractable societal problem (like the drug problem today), the public—egged on by political figures who understandably don't have anything better to propose—seems to be satisfied with the proposal to crank up the sanctions. Doing that seems to be accepted as having dealt with the problem. In that context, your statement that "society should expect that prisons will protect public safety" might also feed that expectation. I fully appreciate the limited sense in which you meant that (keeping offenders assigned to you off the street and thereby precluding *their* predatory behavior), but many people will take it in the context of "protect[ing] public safety" much more broadly.

Incidentally, the photograph on page 36 sure looks to me like Jim Vorenberg (then Executive Director of the President's Commission on Law Enforcement and Administration of Justice and my first mentor on matters of criminal justice), and not Ramsey Clark.

I really enjoyed the issue and your article in it.

Yours truly,

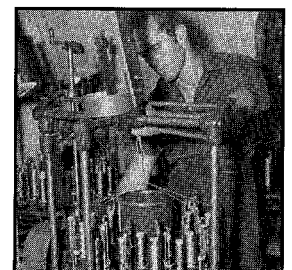
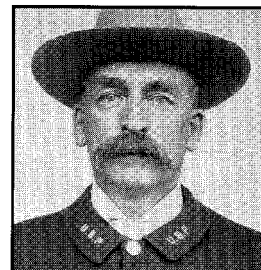
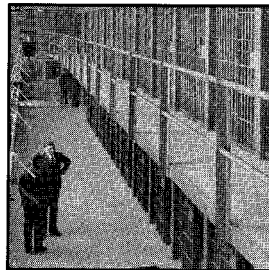
Alfred Blumstein

Dean and J. Erik Jonsson Professor of Urban Systems and Operations Research School of Urban and Public Affairs Carnegie Mellon University Pittsburgh, Pennsylvania

Editor's note: Professor Blumstein is correct. The photograph shows former

Bureau Director Myrl Alexander with James Vorenberg. We should correct some other errors in that issue. On page 36, column 3, paragraph 2, the final sentence should read: "As I worked with delinquent kids, I learned much about their frustrations and deprivations." On the foldout, the "start date" for Federal corrections should be 1789. Maxwell should be the "oldest" rather than the "first" prison camp; a handful of camps opened a few months before Maxwell, but closed within 2-3 years.

The Federal Bureau of Prisons and the National Archives and Records Administration present:



Conference on the History of Federal Corrections

March 28, 1991, National Archives' Theater, Washington, D.C.

1991 marks the Centennial of the Three Prisons Act, which established the first Federal prisons in the United States. This special conference will commemorate that event by furthering scholarship and discussion on the historical evolution of prisons in American society. Admission is free, but seating is limited. Attendees must pre-register on a first-come/first-served basis.

For registration information call 202-307-1202.

Chairman: Norval Morris
 Paul W. Keve
"Early History of Federal Corrections"
 David A. Ward
"Alcatraz and Marion"
 Esther Heffeman
"The Role of Women in Federal Corrections"

Constance Potter
"Resources for Future Research"
 Robert B. Levison
"Classification and Programming"
 Ira. P. Robbins
"Inmate Rights"

John J. Dilullo, Jr.
"Bureau of Prisons Management"
 Comment: Gustavo Fernandez, Julius Debro
 Special Panel Discussion: Myrl E. Alexander, Norman A. Carlson, J. Michael Quinlan. Moderator: Hon. Helen G. Corrothers

Внутри Советских Тюрем

by the U.S. Delegation

Five years ago, who would have thought the Soviet Union would soon open its prisons to scrutiny by U.S. Government officials? Yet that is exactly what did happen in March of this year, when a U.S. delegation, headed by J. Michael Quinlan, Director of the Federal Bureau of Prisons, traveled to the Soviet Union for a 1-week tour of penal institutions and to establish a working dialog with Soviet criminal justice officials. We toured five correctional institutions in the Soviet Union and discussed our observations about the Soviet penal system and the common issues that arise in prison administration with high-ranking officials in the Soviet Ministry of Internal Affairs and in the Office of the Procurator General.

Ours was the first official U.S. delegation to visit Soviet prisons, although previous groups from the United States have visited particular prisons. The U.S. delegation had a balance of perspectives—administrative, legislative, and oversight, as well as prisoners' rights. In addition to Mr. Quinlan, the delegation included Margaret Love, Associate Deputy Attorney General for the Department of Justice; Elizabeth Fine, Counsel to the House Judiciary Subcommittee on Courts, Intellectual Property, and the Administration of Justice; Charles W. Colson, Chairman of Prison Fellowship International; and Jack Eckerd, a member of the Prison Fellowship International Board of Directors.

The idea for the visit grew out of an August 1989 visit by Congressmen Frank Wolf of Virginia and Chris Smith of New Jersey, both members of the U.S.

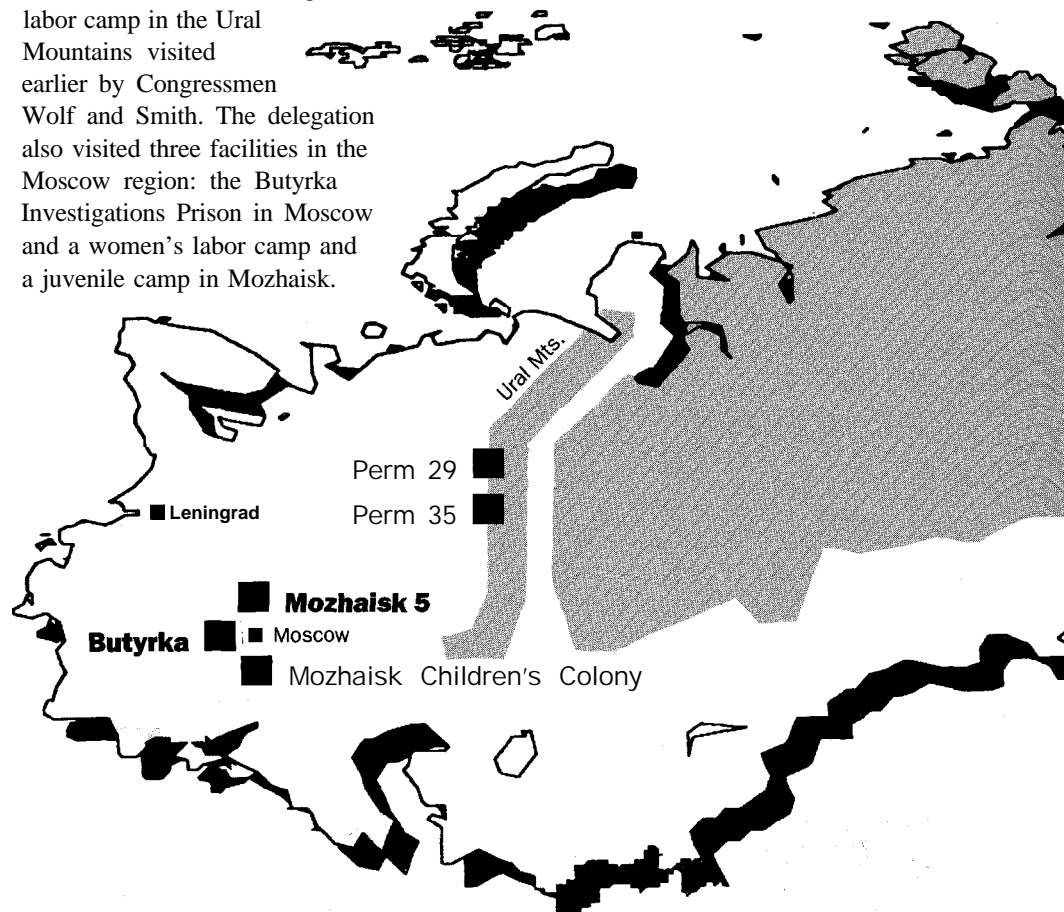
Commission on Security and Cooperation in Europe (Helsinki Commission), to the Perm 35 labor camp to investigate human rights. At that time, Congressman Wolf suggested that Mr. Quinlan and officials of Prison Fellowship travel to the Soviet Union to open a dialog with Soviet correctional officials on matters of mutual concern. Attorney General Dick Thornburgh expressed his support to the Soviet Minister of Internal Affairs, Vadim Bakatin, in December 1989. Mr. Quinlan subsequently wrote to Soviet officials to officially request permission to visit Soviet penal institutions. The Soviet Government granted the request and endorsed the visit as "official."

We visited two labor camps in Penn, a region 800 miles east of Moscow: Perm 29, a "strengthened regime" labor camp, and Perm 35, the "strict regime" labor camp in the Ural Mountains visited earlier by Congressmen Wolf and Smith. The delegation also visited three facilities in the Moscow region: the Butyrka Investigations Prison in Moscow and a women's labor camp and a juvenile camp in Mozhaisk.

We had hoped to tour the KGB-run investigations prison, Lefortovo, but KGB approval was not forthcoming in a timely manner.

A number of Soviet officials met us upon arrival in Moscow and accompanied us throughout the week. They answered endless questions about the Soviet system and were anxious to hear our observations at each stage of the visit. In addition, the Soviets learned what was important to us simply by noting our questions in each of the prisons and the programs and policies that were of particular interest.

The Soviets also arranged for us to meet with officials in the Ministry of Internal Affairs, including its Minister, Vadim Bakatin, and with officials from the



Inside Soviet Prisons

Office of the Procurator General. Both meetings were unusually candid, as Soviet officials were anxious to learn about the U.S. prison system and to hear our comments and criticisms regarding their prison system.

The Soviet Government's gracious assistance afforded us the opportunity to learn a great deal during our 6-day stay. The Soviet correctional system has more in common with the U.S. system than any of us had anticipated upon arrival. Nevertheless, the visit was short, and there is much left to learn. We hope that future official interchanges will enable the two countries to share information about the challenging problems of administering a humane prison system.

The Soviet correctional system today

Fundamental transformations are taking place in Soviet Government and society.

The criminal justice system is not insulated from these radical changes. To the contrary, the government is making great efforts to improve its criminal justice system while simultaneously facing the challenges of justice administration in a rapidly changing society.

According to the Minister of Internal Affairs, Vadim Bakatin, there are currently 761,000 inmates in the Soviet Union, held in 2,100 labor camps or prisons throughout the U.S.S.R. In addition, approximately 200,000 pretrial and unsentenced prisoners are in detention facilities (called "investigations prisons") and 160,000 alcoholics are committed to 250 treatment facilities.

Assuming that these figures are accurate, the number of prisoners in the Soviet Union is roughly comparable to that in the U.S., relative to the size of the total populations. That comparability is relatively recent, however; until 1985, the Soviet prison population was 1.6 million—double what it is today.

Penal reforms and the changing Soviet society

The Ministry of Internal Affairs is now restructuring its penal system. Minister Bakatin emphasized two principal goals for penal reform. First, there must be a balance between the rights of prisoners and the rights of victims.

Second, the historic orientation of the prisons must be changed. In the past, prisons in the Soviet Union have been used to fulfill Soviet production quotas. Societal goals for imprisonment—retribution, rehabilitation, deterrence, and incapacitation—were subverted by the need to produce goods and services for Soviet society. Now, according to Minister Bakatin, the traditional purposes of imprisonment must supersede the nation's productive needs. This will be achieved through decentralization—both of the administration of prisons and of the Soviet economy.

The Ministry of Internal Affairs is working with the Soviet Parliament to reform criminal and penal laws. The first phase included an amnesty for nonviolent and political prisoners, as a result of which half the prison population was released. As a result of these reforms, the prison population was reduced from 1.6 million in 1985 to its present 761,000.

Today, the care with which this amnesty was implemented is being called into question as the Soviet Union experiences a very rapid increase in the crime rate. The crime rate climbed 31 percent last year and is now increasing at a rate of 20 percent.

An obvious explanation for this increase in crime is that certain offenders who pose a danger to society were inadver-



Photos for this article courtesy of various members of the U.S. delegation.

Translation assistance by Kitty Urban.

tently released in the amnesty. In addition, as Minister Bakatin noted, changes in all aspects of life in the Soviet Union, including economic and political changes, the questioning of traditional values, and the resurgence of ethnic nationalism, have generated greater willingness on the part of Soviet citizens to challenge authority. Increased expectations on the part of Soviet citizens and an impatience with the pace of economic reforms contribute to the growth in crime. Finally, just as the United States has a high rate of drug-related crime, the Soviets have a severe problem with alcohol. Indeed, we were told that 30-40 percent of crimes committed in the Soviet Union are alcohol-related.

According to Minister Bakatin, the climate in the labor camps and prisons has deteriorated since the release of nonviolent offenders because only the most dangerous prisoners remain; 350,000 of the 761,000 Soviet prisoners are second- or third-time offenders. Accordingly, Soviet prisons are increasingly difficult to administer. Yet the Ministry at the same time is anxious to proceed with its second stage of reforms—the humanization of the prison system, with a greater emphasis on reeducation and rehabilitation.

Changes in prison administration

The Soviet Union has a centralized legal system, and all law is national law. Unlike the United States, the Soviet Union has no state governments, each with its own laws and administrative and political bodies, although reforms are moving in the direction of greater regional authority. Accordingly, there is

a single organizational structure for the administration of the entire Soviet corrections system.

The Soviet Department of Corrections is within the Ministry of Internal Affairs; the Director of the Department reports to a Deputy Minister. The Department is ultimately responsible for the 2,100 labor camps and the small number of prisons operating in the Soviet Union and oversees the 400,000 employees working for the Department of Corrections throughout the system.* However, much of the responsibility for operating the penal system has been transferred to regional authorities in the 15 republics of the U.S.S.R. Whereas in the past there were 1,000 officials at the Central Department Headquarters in Moscow, there remain only 148.

Prisoners in the Soviet Union are assigned to labor camps and prisons by a

*The Department of Corrections is also responsible for the nation's mental hospitals, which have been much criticized by human rights groups in the past, particularly with respect to the treatment of Soviet dissidents.

classification system markedly different from our own. The labor camps are divided into four different "regimes": ordinary, strengthened, strict, and special. The regimes are apparently not distinguished by security considerations, but by the inmates' access to certain privileges. The number of letters, packages, and visits per year to which the prisoners are entitled varies according to regime. In addition, the prisoners' daily caloric intake is adjusted downward as the severity of the regime increases.

Most of the 761,000 prisoners are sentenced to labor camps. There are, in addition, a small number of facilities, perhaps no more than six, that the Soviets label "prisons." The prisons are reserved for the most serious offenses and difficult offenders. Prisoners there are housed in cellblocks, and the regimen is harsher than in the labor camps.

The court in the Soviet Union, instead of the Department of Corrections, determines a prisoner's classification, and it is part of the sentence. The more severe the offense, the more severe the regime.



U.S. delegation members with local officials and officials from the Ministry of Internal Affairs. Left, Jack Eckerd; third from left, Elizabeth Fine; center, J. Michael Quinlan; third from right, Margaret Love; second from right, Charles W. Colson.

Repeat offenders are also likely to be placed in a more stringent regime. Soviet law provides for a maximum sentence of 15 years' confinement for any offense, though a death sentence may also be imposed. We were told that about 30 to 40 executions took place last year. Once a prisoner is sentenced, the Department of Corrections identifies the specific facility for the prisoner's sentence from among those in the specified regime. Policy favors placement of prisoners in facilities close to their home and family.

The Office of the Procurator General serves as a general oversight authority in the Soviet penal system, much like an Inspector General's role in the U.S. Officials from the Procuracy have the right to enter any prison and investigate cases in which prisoners' rights may be violated. While on the one hand, the Procuracy's role is to contribute to the defense of the weakest, according to the Deputy Procurator General, its official position is one of neutrality. In addition, the Soviet Parliament, with its expanded authority, will begin to exercise oversight of the Ministry of Internal Affairs, and thus over the penal system.



Above: Margaret Love, J. Michael Quinlan, and Minister of Internal Affairs Vadim Bakatin. Right: The gate at Perm 29.

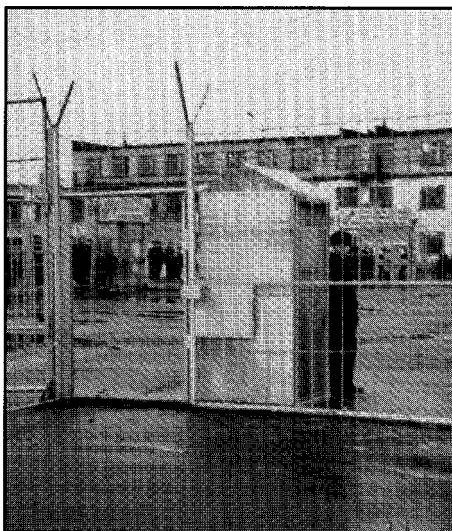
Soviet Prisons—Usually Humane, Sometimes Grim

Perm 29

Perm 29 is a 34-year-old "strengthened regime" labor camp in the Soviet region of Perm. The Perm region has 13 penal facilities: one educational colony for children; three women's colonies; a strict reinforced labor camp, Perm 35; two ordinary regime labor camps; four strict regime camps, and the two strengthened regime camps, including Perm 29. Three camps have been closed as prisoners have been released in recent years.

At the time of our visit, there were 900 inmates at Perm 29, which has a capacity of 1,300. According to the prison commander (who led the tour of the facility and then hosted us for discussion, cognac, chocolate, and tea), 800 of these prisoners have been convicted of crimes against a person and about 380 of murder.

Despite the fresh paint that we could smell throughout the institution and the fresh gravel covering the mud in the fenced-in yard, the prison facilities



appeared run-down and the physical setting was rudimentary and grim. Nevertheless, there were clear indications that the facility was orderly and efficiently run.

The tour took us through educational facilities, where all inmates study to complete the 10 years of schooling required of all Soviet citizens, and where training in various trades was offered for prisoners who had no profession. As in all Soviet penal institutions, the educational staff works not for the Ministry of Internal Affairs, but for the Soviet educational authorities.

As a strengthened regime labor camp, prisoners were entitled to 2,800 calories a day. (This compares with a diet in a U.S. Federal prison, which is not based on calories, but on nutritional content.) The dining room had some tables at which inmates would have to eat standing up. According to the commander, it cost approximately 1 ruble a day to feed each prisoner. At an exchange rate of 6 rubles to the dollar, the per capita expenditure for food amounted to less than 17 cents per day. In addition, prisoners were permitted to spend 25 rubles a month in the prison shop, which sells some foods and items such as toothpaste.

We also toured the library, where there was a local radio station run by a prisoner; the auditorium, used for films and assemblies, and in which the commander indicated there had been a very well-attended religious service only days earlier; and the fenced-in courtyard and dormitory housing unit, where we had the opportunity to talk briefly with inmates. Curiously, inmates seemed puzzled about the existence of a library or the opportunity to borrow books from

it. Also, no prisoner confirmed that there had been a religious service earlier in the week.

Prisoners wore black uniforms and had shaved heads, and a high degree of discipline was evident. The 900 men were divided into separate housing units. The dormitory unit housed 169 inmates in crowded, but neat, double-bunk beds. Men in the unit's recreation room sat in an orderly fashion watching television. A few reading materials were available, including a newspaper written for the labor camps across the country. There was no evidence of any other recreation facilities or activities, either inside or outside the housing unit.

The Soviet officials were quite accommodating and agreed to show us the punishment cells, even though they were not on the scheduled tour. Punishment cells are referred to as "schizo's" (pronounced sheezo) in the Soviet Union. The isolation area was easily identifiable not only by its darkness, but by its stench. The commander offered to open up any of the dozen cells at random. Each punishment cell was 12 square meters in size, and would house up to four prisoners for 1 to 15 days, although officials said the average stay is about 5 days. Officials here repeatedly mentioned that prisoners are rarely placed alone in punishment cells because isolation is considered too grave a punishment. Benches for sleeping are folded up against the wall during the day and taken down at night. Prisoners can sit only on iron benches during the day. The cells have toilet facilities, and running water is made available at 7 a.m. daily.

Taking into account the spartan conditions, the dark, harsh punishment cells, and questions about prisoners' access to library facilities and religious services, the camp's conditions and programs were generally better than what we had expected. Although primitive relative to standards for correctional institutions in the U.S., conditions of confinement at Perm 29 were humane and not standard relative to the surrounding community. The facility was clean and orderly, and administered in a professional manner.

Perm 35

It takes about 6 hours to drive, over snow-covered roads, from the city of Perm to the infamous labor camp Perm 25, high in the Ural Mountains. A.M. Rosenthal of the *New York Times* and a representative from Helsinki Watch were the first Americans to visit this prison, in late 1988. Congressmen Wolf and Smith returned there in August 1989.

Perm 35 is a "strict regime" labor camp with a capacity of 400 prisoners. (At its peak, the prison held 250 inmates.) At the time of our visit, only 22 prisoners were held there. Other prisoners had

recently been released as part of a nationwide amnesty program. Perm 35 attracted international attention when it opened in 1972 because of its high concentration of prisoners who were classified as "prisoners of conscience" by international human rights groups and concerned governments. The National Geographic Society and the *60 Minutes* news team reported on the severe conditions at this "gulag" in the weeks preceding our visit. Even with just a few remaining prisoners, Perm 35 is a living remnant of the Soviet past, and for that reason was worth the lengthy trip.

Previous foreign visitors to Perm 35 focused on the plight of specific imprisoned individuals. We did not revisit the question of whether the prisoners were properly confined, but, rather, examined the conditions of confinement.

Our most immediate impression of Perm 35 was its desolation. Amidst the snowdrifts, there was a small inmate population of 22 prisoners and a staff of 40. This contrasted markedly with another labor camp, several kilometers down the road, where 1,000 prisoners were held and there were signs of a bustling industry inside the barbed-wire fences. Moreover, according to the Perm 35 prison commander, nine inmates were



Above: A worker in the Perm 35 factory.
Right: En route to Perm 35.



scheduled for release and an additional three were being considered for early release. The commander said he would certainly recommend that the camp be closed rather than remain open for the other 10 prisoners, although the decision will be left to the Minister of Internal Affairs.

We first visited the factory, where half a dozen prisoners worked on heavy machinery under equally heavy supervision. According to the commander, prisoners at Perm 35 work 8 hours a day, 6 days a week, and have 1 hour to rest before dinner. It was impossible to talk with any inmate freely; correctional officers quickly appeared when we struck up conversations with prisoners, and at least one prisoner who conversed with us met with clear disapproval from the guards.

Everything about the labor camp reflected its small population. In contrast to the crowded living quarters at Perm 29, the Perm 35 residence had two spacious rooms with only nine cots to a room. Other prisoners were confined to the “schizo” or punishment cells, and two prisoners were ill in the infirmary. The



Above and right: Scenes at Perm 35. The poster reads: “Work better to increase productivity and quality.”

temperature inside the living quarters was comfortable. The residential facilities were roomy but rudimentary, and there was little in the way of recreational activities—just a weight room of sorts and a room with a television set, although the remote location would undoubtedly interfere with the reception.

The remoteness of Perm 35 raised questions concerning the availability of medical care. The labor camp had little in the way of modern medical equipment. An operating room and a dentist’s chair looked like remnants of the 19th century. There was, we were told, a full-time doctor on staff.

The commissary shop for prisoners was well stocked, with canned goods, cookies, cigarettes, socks, toiletries, and writing materials; prisoners could spend 10 rubles a month and supplement their 3,000-calorie-per-day diet. In the apartment-like family visiting area, prisoners are allowed to receive 3-day conjugal family visits once each year. Only three members of the delegation were permitted to see the punishment cells—one small cell and one larger one where two prisoners were held. The larger cell had food on a table and many newspapers. Again, at the time of our visit, the temperature in the cells was comfortable.



We spoke with a number of prisoners in the visiting area in the presence of journalists (including a television camera that accompanied the delegation throughout the tour) and prison administrators. We had asked if we could conduct interviews in private, but were told that “it is the law” that the administrators listen in.

Prisoners told us about a number of problems with conditions in the camp. One prisoner indicated that it is impossible to avoid infraction of the rules (and therefore spending time in the punishment cell). He reported that since Congressman Wolf’s August 1989 visit, he had been placed in isolation five times. Another prisoner told us that he had been in the punishment cell continuously for over a year; a third indicated that his stay in the “schizo” now exceeded 6 months. There were also reports that family visits are often denied and that prisoners have not received incoming mail. Finally, we noted that all the Perm 35 prisoners were very thin.

We had a number of concerns regarding the conditions of incarceration at Perm 35. First, the camp is located in a remote area, far away from many prisoners’ families. This is compounded by the restrictions on mail and family visits. In addition, to the extent that confinement to the “schizo” is used routinely for minor infractions, the practice would not be acceptable in the United States. Nor would the long periods of confinement in the punishment cells. In addition, if facilities are not adequately heated, or punishment cells are intentionally kept at cold temperatures (as we were told is the case), conditions would be inhumane by U.S. standards.

On a positive note, the prison was orderly and neat, and the prisoners were occupied. Yet Perm 35 has a reputation that will survive the camp itself. Many prisoners believe that they are unlawfully imprisoned, and should not have to abide by the same rules as those convicted of property crimes or crimes of violence. We were encouraged by indications that the labor camp may be closed in the near future.

Butyrka Investigations Prison

We next visited the Butyrka investigations prison in Moscow, one of the oldest prisons in the Soviet Union. Butyrka is located in an ancient fortress that was used by Peter the Great for military purposes. It was converted for use as a prison in 1787 and as such has housed many well-known revolutionary figures.

Butyrka was slated for demolition in the late 1950's. However, the Government instead built an apartment house adjacent to the prison to block any view of it from the street. The Butyrka prison is now a historical landmark and the prison commander repeatedly explained the difficulty he faces in gaining approval for renovations from the Government bureaus charged with protecting historic buildings. A 10- to 15-million ruble renovation has, however, finally been approved.

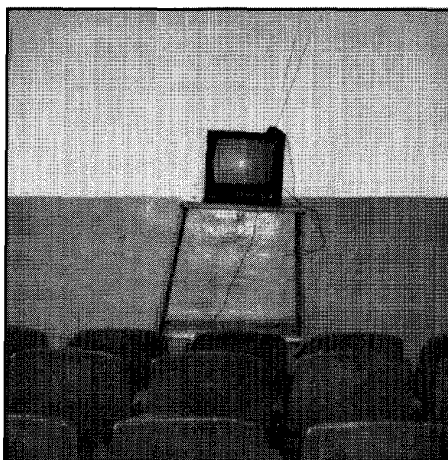
According to the commander, the number of prisoners at Butyrka totaled "a little more" than the facility's 3,500 capacity, and included about 450 women. Those detained at Butyrka are awaiting trial or transfer to another prison, and in some cases prisoners who are material witnesses in a trial are held at Butyrka. The average stay is 4 to 6 months, although

more difficult cases may stay for up to 1 year. In addition, there is a work cadre of about 120 sentenced inmates.

Uniform rules govern all "investigations prisons"; as the commander explained, these prisons serve several tasks: to provide the authorities with all possibilities for investigation, to insulate society from dangerous criminals, and to prevent escapes.

Roughly 60 percent of the prisoners in Butyrka are held in common cells, each accommodating 20-25 persons, while 40 percent are in 1-5 person cells. Men are separated from women, repeat offenders from first-time offenders, those who committed "hard" crimes from those involved with less serious crimes, and adults from juveniles. In addition, all prisoners who are "inclined to excesses" are separated.

We were given a detailed description of the prison, but actually saw very little on the tour. There were virtually no prisoners to be seen anywhere in the institution (with the exception of one prisoner pressed with his face against the wall on the stairwell as we passed and one or two others who were in transit).



We spent more time touring the prison museum than walking around the prison facilities.

The prison was indeed a fortress. Every door was solid and one could not see into or out of the cells or rooms. Prisoners inside the cells could call staff by pressing a bell. The delegation was shown an empty cell on the prison's special block that would accommodate one to five persons and an empty punishment cell, located in one of the corner towers. Regular cells are equipped with toilets, radios, mirrors, and running water. Prisoners leave their cells for showers every 7 days, and at that time the bedding is changed. These and other prison rules are posted on every cell wall.

Punishment cells at Butyrka hold prisoners in solitary confinement. Unsented prisoners can stay up to 10 days and nights in the cells, and sentenced prisoners for 15 days. On average, about seven prisoners are held in the punishment cells at any given time.

On the way into the prison, there are holding cells—really, closets—that are

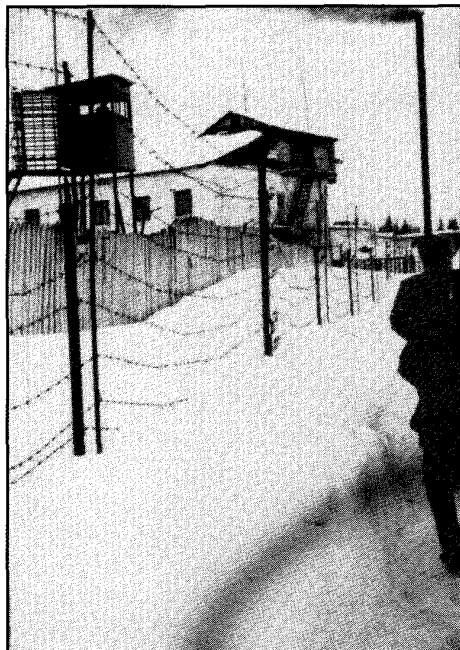


Above and right: A dormitory and bathroom at Perm 35.

not used as punishment cells, but would certainly serve the same purpose. We were informed that prisoners typically spend 1 hour or so in these “cells” while they are sorted for assignment to an area in the prison. Nonetheless, we felt that these closet-cells had the potential for grave abuse.

In the medical facility, prison officials proudly displayed their Soviet-made X-ray machine. The tour continued through an area in which the commander told us that behind each of the solid, closed doors, investigators were meeting with prisoners and working on criminal investigations. Finally, we were given a very detailed tour of the prison museum.

In short, we saw empty cells, closed doors, and relics, and had no opportunity to see how prisoners lived in the institution or what conditions of confinement



Above: Perm 35. Right: A dormitory at Mozhaisk 5.

were like. When the tour ended, we commented that with more than 3,500 prisoners, it was curious that as few as 2 or 3 prisoners had been seen during the entire tour. The commander explained that it is forbidden by law for anyone to see unsentenced prisoners, but agreed to bring us back into the prison, where we met with one sentenced prisoner who had been elected by his fellow prisoners as supervisor for the 120-prisoner work cadre. After a brief chat and a tour of the living area for the sentenced work cadre, the commander led us out of the prison through a side door.

Why did the Government allow us to visit the prison, but place such severe restrictions on what we could see, in stark contrast to the openness of the two Perm facilities? We could only speculate about the reasons for this secretiveness, and surmised that they must relate to conditions inside the cell areas, the lengths of time prisoners are actually held before trial, and the nature of the charges. In addition, we were unable to confirm with inmates any of the staff's assertions about access to counsel, visitation, and other pretrial rights.



Mozhaisk 5

Our next stop was a 40-year-old colony for women at Mozhaisk, a suburb of Moscow. Mozhaisk 5 is one of approximately 80 colonies for women in the Soviet correctional system, 40 of which are commanded by women. Mozhaisk 5 is headed by a male commander and two female assistants, who led the tour of the camp and who impressed us with their knowledge and professionalism, and their extremely comfortable and supportive interaction with prisoners. Most of the 380 military and civilian employees at the camp were women.

The 900 women prisoners at Mozhaisk 5 have been convicted of more serious crimes than had been the case for women in the past. Typical crimes today include state and property offenses, offenses against the person, and murder. Half of all women in Soviet prisons are serving time for property offenses. Women convicted of lesser crimes now have their sentences postponed and are essentially placed on probation. Those who fail to obey the conditions of their probation are sent to a labor camp such as Mozhaisk 5. While prisoners can be sentenced to Mozhaisk 5 for anywhere from 6 months to 15 years, the average sentence is 3.5 to 4 years, and prisoners range from 18 to 70 years of age. In fact, we were surprised by the number of older prisoners in the camp.

This year, the Soviet Government is conducting a bold experiment in seven women's colonies, including Mozhaisk 5. In addition to a new policy of awards—expanding the number and size of parcels women can receive, extending visiting privileges, and adding a 12-day furlough—it makes special provisions

for women who are mothers. Mothers are considered the heads of households, and under this experimental program, initiated in March 1990, pregnant women are released from prison at the time of childbirth and allowed to stay with the family until the child is 3 years old. At that time, if the mother has behaved well, the court decides whether to cancel the original sentence or lessen its severity. All women at Mozhaisk 5 are eligible to participate, provided they are not repeat offenders and are not sentenced for particularly violent or serious crimes.

While we were not intimately familiar with Soviet culture and norms, we felt that this experimental policy could unwittingly encourage pregnancies. This policy would be very controversial in the U.S., particularly if, as in this experimental program, conjugal visiting privileges were extended to nonfamily members. In addition, male prisoners in the United States would claim that women were receiving preferential treatment in violation of the equal protection requirements of the Constitution.

Mozhaisk 5 was without doubt the most impressive facility the delegation toured in the Soviet Union. Two members of the delegation had toured prisons throughout the world and found the level of prisoner morale and the administration of the prison to be among the best that they had seen anywhere.

While there were trees, birds, and signs of spring inside the labor camp compound, much was also done by both prisoners and administrators to make the camp a humane place. Personal touches were evident everywhere. In the educa-

tion building, samples of children's clothes that prisoners had made were displayed on the classroom walls. The dormitories were crowded, but walls were covered with colorful posters and drawings, and pillows, curtains, and cloths were all hand-embroidered by the prisoners, who apparently took great care with their surroundings. Women on a dinner break sat in the television room or in the outside courtyard talking in small groups. In the auditorium, several women rehearsed for an upcoming concert—one stood at the piano singing along with an accompanist. The library was centrally located, well stocked, and apparently well used. We took particular note of the poster-sized prison newspaper, hand-made by prisoners and containing original articles and artwork. An artist showed us many previous editions of the newspaper, stored in a room at the library.

We talked easily with all the prisoners we approached. One woman who spoke English commented that she did not consider this to be prison, but a place where she lived and worked, although it was not her home. The administrators

also seemed to chat freely with the prisoners. At one point a prisoner handed the commander a note with specific requests; he approved two and turned down one.

The medical clinic was filled with activity; we were told that the focus in medical treatment was on preventive care. At the time of the visit, there were a number of prisoners in the clinic awaiting outpatient care and 19 inpatient prisoners who were anxious to find out from the delegation or Soviet authorities if there was any news about when they would be released. General V.N. Kremenesky, a Deputy Chief in the Department of Corrections who accompanied our tour, indicated that an amnesty plan was awaiting approval at the Ministry.

A high point of the tour was the dining room, where we partook of the prisoners' soup, meat, kasha, and fruit tea. Women prisoners and officials appeared to enjoy our visit; one prisoner sat with us as we sampled the cuisine.



Left: The clothing factory at Mozhaisk 5.

Above: Lunch in the cafeteria at Mozhaisk 5.

Most notable, however, was the prison industry. On the day of our visit, the 300 or so women in the factory were making clothes for servicemen at railway stations. There was music playing; we were told that prisoners decide whether music should be on or off and what kind of music should be played. The women wore head coverings to comply with safety requirements and worked for net earnings of 90 rubles a month. In addition, they could receive good-time credits and increased earnings for production in excess of their quotas. At least 50 percent of each woman's earnings is kept by the administration to pay for living, food, and clothes. Some funds are deducted to repay victims of property crimes.

While overall morale in the colony seemed excellent, we found the punishment cells to be somewhat disturbing. Mozhaisk 5 has about 12 punishment cells, and the prison officials noted that they are used only as a last resort. The



Above: Working on the prison newspaper at Mozhaisk 5. Right: Courtyard at Mozhaisk 5.

administration randomly opened the door to one of the cells; inside were five women dressed in nightgowns who were apparently as surprised to see us as we were to see them. One prisoner was particularly disturbed and began crying uncontrollably. The prison administrator tried unsuccessfully to calm her. The delegation was told that the young woman was in the "schizo" for refusal to work, although insolence, fighting, or stealing from other inmates typically landed prisoners in the punishment cells for up to 15 days—sometimes for protection from retaliation by other prisoners.

Our stay in the "schizo" ended abruptly when the young woman's crying turned into a hysterical episode or seizure. We commented that continuous confinement in the dark punishment cell for up to 15 days could have very deleterious effects. The consequences could be lessened, however, if, as the administration indicated, the women are not left in the cells all day, but get out to work and exercise in the punishment area compound.

Notwithstanding the concerns about the punishment cells, we found the institution to be very well run, with a balance of



compassion and discipline, order and personal freedom, and opportunities for women to improve themselves, improve their surroundings, and keep productively occupied during their sentences. The visit to Mozhaisk 5 convinced us of the importance of providing prisoners with real opportunities for productive employment. Moreover, the administration showed concern for creating a humane environment.

Mozhaisk Children's Colony

Our final visit was to the highly disciplined children's colony in Mozhaisk. There are 89 juvenile facilities in the Soviet Union; a total of 28,000 juveniles are in custody. Six of the camps are for girls and four are for serious, violent juvenile offenders. The Mozhaisk children's colony holds roughly 400 boys, aged 14-18, and provides them with education and professional training. All of the boys were serving time for property offenses. Sentences were 3 years on average, although most are released after completing one third of their sentence.

There are two general categories of juvenile prisons in the Soviet Union: one, including Mozhaisk, is for first-time offenders, and a second is for juveniles with previous records. Most first-time offenders are not sentenced to prison, but are given probation, and would only be sent to a colony such as Mozhaisk for violation of probation.

None of the Mozhaisk juvenile prisoners had been sentenced for violent crimes. Yet the atmosphere and physical surroundings at the colony were extremely basic. Boys were dressed in brown and black uniforms, some with red armbands, and most had shaved heads. About 300

of the boys were in school in the prison, completing their 10 years of education, or are in professional school learning steelworking, mechanics, or the assembly of radio equipment. The boys in the classroom were shy about striking up conversations, although several had questions regarding U.S. facilities for juveniles.

Prisoners were involved in production at the prison's six assembly plants and are required to work 4 hours a day if they are under 16 years of age and 6 hours a day if older. After the administration deducts expenses, the boys were left with 40 to 50 rubles a month. The boys worked together energetically and persistently in teams on assembly lines, and were rewarded for production in excess of their quota. In one factory, boys assembled light sockets; in another, loudspeakers.

In contrast with the school and industry sections of the prison, which were all cement, the residential area had trees and picnic tables. Still, the boys live in barrack-styled housing and there was little evidence of any recreation, other than a television room in each dormitory.

Tall fences surrounded the residential and industry sections of the prison to prevent escapes. Escape attempts were reported to be quite common; in fact, there was a boy in the punishment cell for an attempted escape. Unlike other prisons, where administrators made a point of noting that it is too difficult for a person to be alone in a punishment cell, and where administrators intentionally housed prisoners in groups—even in punishment cells—to provide them with

company, this boy was in solitary confinement, and was clearly disoriented after 5 days in the cell by himself.

While not a nurturing, supportive environment, the children's colony at Mozhaisk was highly structured and disciplined. The boys there seem to have the opportunity to learn a skill and to spend their time productively. The colony may instill some discipline in the youths, most of whom seemed to have been sent there for stealing cars. Yet the regimen was severe for juveniles who are primarily first-time property offenders.

General observations and lessons for the U.S.

While we did not discuss in advance of the visit what each of us expected Soviet prisons to be like, we agreed that in certain respects, conditions in the institutions we visited surpassed our expectations. More surprisingly, we were able to compare the two nations' prison systems and develop some ideas for the American correctional system.

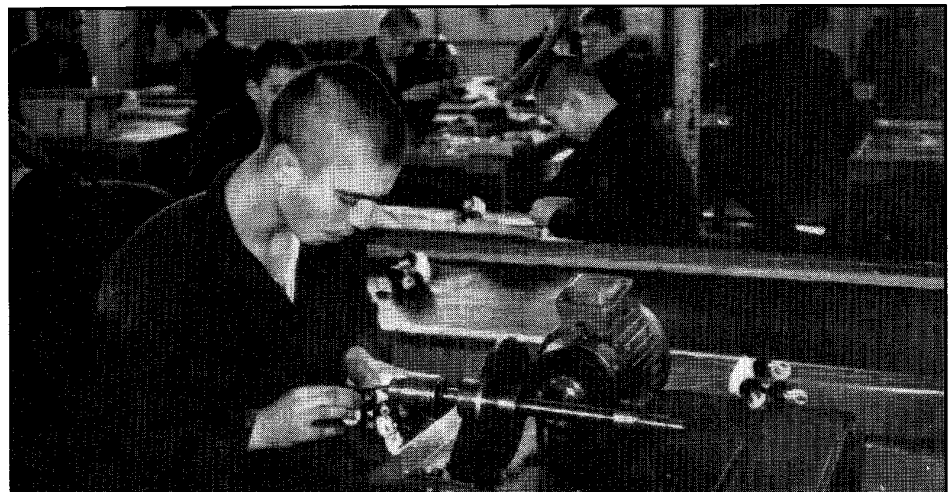
■ *Conditions of confinement.*

Living conditions at many of the facili-

ties visited would be considered substandard in the U.S. For example, whereas Federal prisoners and most State prisoners have virtually unlimited access to showers, Soviet prisoners can shower only once a week. However, the standard of living in the Soviet Union is substantially behind that in the U.S. Inmates in prison cannot live better than citizens in the surrounding community. Based on living conditions that the delegation observed in Moscow, Perm and Mozhaisk, prison conditions appeared appropriate relative to community standards.

■ *Prison industries.*

A prominent theme that emerged in our visit was the importance of prison industries; 82 percent of Soviet prisoners are so employed. Mindful of the fact that labor should not be used as punishment, and of the volumes that have been written on the brutal work conditions imposed in the past on Soviet prisoners, the delegation was nonetheless favorably impressed with the compulsory work regimes at Perm 29, and at the women's and children's camps in Mozhaisk. Prisoners appeared productively employed in work that did not appear either



to be exploitive or generally regarded by the inmates as a form of punishment.

The difference between U.S. and Soviet prison systems with respect to prison industries is somewhat ironic. Whereas the Soviet Union has a problem of a shrinking prison workforce, the U.S. faces the difficult challenge of creating enough jobs for the rapidly growing inmate population.* The tales of exertion in Soviet gulags contrast greatly with complaints of inmate idleness in many U.S. prisons. "Factories within fences," a goal that American correctional institutions strive to achieve, is a reality in the Soviet Union.

Currently, about one-third of qualified Federal prison inmates in the U.S. are employed in industry programs, and just 5-10 percent of State inmates. The delegation was sufficiently impressed

*In contrast to the Government funds used to run prisons in the U.S., Minister Bakatin indicated that the entire operating budget for Soviet prisons in 1989 was raised through prison production, and the full appropriation was returned to the Government.



Mozhaisk Children's Colony: Left, at work in the prison factory; above, outside security; right, a classroom.

with the positive effect that the Soviet prison industry program has on morale, discipline, and administration that it returned with a renewed commitment to increasing employment opportunities for American inmates.

■ **Prison regimes.**

Soviet prisons and camps are divided into "regimes," distinguished in part by the number of letters and visitors prisoners can receive each year, and by the number of calories each inmate can consume each day.

We had serious concerns about the use of food and family communications as a form of punishment, and raised the issue of limitations on mail and visiting rights with Minister Bakatin, who noted that these are remnants of the old Soviet system that have yet to be revised. Supreme Soviet member Golik, another of the officials who met with us, indicated that new laws were being written, and questions such as ours would be addressed through penal law reforms.

■ **Religious freedoms.**

For years, the beautiful cathedrals in and around Moscow have been without decorative crosses on their steeples. That is now changing; the churches that were for a long time museums of Soviet



history are again being used as places of worship. Similarly, the Ministry of Internal Affairs has begun to implement new religious freedoms in prisons; we applauded these advances in our meeting with Minister Bakatin.

Prison administrators stated that prisoners could freely practice their religion. The members of our delegation associated with Prison Fellowship were given permission to hand out Bibles in the prisons visited. While it is unclear to what extent prisoners actually have access to religious ceremonies inside the prisons, the opportunity is there for outside religious groups to hold services.

■ **Oversight of prison administration.**

We noted the positive trend toward greater oversight of the administration of the prison system. Currently, the Procurator General has a certain degree of oversight and review of the Ministry of Internal Affairs. Yet there is a need for greater openness and public scrutiny of corrections. The Soviet parliament is developing its oversight role as it obtains greater autonomy from the executive branch of the Government. New freedoms for the press and greater press independence are contributing to the concept of public accountability on the part of administrators. In fact, a television news crew and newspaper photographer accompanied us into two prisons.

■ **Punishment cells.**

A number of the punishment cells that the delegation saw were harsh, dark, and unpleasant. While prisoners are generally sent to punishment cells for no more than 15 days (although at Perm 35, at least one prisoner had been in the punishment cell for over a year for refusing to work), we felt that conditions

are unnecessarily punitive. In contrast to procedures in Federal prisons, we learned of no administrative process to ensure that prisoners are not arbitrarily or inappropriately sentenced to punishment cells.

On the one hand, the Soviet authorities displayed concern for the prisoners in punishment cells and hold them in groups of four or five to a cell, as loneliness and isolation are considered the greatest punishment of all. On the other hand, prisoners are often deprived of natural light, and the benches for sleeping are pressed against the wall during the day, leaving prisoners with only metal stools for sitting.

n *Levels of unrest.*

While we did not see evidence of unrest in the prisons visited, Soviet officials noted that unrest and riots are on the rise as the concentration of violent prisoners increases. Correctional staff have increasingly been taken hostage and the authorities are grappling with how to address this problem.

In meeting with the Deputy Procurator General, we reviewed recent prison riots in the U.S. and the lessons learned about the use of force to counter prison rebellion. Since the Attica State prison uprising, the policy in Federal prisons has been to avoid use of force because it leads to greater bloodshed. Currently, the policy in the Soviet Union is to use force to counter prisoner rebellions.

n *Discipline.*

While Soviet officials discussed the problem of prison unrest, the prisons and prisoners we visited were notable for

their high degree of discipline. Prisoners' neat manner and appearance—for example, prisoners' shirts were buttoned up to the collar and their heads shaven—tidy dormitories, and regimented schedule evidenced a high degree of orderliness. Inmates watching television sat in rows. Prisoners with whom we spoke were quick to stand and respond politely.

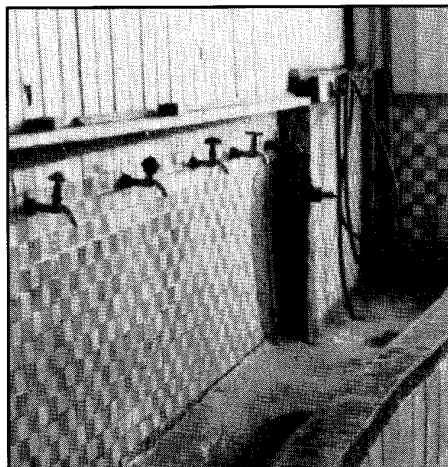
n *Family visiting.*

Family visits are limited to as few as one or two a year or as many as five or six a year, depending on the nature of the regime.* Certain visits, however, extend for 3 days and 3 nights. During these long family visits, the prisoners stay with their families in apartment-like areas inside the prisons. While U.S. Federal prisons allow more frequent family visits, there are no conjugal visits. We encouraged the Soviet Government to allow more frequent family visits, and came away with an interest in exploring anew the issue of conjugal visitation.

n *Administrative remedies.*

According to the Office of the Procurator General, prisoners have the right to

*Juvenile camps allow somewhat more frequent family visits. In addition, the women's camps are experimenting with extra visitation privileges.



write to the Procuracy to seek relief for misconduct on the part of administrators or others violating their rights.* Administrators must forward all prisoner mail to the Procurator's office within 24 hours. Regional Procuracy offices receive about 75,000 prisoner claims and letters each year, although the Central Department Headquarters in Moscow receives only 11-12,000 letters, most of which are appeals of decisions by lower authorities.

We learned of no mechanisms for prisoners to seek redress directly within the Ministry of Internal Affairs, such as exist in U.S. prisons. Such administrative relief mechanisms could be very useful in resolving disputes internally, unless prisoners would hesitate for fear of retaliation.

■ *Medical care.*

Medical facilities generally appeared rudimentary. Moreover, according to the Deputy Procurator General, inadequate

*Although if an inmate is found to be at fault instead of an administrator, the inmate may be punished.



Left, A washroom at Mozhaisk Children's Colony. Above: A classroom at Perm 29.

medical care is a chief complaint among prisoners. The Procurator's office, however, does not view medical care as a serious problem, as many individuals arrive in prison with "damaged health."

While medical care was of interest to us, there was insufficient opportunity to explore this issue in depth. It would be useful to learn more about the medical care afforded to prisoners in future exchanges, especially since the issue poses many difficult questions for administrators in the United States.

n Prisoners of conscience.

While we did not focus on the question of prisoners of conscience, we did visit Perm 35, which has been noted for the political nature of its prisoners' offenses. Moreover, the U.S. Government and Members of Congress, including Representative Wolf, are concerned that the

Soviet Government still does not adequately respect human rights. Accordingly, prisoners' rights and prisoners of conscience were a component of the official American delegation's visit. Mr. Colson raised a concern about the incarceration of prisoners of conscience at Perm 35 in our meeting with the Ministry of Internal Affairs. However, Minister Bakatin was not receptive to the discussion, and defended the Soviet Government's imprisonment of individuals who have violated Soviet law.

n Women's penal facilities.

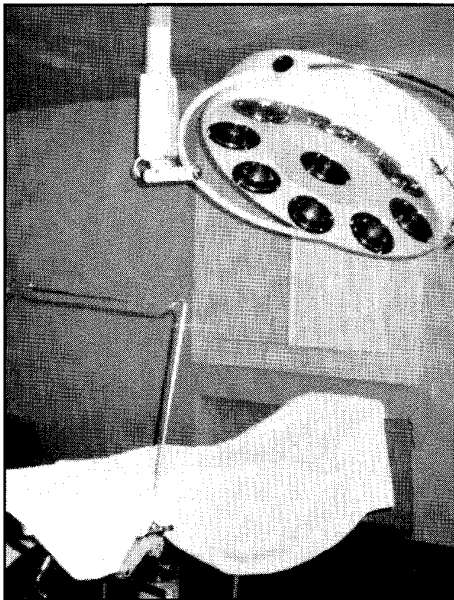
Soviet officials are experimenting with some bold reforms in women's prisons, and while certain experimental policies would be controversial in the United States, the fact that the Government is attempting to improve conditions in women's prisons through reforms and innovations is encouraging. The same

degree of innovation and commitment will ideally be applied to men's facilities as well.

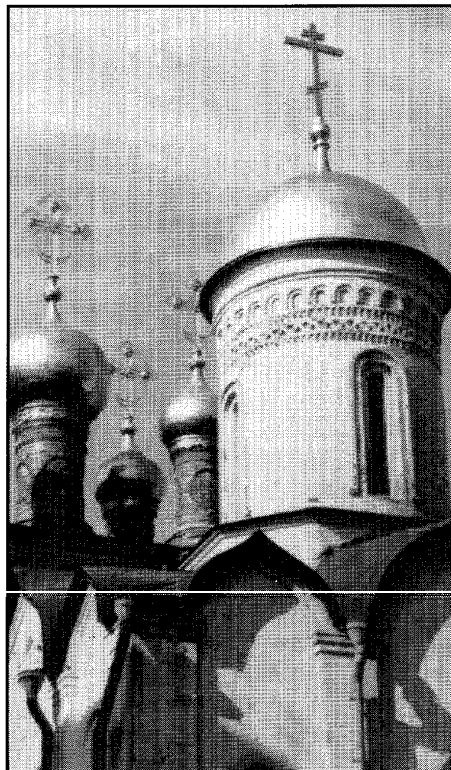
Future steps in U.S.-Soviet criminal justice relations

Overall, we were encouraged with the course of Soviet prison reforms and found many positive elements in the current administration of the Soviet prison system. Mr. Quinlan invited Soviet officials to continue their discussion about prison administration by visiting the United States.

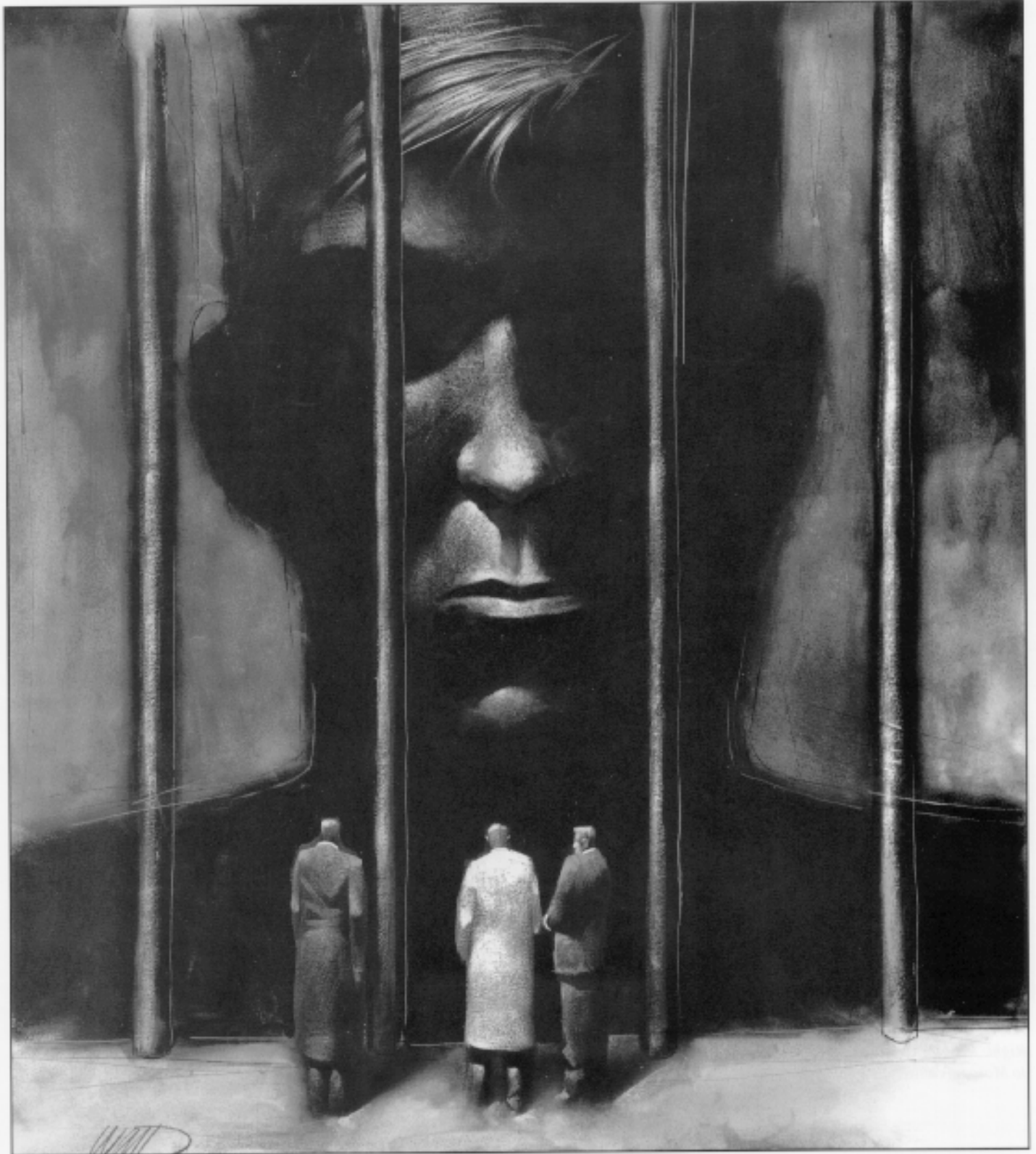
The entire visit was extraordinarily educational, and a very positive, friendly relationship was established. The Soviet and U.S. governments and their respective prison systems are certain to benefit from the delegation's visit and from future discussions regarding mutual efforts to improve criminal justice. n



Above: The operating room at Perm 35.
Right: Religious symbols have been restored to Moscow cathedrals.



J. Michael Quinlan is Director of the Federal Bureau of Prisons. Elizabeth Fine is Counsel to the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, Committee on the Judiciary, U.S. House of Representatives. Margaret Love is Associate Deputy Attorney General, U.S. Department of Justice. Charles W. Colson is Chairman of Prison Fellowship International. Jack Eckerd is a member of the Prison Fellowship International Board of Directors.



Sam Ward

Involuntary Treatment

When can mentally ill inmates be medicated against their will?

Bill Burlington

For those involved with caring for the mentally ill, the 1990 Supreme Court term was a banner year, as the Court in one decision answered a question that has divided mental health professionals for more than 35 years—under what circumstances can mentally ill patients be given antipsychotic medications against their will?

On the same day, in a separate case, the Court provided guidance on a related question: what is the obligation of mental health professionals to ensure that a mentally ill person has the capacity to provide an informed consent for admission to the hospital, or to be medicated voluntarily? These issues affect both the quality of mental health care and the potential legal liability of those who treat the mentally ill, whether in a prison or a civilian psychiatric hospital. This article will examine these two decisions in detail, and will attempt to show how they may affect both mental health patients and staff.

Involuntary medication of a dangerous psychiatric hospital patient

*Washington v Walter Harper*¹—In 1976, Walter Harper began serving a 20-year sentence for robbery in the Washington State Penitentiary. Mr. Harper was diagnosed by staff as suffering from schizophrenia, schizoaffective disorder, and manic depression, and consequently spent much of his sentence in the

prison's mental health unit. He had a history of assaultive behavior, having received at least 29 disciplinary reports for offenses such as fighting, assault, setting fires, threatening bodily harm, destroying property, possessing narcotics, and theft. Mr. Harper's treating physicians attributed his assaultive behavior to his mental illness. In 1980, he was paroled on the condition that he

This debate generally divided those who stress the benefits of such treatment from those who fear the serious side effects that may accompany some of the medications used.

receive outpatient psychiatric treatment. While on parole he was committed on two occasions to a psychiatric hospital for treatment. In 1981, his parole was revoked when he assaulted two nurses at the hospital.

When he returned to prison, Mr. Harper was sent to the Special Offender Center, where convicted felons are diagnosed and treated for mental illness. Here, after initially consenting to medication, Mr. Harper refused further treatment. Following center procedures, physicians medicated Mr. Harper. Mr. Harper remained at the center off and on until February 1985, when he filed suit, claiming that his constitutional rights

were violated when he was involuntarily medicated without a prior judicial finding that he was medically incompetent.²

While Mr. Harper prevailed before the Washington State Supreme Court, the United States Supreme Court ruled against him. The Court held that a prior judicial finding of incompetence was not necessary, and that prison officials can treat an inmate who has a serious mental illness involuntarily with antipsychotic drugs—where that illness makes him a danger to himself or others, and when treatment is found to be in the inmate's medical interests.

The *Harper* decision resolved an issue that on two previous occasions had been before the Court—under what circumstances can psychiatric patients be medicated against their will?³ In each previous instance, the Court decided the case without answering this controversial question. In the meantime, the issue divided both the lower Federal courts and professionals engaged in caring for the mentally ill.⁴

This debate generally divided those who stress the benefits of such treatment from those who fear the serious side effects that may accompany some of the medications used. This same division may explain the decision in *Harper*, as the six-justice majority stressed that "the proper administration of antipsychotic drugs is one of the most effective means of treating certain mental illnesses," while the three dissenting justices stressed the adverse side effects that may accompany such medications, and quote Mr. Harper as saying, "Haldol paralyzed

my right side of my body...you are burning me out of my life...you are burning me out of my freedom.”

In *Harper*, the two parties, as well as seven other interested groups, filed briefs with the Supreme Court. These groups were hotly divided over the desirability of using antipsychotic medication. As Justice Blackmun observed in his concurring opinion, “The difficult and controversial character of this case is illustrated by the simple fact that the American Psychiatric Association and the American Psychological Association, which are respected, knowledgeable, and informed professional organizations, and which are here as amici curiae, pull the Court in opposite directions.” The American Psychiatric Association had stressed that the benefits from cautious use of these medications outweigh the potential side effects, while the American Psychological Association had urged the opposite.

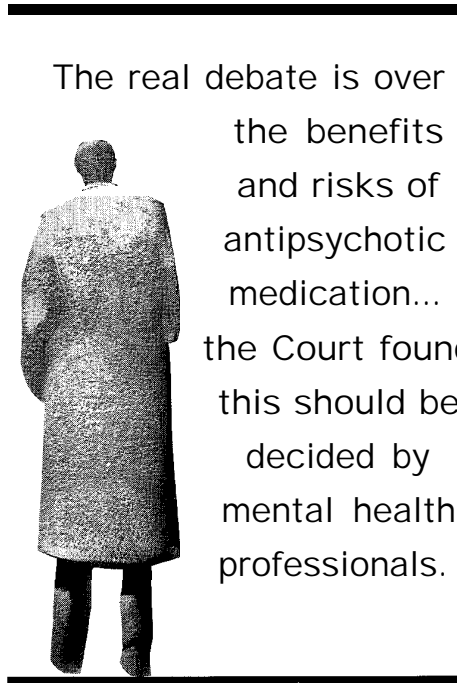
Implications of *Harper*— Procedural and substantive

The narrow holding of the *Harper* decision is that a dangerous inmate may be medicated against his will when such treatment is found by mental health professionals to be in his or her best medical interests. However, the decision contains both a procedural and a substantive component, and by looking at each component individually, it appears that

there may be other circumstances under which medication may be involuntarily administered to a hospitalized inmate.

n *Administrative procedures.*

The Court rejected Mr. Harper’s contention that he was entitled to a judicial hearing before the State could treat him over his objection. Finding the real debate to be over the benefits and risks of



The real debate is over
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antipsychotic medication, the Court found this was the type of question that should be decided by mental health professionals during an administrative hearing, rather than by a judge. The Court stressed that the hearing official should be independent, and approved the Washington State regulations, which guaranteed that the mental health professionals who presided at the hearing must not be personally involved in the current diagnosis and treatment of the inmate.

The Court in *Harper* was concerned that the inmate has an opportunity to adequately prepare and be heard at the hearing. The Court approved of Washington’s procedures, which required:

1. At least 24 hours prior notice of a hearing that will determine whether the inmate should be involuntarily medicated, during which time the inmate may not be medicated.
2. The notice must state the tentative diagnosis, the factual basis for the diagnosis, and why the staff believes medication is necessary.
3. At the hearing, the inmate has the right to attend, to present evidence, including witnesses, and to cross-examine staff witnesses.
4. The inmate can have the assistance of a lay adviser who has not been involved in his case and who understands the psychiatric issues involved. There is no right to have an attorney present at the hearing.
5. Minutes of the hearing are kept, with a copy given to the inmate.
6. The inmate may appeal the decision to the Superintendent within 24 hours of the decision, and the Superintendent must act on the appeal within 24 hours of its receipt. If still dissatisfied, the inmate may seek judicial review of the decision.
7. Once authorized, the involuntary medication decision must be reviewed

after 7 days and, if approved again, reviewed (with a report prepared) every 14 days while treatment continues. At the end of 180 days, a new hearing is held to consider the need for continued treatment.

n Conditions that must be found at the hearing to justify involuntary medication.

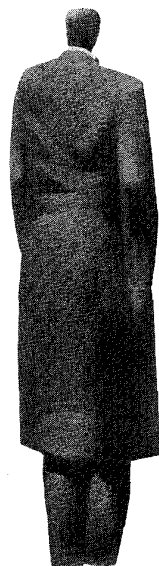
The second aspect of the *Harper* decision focused on the substantive component of the hearing—what factors must the hearing officials find before they can authorize medication against the patient’s will? Because the record contained numerous instances of assaultive behavior by Mr. Harper, the Washington State hearing panel authorized his involuntary medication due to its belief that he was a danger to others as a result of his disease. Given that Mr. Harper’s lawsuit challenged this decision, the holding of the Supreme Court was a narrow one—that an inmate with a serious mental illness can be involuntarily treated with antipsychotic medication if the inmate is dangerous to himself or others, and the treatment is in the inmate’s medical interest.⁵ However, in its opinion, the Supreme Court spoke approvingly of regulations that authorized medication where the following conditions were found:

1. The person suffers from a “mental disorder,” defined as any organic, mental, or emotional impairment that has a substantial adverse effect on an

individual’s cognitive volitional functioning, and

2. As a result of disorder, the person is “gravely disabled,” defined as either

a. being in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or



An argument can be made that involuntary medication may be authorized in certain circumstances to help even a nonviolent inmate regain competence to stand trial.

b. manifesting severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

Thus, the narrow holding of the Court should not be read as defining the entire spectrum of situations in which involuntary treatment of a prison inmate may be allowed. In fact, shortly after the Court handed down the *Harper* decision, it denied certiorari in *U.S. v Charters* 863 F.2d 3D2, (4th Cir. 1988) (en Banc), a

case the Court previously agreed to hear, where the Fourth Circuit Court of Appeals approved of medicating an inmate who was not currently dangerous, so he could regain competence to stand trial. By the Supreme Court’s declining to hear the case instead of remanding it for further proceedings in light of the *Harper* decision, an argument can be made that involuntary medication may be authorized in certain circumstances to help even a nonviolent inmate regain competence to stand trial.

In addition, it is likely that additional light will soon be shed on the question, as the Supreme Court has agreed to hear this year a case involving the question of whether the State of Louisiana can involuntarily medicate an inmate to help him regain his competence, after which the inmate will be executed.⁶

Competence to consent to admission or medication

Zinermon v Burch⁷—On December 7, 1981, Darrell Burch was found wandering along a Florida highway, appearing disoriented and injured. He was taken to a private mental health facility, and after 3 days was transferred to a public hospital operated by the State of Florida, as he was felt to need long-term treatment.

Dr. Zinermon, the attending physician, wrote upon admission that Mr. Burch was “disoriented, semi-mute, confused and bizarre in appearance and thought...not cooperative to the initial interview,” and “extremely psychotic, appeared to be paranoid and hallucinating.” A day after his admission, a nurse noted that Mr. Burch was confused and unable to state the reason for his hospi-

talization and believed "this is heaven." At the time of his admission, Mr. Burch signed forms for voluntary admission and treatment. Mr. Burch remained an inpatient for 5 months, during which time he received antipsychotic medication.

Upon his release, Mr. Burch initiated a Federal lawsuit seeking to hold personally liable 11 staff members at the hospital. Mr. Burch claimed staff knew, or should have known, that he was "incapable of voluntary, knowing, understanding and informed consent to admission and treatment..." and that such conduct deprived him of his liberty without adequate procedural due process. Before the Supreme Court, the narrow question presented was whether these allegations stated a valid claim of violation of Mr. Burch's constitutional rights.

The Supreme Court held if Mr. Burch could prove the above facts at trial, he would prove that Florida hospital staff had violated his constitutional liberty interest by improperly admitting him to the hospital, and by subsequently treating him without a valid informed consent. While the State of Florida had regulations that required that a valid voluntary consent to admission and informed consent to treatment be obtained, they had failed to develop procedures that would ensure that the patient was competent to make such decisions. In so holding, the Court left open the possibility that staff at the hospital could be personally liable for failing to ensure that Mr. Burch was competent when he

admitted himself, and when he agreed to treatment. The case was remanded to the District Court for a trial on the merits of Mr. Burch's allegations.

Implications of *Burch v Zinermon*

Staff who work in psychiatric hospitals have long been troubled by the fact that

Thus, a patient
who voices a
desire for
admission and
treatment, yet is
found incompetent to consent
to such
treatment, may
not be treated.



their patient's mental condition may preclude obtaining a valid informed consent. A need for informed consent arises in a variety of situations with psychiatric patients, aside from decisions regarding admission to the hospital or treatment. Virtually all States require mental capacity to make a will, to get married, to transfer property, and to manage one's affairs. In *Burch*, the Court required staff specifically to assess whether Mr. Burch was competent to consent either to admission or treatment. If they determined he was not competent, involuntary admission or treatment procedures should have been implemented. After *Burch*, it appears that mental health staff will run the risk of

personal liability if they fail to consider whether the patient is competent to make certain decisions.

While both the *Harper* and *Burch* decisions seem fairly straightforward when read together and when seen in the context of the Federal statutes governing the treatment of Federal prison inmates (Title 18, United States Code, Section 4241-4247), these cases raise the potential of temporarily placing a legal straitjacket upon treatment staff, and of relegating certain categories of patients who may desire help to little or no treatment.

After *Burch*, the effect of finding a person incompetent to consent to voluntary admission to a psychiatric hospital is that staff will be forced to initiate the State involuntary commitment procedures. In most States, such procedures can be accomplished in a matter of weeks, if not days. However, involuntary commitments under the Federal statute, 18 United States Code, Section 4245, have taken on average several months, and in one case as long as 10 months.⁸ Thus, a patient who voices a desire for admission and treatment, yet is found incompetent to consent to such treatment, may not be treated for several months. This possible scenario is extremely upsetting to Federal mental health staff, who feel an obligation to provide needed treatment.

An even more upsetting dilemma for some is seen in the case of the patient who expresses a desire for treatment, is not competent to consent either to admission to the hospital or to treatment, yet is not dangerous or gravely disabled.

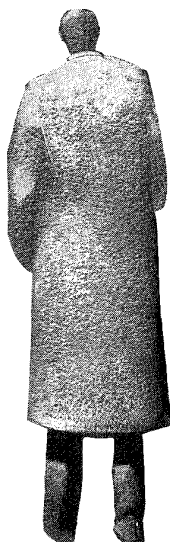
After *Burch*, it is clear that this patient must be involuntarily committed. However, it is conceivable that after *Harper*, even though the patient could be involuntarily committed under Federal law, where dangerousness or a finding that the patient is gravely disabled is not necessary for commitment, staff could not legally treat this person. While the patient is too sick to give valid consent to admission or treatment, he or she may not be sick or dangerous enough to treat involuntarily.

The above scenarios will be frustrating for mental health staff and others who believe in the patient's need for treatment, and that antipsychotic medication offers the only form of meaningful treatment for some mental illnesses. In the case of delays in the commitment process, there is a clear need to explore—with the judiciary and the inmate's counsel—means to streamline the commitment process. The *Burch* decision exacerbates the problem, as there could now be substantial delays in the treatment of a person who is not openly opposing treatment.

Mental health staff may find it difficult to legally treat, under the *Harper* and *Burch* decisions, a person who is incompetent to give an informed consent, yet is not ill enough to treat involuntarily. An argument can be made that the Court in *Burch* recognized this dilemma when they noted that some persons who are not competent to consent to admission would not necessarily be involuntarily committable, as most States require a finding of "dangerous to self or others" before such commitment can take place.

However, in making this statement, the Court was stressing that a person who was not dangerous to others, and who

posed no danger to him- or herself, has a constitutional right to live free in society. This rationale does not seem to apply to the prison context, where the inmate's liberty has already been substantially curtailed, where the Federal commitment statute does not require a finding of "dangerous to self or others," and where bizarre behavior by a mentally ill



Mental health staff will run the risk of personal liability if they fail to consider whether the patient is competent to make certain decisions.

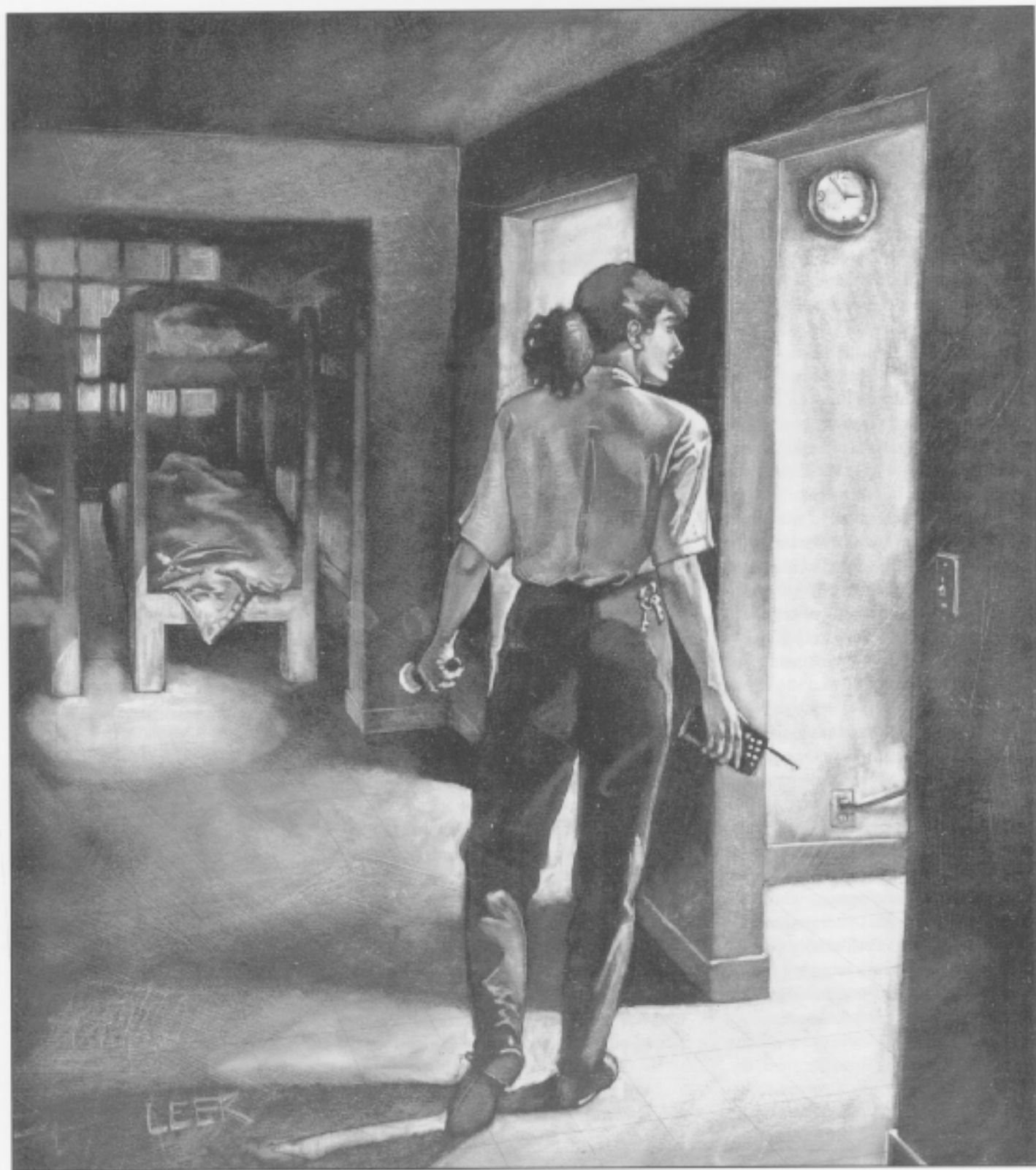
prisoner places that individual at risk of being victimized. To simply warehouse mentally ill inmates may subject them to danger at the hands of other inmates, who may not tolerate what they see as "crazy" behavior.

This author believes that this consequence was not anticipated or intended by the Court; unfortunately, however, its resolution will come only through the long and often uncertain course of future litigation. n

Bill Burlington is Deputy General Counsel for the Federal Bureau of Prisons.

Notes

1. 494 U.S. ___, 110 S.Ct.1028, 108 L.Ed.2d 178 (1990).
2. Mr. Harper filed suit under Title 42 U.S.C. Section 1983, claiming violation of the Equal Protection, Due Process, and Free Speech clauses of the Federal and State constitutions; he also claimed that State tort law had been violated.
3. See *Hills v Rodgers*, 457 U.S. 291,299 (1982); and *Rennie v Klein*, 720 F.2d 266 (3rd Cir. 1983), vacated and remanded at 458 U.S. 1119 (1982).
4. See *Bee v Greaves*, 744 F.2d 1387 (10th Cir. 1984) and *Walters v Western State Hosp.*, 864 F.2d 695 (10th Cir. 1988), adopting a very restrictive approach to involuntary treatment, versus *Dautremont v Broadlawns Hospital*, 827 F.2d 291 (8th Cir. 1987); *Johnson v Silvers*, 742 F.2d 823 (4th Cir. 1984); *Project Release v Prevost*, 722 F.2d 960 (2nd Cir. 1983); and *United States v Charters*, 863 F.2d 302 (4th Cir. 1988) (en Bane), which adopt the more liberal "professional judgment" standard for involuntary treatment.
5. In defining what amounts to a danger to self or others, the Washington regulations included the concept of harm to the property of another, stating, "Likelihood of serious harm means either,
 - a. a substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats of attempts to commit suicide or inflict physical harm on one's self,
 - b. a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or
 - c. a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others."
6. *Perry v State of Louisiana*, 502 Sc.2d 543 (1986), cert. granted March 5, 1990, No. 89-5 120.
7. 494 U.S. ___, 110 S.Ct.975, 108 L.Ed.2d 100 (1990).
8. At one Bureau psychiatric hospital, the average time from the filing of the commitment petition until the final judicial decision was: 1988—3 months, 24 days; 1989—4 months, 10 days; 1990—2 months, 22 days.



Rebecca Leer

Working the Morning Watch

John A. Mattsen

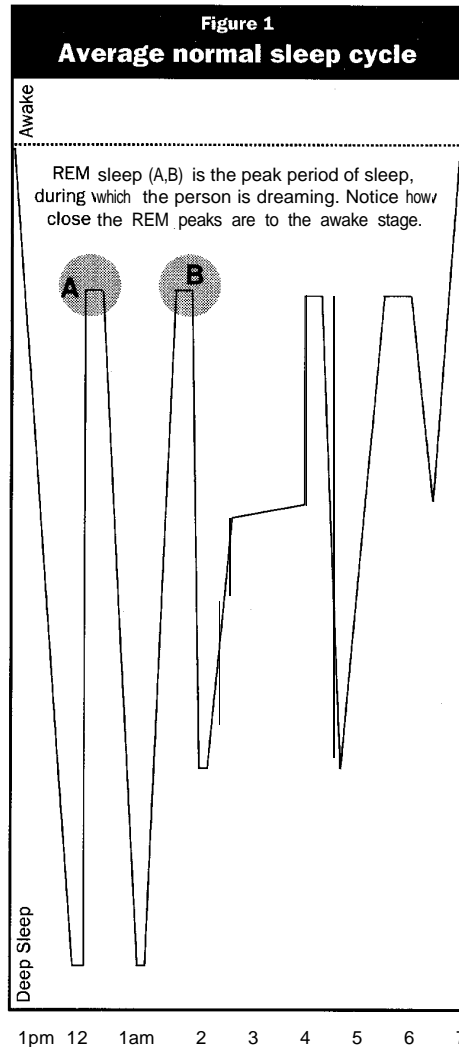
The other day my wife tried to convince me that there are people who prefer to work on the morning watch (12-8 a.m.) and do so without the mental, physical, and emotional stresses so common to most of us. To prove her point she mentioned the husband of a 58-year-old female associate who had worked in a powerhouse for more than 30 years, all on the morning watch and supposedly loving every minute of it. She went on to explain that he was now retired, and I couldn't help but wonder if he was still living on the morning watch.

Morning watch isn't something you just do, it's something you learn to do, and to some extent it involves trial and error. If this is so, then how do we teach new employees how to adapt to morning watch hours? All too often it is learned informally from other officers who propose such strategies as "drink a lot of coffee to stay awake" and "turn on a fan in your bedroom to go to sleep." In fact, these ideas may be poor advice.

Beyond the need to stay awake and alert to perform well on the job, knowledge about sleep patterns (later I will discuss something called the "circadian rhythm") is essential for optimum morning watch supervision of inmates. Many officers seem to believe that because most inmates are asleep, their job entails little more than being available in the event that something goes wrong. This is a dangerous misconception.

Sleep cycles

Figure 1 represents an average normal sleep cycle for a young adult. You'll notice that about 45 minutes into the



pattern, the person experiences his/her deepest sleep. When officers become "sleep stressed" (haven't had good sleep for days), they can achieve deep sleep in a matter of minutes (the line to the first deep sleep cycle would become nearly vertical).

Note the peaks of the graph—the periods during which the sleeping person is nearest to an awake state—(A) 12:45 a.m., (B) 2:15 a.m., and so on. Sleeping associated with these peak periods is called "REM (Rapid Eye Movement) sleep," during which the person is

dreaming. It is difficult to measure the effects of losing REM sleep because one type of sleep may partially take over the functions of another. In some experiments, however, subjects who were deprived of their REM sleep showed increased aggressiveness and irritability, and seemed to have difficulty keeping their impulses under control. In contrast, subjects who failed to obtain sufficient deep sleep for even one night suffered from feelings of lethargy (low energy).

Notice how close the REM sleep cycles are to the threshold line (awake/asleep). While it may be very difficult to wake an inmate from a deep sleep cycle, it is relatively easy to wake the person during REM sleep. If the officer fails to properly control the sleep environment—light, noise, movement, and temperature—inmates will not get enough REM sleep. In other words, the morning watch officer is not just a night watchman in a warehouse.

Within the context of a low security institution, let's take a look at how this applies to the operation of a unit on the morning watch and the consequences of failing to control the sleep environment. Refer to the floor plan diagram on page 32 as needed.

In this scenario the officer leaves the lights on in the TV rooms, hallways, toilet area, and washroom. Already, we have light shining into the first cubicles.

There are two kinds of inmates in the TV rooms: watchers and talkers. When the talkers yell back and forth the watchers turn up the volume, causing the talkers to talk louder, and so on. With the doors to the living area (by the shower) closed, we now have considerable light and some noise in the first cubicles.

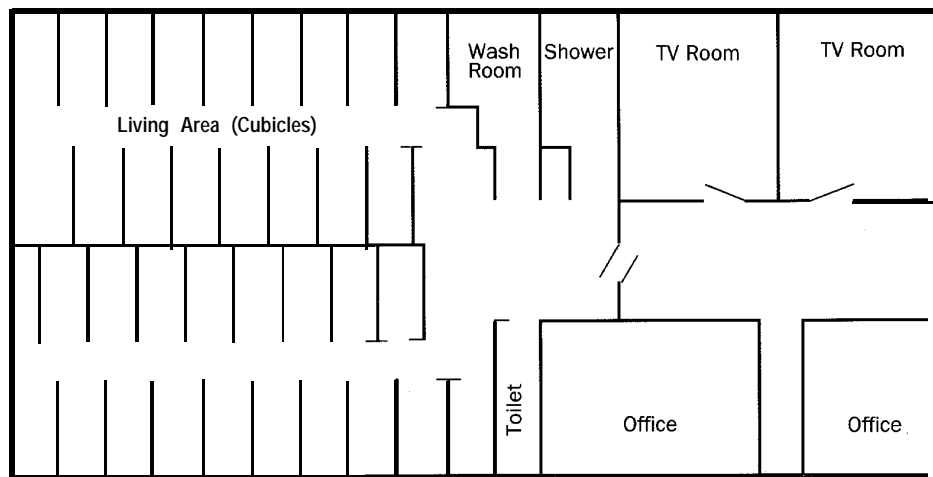
Inmates Smith and Jones leave the TV room talking loudly, treating the hallways as if they were an extension of the TV room. When they reach the washroom, they exchange loud greetings with inmate Williams, who is brushing his teeth. Smith and Jones proceed down the aisles of the cubicle area, talking loudly until they reach their respective cubicles.

Some of this behavior is clearly intimidation of the inmates who are asleep—a way for Smith and Jones to assert dominance. Every time they engage in this type of behavior they gain power, and every time the night watcher fails to take action he/she loses power and respect. Failure to take action in this scenario will result in the loss of sleep for many inmates in the unit.

The inmates react in a variety of ways. Some return to normal sleep as if nothing had happened. Some will lay awake, anxious and hostile, for 30-60 minutes before assuming an irregular sleep pattern. Some will give up and go watch TV.

This cycle of light, noise, and movement results in a number of inmates achieving sleep cycles similar to the patterns in Figure 2. The solid line represents an inmate who is successful (A) in achieving the first deep sleep cycle, but is awakened by noise (B) as he approaches the first REM sleep. He views this interruption only as an irritation, and is successful in again achieving deep sleep (C), though not as deep as if he hadn't been interrupted.

On the way to the second REM sleep (D) he is awakened by Smith and Jones, triggering anxiety and hostility that affects sleep patterns for the rest of the night. At 7 a.m. he is awakened (E) from



Floor plan

deep sleep by a fellow inmate who is concerned that he'll be late for work. (One can only speculate how this affects the number of sick calls and chronic medical complaints.)

The broken line in Figure 2 represents an inmate we're all familiar with. He goes to bed for about an hour, gets up complaining that he can't get to sleep, and returns to bed (F) about 6 a.m., when the lights are turned on. He then drops into a deep sleep cycle (G) until he is awakened at 7:30 a.m., late for work.

There are a number of reasons for a sleep pattern such as this, including prescribed medication, drugs, a previous lifestyle, or fear. The relevant point here is the officer's failure to control the sleep environment.

Whatever the reason, we should ask ourselves: What happens to someone who experiences these irregular patterns night after night? No surprise—job performance will drop off, he'll feel irritable all the time, and eventually he's going to ventilate. He may well wind up in Segregation, where he'll have plenty of time to catch up on his sleep before the cycle starts all over again.

Controlling the sleep environment

Morning watch officers can employ various measures to ensure a proper sleep environment. The behavior of inmates Smith and Jones must be realistically viewed as a serious problem, hampering the secure and orderly running of the institution. (The hypothetical situation discussed here does not, of course, invalidate security procedures in place at any given institution; nor should the reader infer that these observations invalidate particular current policies.)

n *Light and sound.*

It is essential that the officer control the lighting, not only because excess light has the potential to wake the inmates from REM sleep, but because light breeds noise. Light encouraged the presence of inmate Williams in the washroom, as well as the exchange among Williams, Smith, and Jones. The lighting patterns failed to provide a psychological barrier that defined noise as being unacceptable. Darkness must imply silence to inmates; once this is established, darkness will come to equal

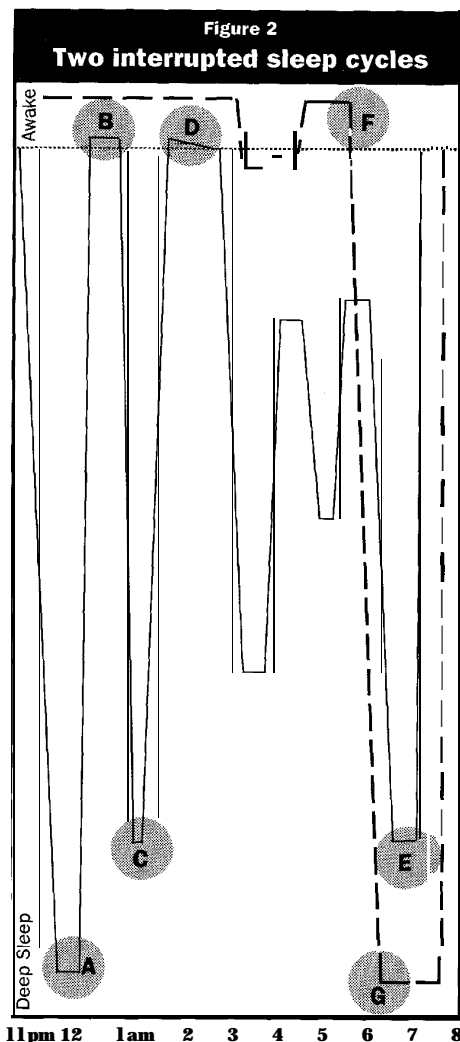
something else—privacy. More inmates will spend less time in the TV rooms and will instead engage in quiet activities in their cubicles (such as reading or letter writing). From here, they are just one step away from a good night's sleep.

Controlling light is not just a matter of ensuring that sleep areas are dark. The security concerns of a correctional environment require a more sophisticated approach. Return to the diagram, and let's turn out all the lights in the unit except in the TV rooms and the hallway just outside the offices. This would appear to be a perfect solution—darkness in the sleep areas with a closed door (by the shower) to act as a physical and psychological barrier beyond which noise is unacceptable. However, this solution has problems.

At 4 a.m., when all the inmates have gone to bed and the officer is standing in the hall across from the TV rooms, the only person he is supervising is himself. Light from the hall against the glass in the doors by the shower creates an impenetrable mirror so effective that the officer is unable to detect the movement of an inmate into the shower. Furthermore, the officer is essentially standing under a spotlight that eliminates the need for the inmates to establish a "jigger."

If a serious incident should occur in the cubicle area, the officer's eyes may not have had time to adjust to the darkness when he arrives at the scene. Of course, the inmates' eyes will be well adjusted.

When Smith and Jones leave the television room, they pass through the hall doors by the shower as if they were an extension of the lighted hallway and won't quiet down until they reach the washroom. That's too late; the inmates in



the first cubicles need a good night's sleep as much as anyone else.

The officer might achieve better results by turning the lights on in the TV rooms, toilet areas, and maybe the shower. Light from the TV rooms is adequate for the hallway. Light in the toilet area spotlights a potential problem area, adequately lights the hall and washroom areas, and provides enough light on the back side of the glass in the doors by the shower to enable the officer to clearly see through to the back wall of the living area. The cubicle area is lit indirectly from outside security lights.

When Smith and Jones leave the TV room talking at high volume, the message of darkness and silence begins at the TV room door. The officer's eyes are adjusted to dim light; if more light is needed the officer has a flashlight. Contrary to some correctional thinking, under some conditions more light does not necessarily equal more security.

n Temperature control.

Body temperature drops a couple of degrees during sleep (or tries to). A trick of the officer's trade is to turn up the heat so the inmates will uncover, thereby making it easier to see flesh for the count. In the long run it turns out not to be so clever. Physical discomfort (stress) during REM sleep will induce tossing and turning, which in many cases will cause the inmate to wake up, and in others will cause a reduction in REM sleep.

n Snoring.

Snoring can be a major problem not only for the snorer but for anyone in the vicinity. The solution is to stop the snoring—easier said than done, but in some severe cases there is a way to do it.

More severe cases of loud snoring may well be symptoms of a potentially fatal sleep disorder called "sleep apnea." It is most common in males over 50, who are overweight and have a short neck. As they fall asleep the muscles in the throat collapse and block the airway, causing the person to stop breathing for several seconds to a minute or more. Then they suddenly gasp for air, but because the throat is relaxed and collapsed the air passes through the nostrils—loudly. This causes the person to awake and is often accompanied by thrashing. In severe cases this can happen hundreds of times a

night and can produce a dangerous heart arrhythmia.*

■ Making frequent rounds.

Inmates who suffer from anxiety tend to have difficulty achieving deep sleep and tend to wake more often than they should. Frequent rounds instill a sense of security, and allow the inmate suffering from anxiety to believe that the environment is safe enough for sleep.

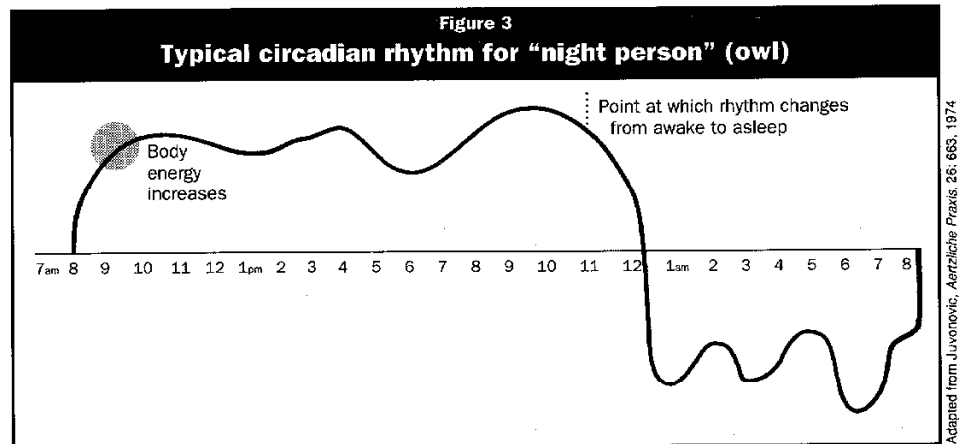
Once you've established a good environment, go after the details. Deal with noisy staff who enter your territory and disturb the environment you've created. Adjust the door closers so that doors don't make noise. Have maintenance staff take the squeaks and groans out of air handler systems.

Achieving deep sleep cycles is never more important than basic security considerations. The inmate who doesn't want his sleep disturbed always has the choice of leaving some skin exposed for the count.

The circadian rhythm

Staff who work the morning watch may experience problems with sleep that are considerably more challenging than those typically faced by inmates. Controlling the sleep environment during the day when the rest of the world is awake, active, and noisy is difficult. It requires controlling disturbances that include

*A simple machine is available that (when used under proper security procedures) can eliminate the major problems associated with sleep apnea—a small, very low pressure pump connected to the user by a hose and a nose mask that provides positive air pressure through the nostrils. Further information on these machines is available from your local sleep disorders clinic or from the American Sleep Disorders Association, Rochester, Minnesota.



jackhammers, chainsaws, telephones, sirens, barking dogs, lawn mowers, small children who don't seem to comprehend Bureau policy no matter how often you explain it to them, and teenagers who disregard it as a matter of convenience.

None of these obstacles are as evasive, unknown, and (for some) powerful as the great circadian rhythm. The circadian rhythm is a "biological clock" that is set at birth and is based upon a 24-hour cycle (or circle) of voluntary and involuntary physiological functions and events. In other words, your body is programmed to do the same things at the same time and in the same order every 24-hour day. This includes voluntary actions like eating and sleeping and involuntary actions like the organic secretion of hormones. By age 25, the body has been trained in the basic pattern almost 10,000 times.

At about 50 years of age, the circadian rhythm changes. As people grow older they tend to nap more frequently and wake up more often during the night. Thus a 50-year-old officer who has spent years as a morning watch worker and has adjusted fairly well suddenly finds himself having difficulty, despite a better sleep environment and no children at home.

Figure 3 represents a typical circadian rhythm for a "night person" (owl) and Figure 4 is a typical rhythm for a "morning person" (lark). Eighty percent of the population are neither extreme larks nor extreme owls, but viewing sleep problems from the extreme perspectives allows us to better understand our own rhythm and its effect on our ability to achieve proper sleep for the morning watch.

Through trial and error, staff who work the morning watch develop coping strategies that allow considerable flexibility in their sleep patterns, but are extremely specific to each individual. What they have done without knowing it is to become acutely aware of their own circadian rhythms.

Most coping strategies appear to include one principle and two patterns. The principle is that it's important to sleep in the evening just before you go to work so that you at least start out wide awake and alert.

If a little sleep is good, is a lot of sleep automatically better? One pattern is to force yourself to stay awake until 2 or 3

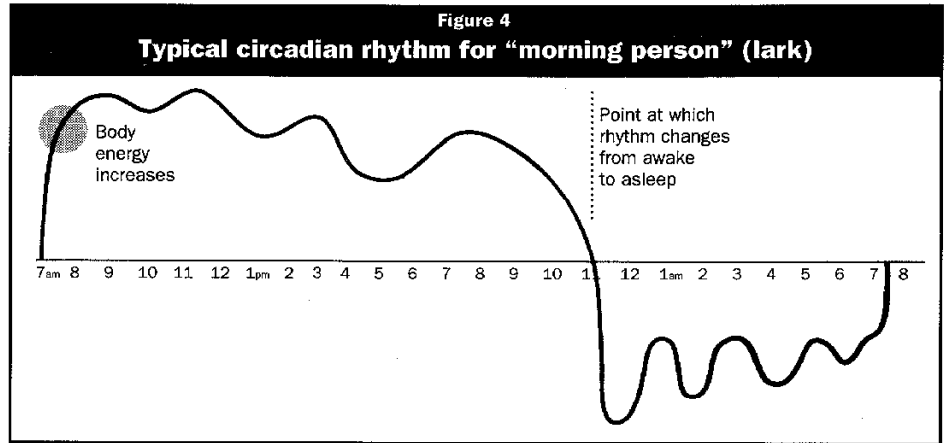
in the afternoon, then sleep 7 or 8 hours just before going to work. Let's take a look at how this fits with the circadian rhythms in Figures 3 and 4.

Assuming no extraneous factors such as caffeine consumption, by 2 or 3 p.m. you'll be so tired that falling asleep will be no problem. But if you're an owl (Figure 3), where is your circadian rhythm? It's high, and so in 3-4 hours the power of the rhythm coupled with any disturbance causes you to wake up. Where is your rhythm at 6 p.m.? It's high and headed for the highest peak of the day. So you toss and turn until it's time to go to work, and on your arrival you've had only 4 hours of sleep in the previous 24 (and by morning, when it's time to drive home, you'll have had only 4 in 32—the psychological equivalent of driving drunk).

Forcing yourself to stay awake all day presents additional hazards. What are you going to do in this stupefied condition? Operate a chain saw? Make financial decisions?

The second pattern is to sleep when you get home from work in the morning for 3-4 hours, get up, and then sleep another 3-4 hours just before going to work again. Let's see how this pattern fits the circadian rhythm of a lark (Figure 4). At 9 a.m., your rhythm is high and on the way to the highest peak of the day. You're so sleep-stressed that falling asleep will be no problem, but sleeping more than 3-4 hours will be difficult due to the circadian rhythm.

So you get up and wander around feeling lethargic until 6 p.m. Trying to sleep at 6 is easier for a lark than an owl, but if extraneous factors—*anxiety, caffeine, domestic problems*—interfere with sleep



at 6, you will arrive at work with only 3 hours of sleep, and those 3 hours were 12 hours before going to work.

Obviously no one pattern works for everyone. The human body is like an orchestra and the circadian rhythm is the conductor. Working the morning watch is like adding a second conductor who attempts to make the orchestra play a different tune—but only for 5 days of the week. The resulting confusion and noise are all too often forgotten by those who have returned to the rhythm of the day watch.

Exercise

Employees who engage in a regular exercise program for aerobic fitness will find that the morning watch may present some discouraging obstacles, particularly if part of their healthier lifestyle also includes the elimination of caffeine from their diet. People who achieve a reasonable level of aerobic fitness have bodies that require exercise. People who work the morning watch usually end up with bodies that need rest.

Aerobic exercise raises adrenaline, and when the body comes to rest the adrenaline continues at an elevated level until the body eventually produces enough endorphins to bring it back down. The

endorphins affect the opiate receptors in the brain and are a more powerful anesthetic than opium. When your body is running high on adrenaline, achieving deep sleep is very difficult; after intense aerobic exercise it can take hours for the endorphins to overcome the effects of high adrenaline.

If improperly timed with the circadian rhythm, the combination of adrenaline followed by endorphin can develop a one-two punch that is capable of knocking you out. If, for example, a person engages in strenuous exercise for 2 hours prior to going to bed at 10 p.m., the combination of a night person's rhythm and adrenaline will certainly prevent deep sleep and possibly prevent any sleep at all. By midnight, when this person starts work, he or she is sleep-stressed, physically stressed, has a circadian rhythm that says "sleep," and a high level of endorphins. I've been here before, and by 3 a.m. was so fatigued that I've fallen to the floor because I fell asleep while walking. It was ignorance, not irresponsibility!

This raises interesting questions about some BOP operations. When a supervisor discovers an employee sound asleep on

the job, does the act represent dereliction of duty or a lack of understanding of sleep cycles? Is this an example of a lack of proper training? What if that employee had recently experienced the loss of a loved one—a stressful situation that typically disrupts sleeping patterns? What about a new employee, already strained by his/her need to demonstrate competence in a stressful environment? Chances are these individuals will not be able to sleep when they should and will when they shouldn't.

I certainly don't mean to suggest that sleeping on the job is ever acceptable, but there may be more involved than a disciplinary problem.

Caffeine

Caffeine is chemically related to amphetamines. Caffeine's ability to increase mental alertness and reaction time for sleep-stressed individuals is both well known and well documented, as are the undesirable side effects of the drug. Less well known are some facts about caffeine that have a profound effect on one's ability to stay alert on the morning watch and to sleep during the day when the circadian rhythm is at its highest levels.

Caffeine continues to affect mental functioning for as long as 20 hours after it is ingested. Research confirms that caffeine interferes with sleep. Countless cases of insomnia have been cured by simply (or not so simply) eliminating caffeine from the diet. Most employees who work the morning watch will not view this as realistic. They point out that "getting good sleep" during the day is

only half the problem; staying alert necessitates the use of caffeine.

Most sleep experts suggest that if you must consume caffeine and are experiencing difficulty with sleep, you should avoid it for 6-8 hours prior to retiring.

Caffeine
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it is ingested.

Experienced employees will not accept the idea that they should not drink coffee after 1 a.m., because they know all too well that sometime during the night, usually between 3 and 4 a.m., they experience a period of fatigue where it is extremely difficult to stay alert.

However, caffeine doesn't start working fully until 1-3 hours after it is consumed. Typically, officers wait until they are really fatigued at 3:30 a.m. to drink a cup of coffee. By 4, they discover that the first cup didn't do the trick and have a second or third. By 5 they start feeling pretty good, but 5 is only 4 hours away from when they'll try to go to sleep. Caffeine is also a diuretic, and so increases the odds that the user will experience physical discomfort during REM sleep.

A much wiser use of caffeine might be to anticipate this period of fatigue and then

consume caffeine 2 hours in advance. If it occurs at 3 a.m., drink coffee at 1 a.m.—8 hours in advance of sleep.

Putting it all together

The old adage "ignorance is bliss" obviously originated with someone who never worked the morning watch. Misery is the consequence of ignorance about the subject of sleep. To demonstrate the actual application of the information presented in this article, let's take a look at a worst-case scenario and then at a scenario that uses the information I've presented.

Worst case. After drinking several cups of coffee on the morning watch, the officer arrives home at 8:30 a.m. and eats breakfast, which includes a cup of coffee. He fills a Thermos with coffee and heads out to cut firewood. (Note: excess caffeine in conjunction with elevated heart rates can cause a dangerous arrhythmia.) The officer plans to sleep from 4-10 p.m., so he stops drinking coffee at noon. He arrives home fatigued and is in bed by 4, confident that sleep will be no problem.

With the circadian rhythm, adrenaline, and caffeine levels high, he fails to get to sleep until 10 p.m., when his circadian rhythm is coming down, endorphins are high, adrenaline is down, and the coffee is wearing off. So at 10 p.m. he crashes into deep sleep, and at 10:15 his wife wakes him up for work. He feels far worse than if he had never slept at all. He'd call in sick but it's too late. It doesn't get any worse than this.

Best case. After a morning watch without caffeine, the officer arrives home at 8:30 a.m. and has a light breakfast. She's a

Sleep machines

Sleep machines (a.k.a. sound conditioners or white noise generators) work so well that there shouldn't be a staff training office in the Bureau that doesn't have one for employees to try. There are two different types: an electromechanical device (cost: under \$50) that produces a sound similar to rushing air, and a solid state device (cost: \$100-150) that simulates the sound of rain, surf, or a waterfall. They're available from MARPAC Corporation, 2907 Blue Clay Road, P.O. Box 3098, Wilmington, NC 28406; 919-763-7861.

These machines do three things. They produce a variety of low frequency sounds that mask irritating noises such as a dripping faucet. They smooth out sharp, unexpected sounds that would

otherwise wake you up during REM sleep when you're near the awake/asleep threshold. And the even, low frequency sound of the machine becomes a point of mental focus. For many people, shutting the machine off during sleep is as effective as an alarm clock.

In addition to the written instructions, I offer the following advice:

- Don't underestimate the machine! Make certain you have adequate means for waking up when you should.
- Make sure you have a properly working smoke detector in the bedroom. The machine could mask out the sound of a detector in another room.
- The sound of rushing air produced by

heating and cooling air handler units in most institutions is very similar to the sound produced by the sleep machine. It is conceivable that a person could come to associate the sound of rushing air with sleep to the point that an air handler unit could actually induce sleep. I suggest you use the machine only when working the morning watch.

- The machine should be placed away from your head, between you and the dominant source of noise.

Fans may also act as sound conditioners, but if the temperature drops as you sleep a fan can cause chills. In addition, studies show a correlation between pneumonia and humid air movement during sleep.

—J.M.

morning person, and her circadian rhythm is rising to its highest peak. She exercises from 9 a.m. to 10:30, which increases adrenaline.

By 3 p.m. the adrenaline is down, the endorphins are up, she's sleep-stressed (and therefore primed for a plunge into a deep sleep cycle), physically stressed, and the circadian rhythm is on the way down. Her sleep environment is properly controlled and she turns on the sleep machine (see sidebar). It doesn't get any better than this, at least not if you're working morning watch. After 7 hours of deep and restful sleep she reports to work in prime condition. At 1 a.m. she drinks two cups of coffee to get through the anticipated 3 a.m. slump.

Conclusion

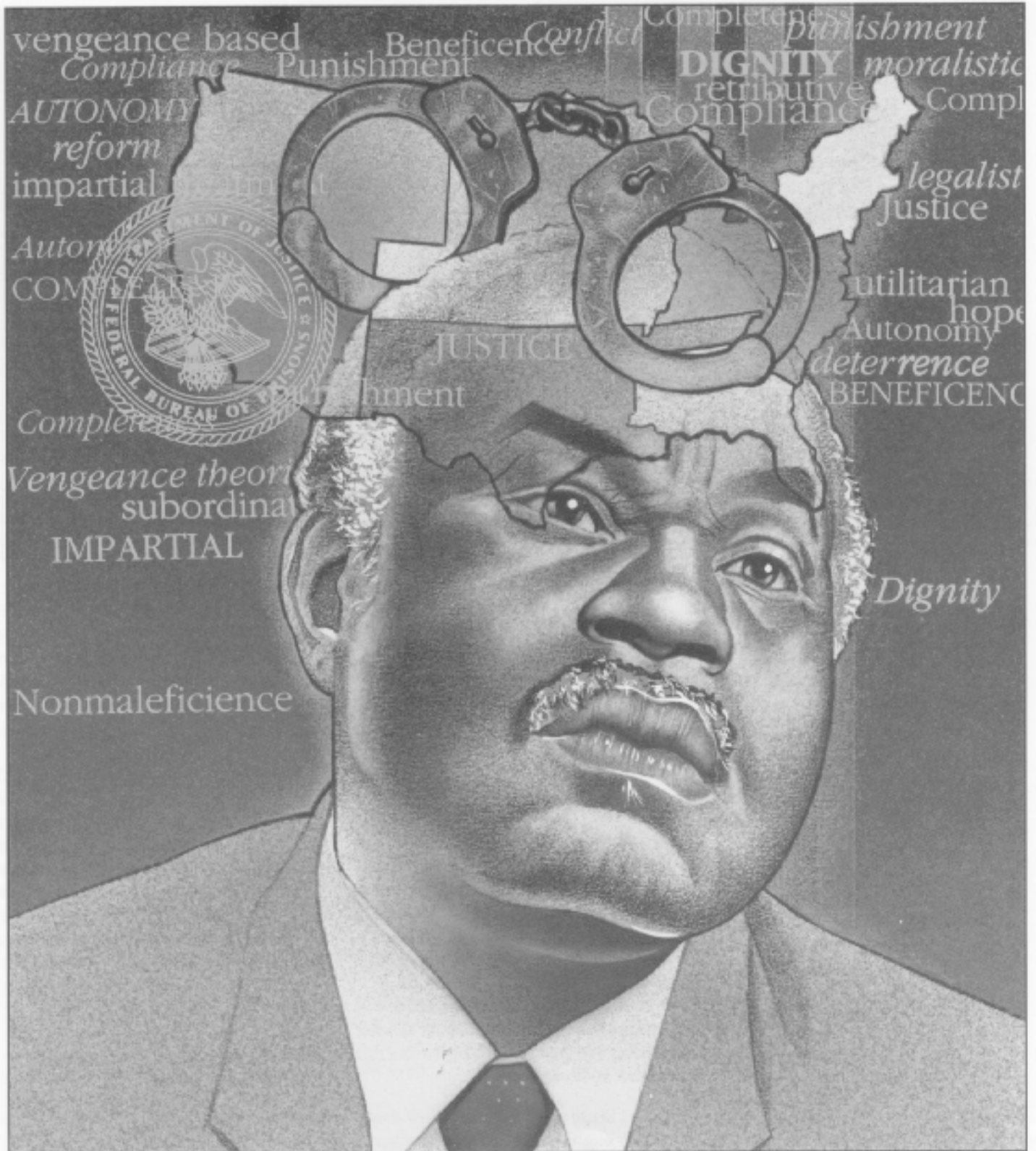
In Europe, many companies are switching to "rapid rotating" work schedules, commonly referred to as the "Continental Rotation" (2 days, 2 evenings, 2 mornings, and then 2 days off.) This rotation allows the circadian rhythm to maintain its daytime orientation.

While this sort of scheduling is not on the immediate horizon for the Bureau of Prisons, we can begin to train staff about the circadian rhythm, sleep patterns, and coping strategies for shift work. These subjects have an important bearing on inmate management, stress management, disciplinary actions, and the interpersonal relations of staff. Correctional workers have everything to gain by such training and much to lose by leaving this subject in the dark. **n**

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Ethics and Prison Administrators

Learning to articulate the reasons for your decisions

J. David Newell

Like other Chief Executive Officers (CEO's), the Federal warden is responsible for making daily decisions and judgments about policies, programs, procedures, and particular problems concerning a wide variety of issues. In an ethically sensitive age such as ours, it is essential that such decisions have a solid ethical grounding—but it is just as important that the CEO be able to articulate these grounds when necessary.

One does not become a warden without having passed muster as a man or woman of character and good moral standing. Most of the decisions wardens make are no doubt good ones, even if a particular warden on a particular occasion may be at a loss for words when it comes to articulating the reasons for a decision, when required to do so by an inquiring superior or a concerned public.

In this essay, we will address two issues: How can we assure ourselves that our decisions are ethically valid? How can we best articulate the reasons for our decisions to others? These questions are closely related. By establishing a procedure for justifying our decisions and judgments, thereby assuring ourselves that we have made the right decision, we will also have developed a framework that allows us to account for our thinking about moral issues.

Moral decisions and judgments in prison administration are justified in essentially the same way they are in other areas of applied ethics. In the first section of this article we will consider a model of moral reasoning that can be used in justifying ethical decisions. While this model is somewhat similar to the way reasoning is performed in business, medicine, engineering, and so on, two features of

A 6-stage model of moral reasoning—Stages 5 and 6

Stage 1: Concept of a subordinate.

Stage 2: Theory of punishment.

Stage 3: Universal ethical principles.

Stage 4: Code of the profession.

Stage 5: Particular case.

Stage 6: Moral judgment.

Stage 5: Particular case.

The facts of the case drive the problem-solving process; inadequate or mistaken factual information subverts the whole enterprise.

Stage 6: Moral judgment.

Once the facts of the case are presented, our immediate response is frequently a judgment about what should or should not be done—that is, we make a moral judgment or decision.

Since intuitions sometimes differ among individuals, it is important to be able to provide good reasons for them...Such reasons are found in stages 1-4.

our model are specific to prison ethics: a theory of punishment and what I will call a “concept of the subordinate”—that is, how you think about those who are subordinate to your decisions (primarily inmates in this context, but also staff).

In the second section, we will examine three theories of punishment and suggest how each affects the day-to-day decisions wardens and administrators make. In section three we will consider four “concepts of a subordinate” and suggest how the view of punishment one adopts depends on which concept of a subordinate one holds.

The model presented here attempts to take into account a wide variety of possible influences upon decision-making. Breaking down what are always complicated (often instantaneous) decisions, with serious consequences, into such a “checklist” may seem unrealistic or even beside the point. In addition, as we follow the stages of the model back toward Stage 1, you may find particular elements with which you disagree.

While it's not the purpose of this article to prescribe a particular ethical system, it

is important to be able to articulate *why* we believe *what* we believe, in professional work as in any other area of our lives. In this sense, this model should serve as a self-monitoring tool for corrections professionals.

A model of moral reasoning

By understanding the model of moral reasoning presented here and the relationship between theories of punishment and “concepts of a subordinate” we should enhance our ability to think through the ethical aspects of decisions and judgments. Such an understanding should also provide us with a rationale for our decisions and judgments whenever a legitimate request for a justification is made. In bare outline the model looks something like the six stages at the top of the page.

Typically, when an ethical dilemma occurs, a problem presents itself and the facts of the case are given—that is, chronologically, *Stage 5* comes first. It is critical that the very best factual information be obtained before attempting to reflect on what should be done. The facts

of the case drive the problem-solving process; inadequate or mistaken factual information subverts the whole enterprise.

Once the facts of a case involving an ethical issue are presented, our immediate response is frequently a judgment about what should or should not be done—that is, we make a moral judgment or decision. Thus, *Stage 6* is often the second step chronologically. This initial judgment may be correct; if it goes unchallenged, the matter may end there. The initial judgment may be the result of our intuition or general good sense or judgment, but since intuitions sometimes differ among individuals, it is important to be able to provide good reasons for them. Such reasons are found in the first four stages of our model. Because each stage to some degree depends on the stages before it, we will discuss them in reverse order, from Stage 4 to Stage 1.

Stage 4: Code of the profession

The first court of appeal, so to speak, should be the “code of the profession”—Stage 4. Whether the code is developed by a recognized association of professionals, or handed down by parties who have legitimate authority, the general duty to follow the code of the profession stems from a voluntary agreement (stated or unstated). It is the idea that certain duties come with certain stations in life and by agreeing to accept a certain station the individual agrees to abide by its code of conduct to the best of his or her abilities.

Virtually every profession has a code of conduct that is presented to new employees. Psychologists, architects, nurses, doctors, insurance brokers, engineers, social workers...all have professional

Standards of Employee Conduct and Responsibility

claims that “loyalty to the highest ethical principles and the country” is to be placed “above loyalty to parties or governmental departments.”

codes of ethics. Where a code does not exist, a company or institution often creates one specific to that particular workplace. It is a condition of employment that the worker subscribe to the code or be denied employment.

In the case of Federal prison workers, the code is the “Standards of Employee Conduct and Responsibility” (Basic Federal Personnel Manual, Chapter 735, and Department of Justice Order No. 350-65 (28CFR45), Document #3000.1). If a particular moral problem in Federal prison administration can be straightforwardly settled by a direct appeal to this code, the matter would end there. This will happen at times. But there are certain limits to every code of conduct, and the Federal prison standards are no exception.

Although “Standards...” is a pretty commendable document, it is not sufficient to ensure ethical conduct in even the most conscientious employees, for three reasons:

n Compliance. It is much better when people willingly obey a set of rules than when they comply with them out of fear

of reprisals for noncompliance. People are much more likely to engage in voluntary compliance with rules if they understand them. Programs in which employees are educated about the reasons behind the code are likely to have the highest degree of compliance. Moreover, periodic evaluations of the code require that there be some higher court of appeal against which its precepts can be tested.

n Completeness. The “Standards of Conduct” can’t cover all the territory. It tells us about conflicts of interest, cheating, lying, stealing, fraud, bearing false witness, bribery, favoritism, confidentiality, privacy, loyalty, and so on. It even makes the claim that “loyalty to the highest ethical principles and the country” is to be placed “above loyalty to parties or governmental departments.” But it does not tell the employee what larger ethical principles are behind the code. Moreover, while it specifies a range of penalties for particular offenses, it leaves open to administrative discretion whether, for instance, to issue a reprimand or a 3-day suspension. How are wardens to decide such matters fairly?

n Conflict. Finally, some particular rules of a code may have to be set aside in the interest of doing the right thing. For example, in Herman Melville’s novelette, *Billy Budd*, about life at sea in the 19th century, Captain Vere must decide the fate of the sailor Billy Budd. Before the captain’s eyes, Billy kills the master-at-arms, John Claggart—who has falsely accused Budd of mutinous activities. Budd is an inarticulate innocent—he is so overwrought by Claggart’s lies that he cannot speak. His only resort is to swing—without intending to kill Claggart. But Claggart strikes his head as he falls and dies.

How is Captain Vere to decide this case? The strict rules of the code push him in one direction, but his own moral sense pulls him in another. He must decide; he has Billy hanged, but Melville leads us to question whether he did the right thing.

Codes in the various professions often present fixed rules that are too rigid to be followed to the letter without violating higher ethical principles and sensibilities. Hence, the codes of the profession need to be supplemented by higher ethical principles—and we move to Stage 3.

Stage 3:

Universal ethical principles

At this point we must turn to ethical theory proper for some basic universal principles. Without suggesting that they are the only (or even the most) important principles, we will focus on four principles that seem relevant to contemporary moral problems: autonomy, beneficence, nonmaleficence, and justice.

n **Autonomy** states that every human being is a self-determining agent with intrinsic value. This means that we must treat human beings as ends in themselves, never merely as a way to achieve other ends. It means that we must respect the inherent freedom and dignity of the individual. Human persons are not objects, but subjects. They are not tools or instruments to be used. (In hanging Billy Budd, Captain Vere used him as a means of averting a mutiny, violating the principle of autonomy.)

n **Beneficence** states that we must do what we can to maximize good or benefit for all who are affected by our actions. Specifically, beneficence requires us to (a) do positive good, (b) remove harm, and (c) prevent harm. If Captain Vere's decision to hang Budd was designed to

Stages 4 and 3	
<p><i>Stage 4:</i> Code of the profession.</p> <p>In the case of Federal prison workers, the code is the "Standards of Employee Conduct and Responsibility."</p> <p>Although "Standards..." is a commendable document, it is not sufficient to ensure ethical conduct in even the most conscientious employees, for three reasons:</p> <ul style="list-style-type: none"> n Compliance. n Completeness. n Conflict. <p>The codes of the profession need to be supplemented by higher ethical principles—see Stage 3.</p>	<p><i>Stage 3:</i> Universal ethical principles.</p> <p>Four principles seem relevant to contemporary moral problems (these are not the only important principles):</p> <ul style="list-style-type: none"> n Autonomy. n Beneficence. <ul style="list-style-type: none"> Do positive good. Remove harm. Prevent harm. ■ Nonmaleficence. n Justice. <ul style="list-style-type: none"> Equal treatment. Impartial treatment. Desert.

prevent mutiny, and Vere perceives the prevention of mutiny as doing positive good or preventing harm, then his decision may have been justified. But hanging the popular Budd could have in fact *caused* mutiny. Nor was removing Budd removing something harmful, since up to that point Budd had had a good effect on the crew.

n **Nonmaleficence** is usually seen as the flip side of beneficence. This principle requires that we do not do deliberate, unnecessary harm to others—for instance, torture others for the pleasure of it.

n **Justice** requires us to be fair in our dealings with others. We can identify three common applications of the notion of justice that are relevant to prison work.

(1) A central feature of virtually every theory of justice from Aristotle to the present is the notion of *equal treatment*. Justice is not done unless we treat equals equally and unequals unequally. By itself this does not tell us either how to determine when two or more people are equal. Still, given that persons are viewed as equal, justice commands us to treat them the same way.

(2) Justice also requires us to engage in *impartial treatment* of others. Impartial treatment means an absence of prejudice and favoritism in the way we treat others. Most of the "Standards of Employee Conduct" hang on this principle.

(3) Finally, there is the notion of *desert*—that everyone should get what they deserve, neither more nor less. The concept of desert requires us to give everyone his/her due. This rules out excessive as well as inadequate punishments, excessive as well as inadequate rewards. It is compatible with what we will later see as the "retributive theory" of punishment (see below). In the case of Billy Budd, if he did not intend the death of Claggart, his punishment of death by hanging seems cruel and unnecessary—disproportional, undeserved. Of course, if Budd were a favorite of Vere's, it would be wrong to lessen the punishment that another sailor would have received...that would be partiality.

These four principles, then, can be used to justify much of the conduct called for by the professional code of the Federal Bureau of Prisons, and to supplement the

code in areas beyond its scope. It is tempting to end the story here, but the potential for competition between and among these four principles remains a problem. If conflict occurs, how do we decide which of these ethical principles outweighs the others?

I maintain that the way we prioritize universal principles (Stage 3) is determined in large measure by the views we hold about punishing offenders. We are brought to that stage of the model in which “theories of punishment” are brought into play—Stage 2.

Stage 2:

Theories of punishment

Punishment, whatever its form, involves the deliberate infliction of “pain and suffering,” or deprivation, on human beings. In putting offenders behind bars, limiting their freedom, or curtailing their rights, we are inflicting some sort of suffering or deprivation on them, whatever else we may want to call it. Since suffering and deprivation are generally viewed as negative, how can we justify their infliction?

Theories of punishment are designed to provide answers to this question. There are three main theories: *utilitarian*, *retributive*, and *vengeance-based*.

■ **Utilitarian theories.** Utilitarians believe that ethical conduct should increase the total amount of happiness or pleasure in society. They see the infliction of pain on offenders as a necessary evil aimed at producing the maximum benefit for society as a whole. The utilitarian, then, argues that our justification for inflicting pain on others is either *reform* or *deterrence*.

Like moral retributivism,
legalistic retributivism
says that the
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committed a crime.

If the aim is *reform*, we can punish lawbreakers to change them—improve their character—so that they will not repeat the deed, perhaps not even want to do it again. By reforming the individual we ultimately make society a better place—contributing to the greatest happiness of the greatest number. Decisions about programs and policies aimed at rehabilitation are justifiable using this principle.

Whether or not rehabilitation works is another question entirely. But even if it does work, opponents of the utilitarian view say that mandatory vocational training, mandatory counseling, mandatory trips to chapel, and so on, constitute additional punishment for those who do not want such experiences. Critics also argue that we could, using utilitarian principles, justify punishing someone who has a bad character, even if that person has not actually been convicted of anything. Some people think that it is a weakness of this view of punishment that it cannot justify capital punishment.

According to the utilitarian view, we can also justify inflicting pain on offenders if we see it as a way of deterring others

from doing likewise. As with the reform view, *deterrence* is aimed at making society a safer and better place, but it does not focus on the betterment of the individual offender. If the punishment of an offender can serve as an example to future offenders, then the punishment is justified. Unlike the reform view, deterrence seems to account for the death penalty.

However, critics of this view argue that if 3 years in jail is the prescribed punishment for an offense, it is additional punishment to also give the incident three columns in the local newspaper. It is also difficult to know how successful punishment is in deterring others, since any successes will go virtually unrecognized. Moreover, this theory could hypothetically be used to justify the punishment of an innocent person, if such punishment could be shown to have a significant deterrent effect.

■ **Retributive theories.** In general, retributivists insist that the punishment of a criminal must be only in response to the deeds he or she has done. No amount of punishment of an innocent man, no matter how much good results for society as a whole, can be justified on retributive grounds. Retributive theories usually fall into either the *moralistic* or the *legalistic* category.

The *moralistic retributive* view says that we must set the punishment to match the moral gravity of the offense. This theory argues that the penalty should be appropriate to the degree of wickedness of the criminal’s intentions. (Billy Budd did not intend to commit murder.)

The difficulty with this view is that it requires us to be able to reliably deter-

mine the exact intentions of the offender. It also requires us to decide precisely what degree of punishment corresponds exactly to the offense. Intangibles such as “intentions” and “moral gravity” are slippery items.

Like moral retributivism, *legalistic retributivism* says that the sole justification of punishing someone is the fact that he or she has actually committed a crime. This avoids some of the problems of the moralistic view by insisting that the punishment be prescribed by law and that intentions and moral gravity are not relevant to the issue of whether or how much to punish. (It is worth noting that the “Standards of Employee Conduct and Responsibility” is largely based on this point of view.)

One traditional problem with this view is that it is unclear how we decide what and how much punishment to establish by law for various offenses. Another problem is rigidity: presumably, there will be times when we will want, with good reason, to make exceptions. (Of course, in the Federal system, Sentencing Guidelines address both of these concerns.)

n **Vengeance theories.** Aimed at satisfying our desire for vengeance, especially for heinous offenses such as child abuse, rape, and cold-blooded murder, this theory says we are justified in punishing a criminal as an outlet for aggressive feelings that would otherwise demand satisfaction in socially disruptive ways. It may also give pleasure to those who wish to see the offender suffer for his/her crime. Some vengeance theories see punishment as an expression of the hate and anger we often feel toward the offender.

Stages 2 ar	
<p><i>Stage 2:</i> Theories of punishment.</p> <p>Punishment, whatever its form, involves the deliberate infliction of pain and suffering on human beings.</p> <p>Three main theories are used to justify the infliction of pain and suffering:</p> <ul style="list-style-type: none"> n Utilitarian. Reform. Deterrence. n Retributive. Moralistic. Legalistic. n Vengeance-based. 	<p><i>Stage 1:</i> Concepts of the subordinate.</p> <p>A subordinate is someone who is subject to or under the authority of a superior.</p> <p>There are at least four ways in which a supervisor or other person in charge may view subordinates:</p> <ul style="list-style-type: none"> n Subordinate as “object.” n Subordinate as “animal.” n Subordinate as “devil.” n Subordinate as person. <p>In this last view, the subordinate is seen as a human being—a person with dignity—who thinks, makes choices, has goals, can improve.</p>

The trouble with vengeance is that, since it is emotionally based, there is a danger of getting carried away by unreasoned passion.

It may be that no one of these theories is adequate by itself to decide what punishment is appropriate, but that some combination of them could be. And yet, in cases of conflict, it remains important to be able to decide which takes precedence.

As suggested earlier, the view we take of punishment is largely bound up with the concept we have of the inmate (subordinate)—the first stage of the model.

Stage 1:
Concepts of the subordinate

A subordinate is someone who is subject to or under the authority of a superior. Staff workers in a prison are subordinate to the warden and inmates are presumably subordinate to the correctional workers and others in jurisdiction over them. The concept one has of those who are in his/her charge can dramatically affect the way one treats them. There are at least four ways in which a supervisor

or other person in charge may view subordinates:

■ **The subordinate as object.** The subordinate is seen as a means to an end, as an instrument of one’s own or the prison’s ends. A person with this view uses people to advance his/her own program or career, regardless of the effect it has on the subordinate. The subordinate is not given an opportunity to participate in decisions, make choices, or contribute ideas. The subordinate is a “thing”—incapable of improvement, deserving of virtually nothing. This perspective sees the prison as warehousing human objects, and staff as mindless robots-equivalent to the bars on the windows or the gates on the entrance.

n **The subordinate as animal.** In this view, the staff person or the inmate is seen as a living thing with basic biological needs (food, shelter, clothing, sex), but not as a human animal. The subordinate is more than an inanimate object, but less than a person who has higher needs.

From this perspective, the prison is viewed as a kind of kennel and staff as animal keepers. Needs of staff or inmates that go beyond the basics are ignored.

■ ***The subordinate as devil.*** A superior may see the subordinate as something evil—clever and intelligent, perhaps, but bent on lying, stealing, or murder. Holders of this view tend to establish policies and procedures designed to make life miserable for the subordinate. The penalties they devise are designed to punish for the sake of punishment alone. Their decisions will perhaps be designed to retaliate for evil, to strike back, or to get even, regardless of whether reform or deterrence occurs. Hostile emotions are vented through punishment of the offender. People with this view tend to see punishment as vengeance.

■ ***The subordinate as person.*** In this view, the subordinate is seen as a human being—a person with dignity—with feelings, thoughts, needs, desires, hopes; who thinks, makes choices, has goals, can improve. A person has a family, makes friends, wants to be happy. A person can change or be changed. A person is worth saving. A person has inherent worth or dignity.

Someone who sees the subordinate as an object or a brute animal is likely to be drawn to the utilitarian perspective, in which the subordinate is seen as a means to an end. If reform measures are introduced, the outlook shifts to a behavioristic (Skinnerian) view, arguing that staff should retrain or modify the behavior of the offender. From this perspective, anything we do to objects and animals for the good of society is acceptable—including using them to deter other offenders. The principle of maximizing benefits for the greater good

The subordinate as person,

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will always override considerations of autonomy and justice.

One who views the subordinate as evil or an agent of evil will be inclined toward vengeance theory, in which punishment is seen as a way of striking back at evil—or as good triumphing over evil. This person will use (or abuse) justice principles by treating all subordinates as equal to each other but unequal to “us.”

Finally, those who view subordinates as persons will most likely embrace the “moralistic retributive” theory of punishment and gravitate toward the principle of autonomy as the superior ethical principle. This view has several advantages: allowing reform measures as an option to the offender (respecting his/her right to choose); making deterrence incidental; ruling out vengeance as abusive to the fundamental dignity and worth of human beings; avoiding rigid rules that cannot account for wrong things done with good intentions.

Such a view puts autonomy, or respect for persons, above utility, or maximizing happiness. Captain Vere would not have sacrificed Billy Budd to the interests of

the greater good if he held this view. In this view, the only policies, procedures, and programs that are justifiable are those that respect the inherent worth of the individual.

Prisons are first and foremost places where people live and work. Where there are rules and regulations on the books, they should be laid down with respect for persons in mind. Once they are established, compliance should be based on respecting people as individuals. “Standards of conduct” at Stage 4, that are drafted with respect for persons in mind, deserve to be followed because they are so based. They should be followed, unless their abandonment can be justified by appeal to a higher principle such as those at Stage 3. Principles at this stage are to be prioritized by appeal to our basic philosophy of punishment (Stage 2) and our view of subordinates as human beings (Stage 1).

While the viewpoints in this article may appear clear-cut and easily defined, life experiences are more dynamic and tend not to fall so neatly into recognizable categories. Thus, this article is intended, as mentioned at the start, to enable correctional workers to examine the lines of reasoning they employ to reach the decisions they make. In this way, they can either reaffirm or reexamine their decisions—and they will be able to articulate the underlying reasons for these decisions, adding consistency to correctional decisionmaking all along the line. ■

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