THE CORRECTIONAL ASSOCIATION OF NEW YORK

133RD ANNUAL REPORT TO THE LEGISLATURE

1978

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This is an official report of The Correctional Association of New York to the Legislature of the State of New York, which has been made annually since 1845, and constitutes the one hundred and thirty-third of the series.

Paragraph 6 of Article XI of the Act incorporating The Correctional Association of New York (as amended by Chapter 398 of the Laws of 1973) provides that "The said executive committee [of The Correctional Association of New York] by such committees as they shall from time to time appoint shall have power to visit all the prisons in the state, and annually report to the legislature their state and condition, and all such other things in regard to them as may enable the legislature to perfect their government and discipline."

1978 N.Y.S.L.D. – G00514

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THE CORRECTIONAL ASSOCIATION OF NEW YORK
135 East 15th Street
New York, New York 10003

June 15, 1979

Hon. Hugh L. Carey
Governor of the State of New York

Hon. Mario M. Cuomo
Lieutenant Governor and President of the Senate

Hon. Stanley Steingut
Speaker of the Assembly

Dear Governor Carey, Mr. President and Mr. Speaker:

Pursuant to Chapter 163 of the Laws of 1846, as amended by Chapter 398 of the Laws of 1973, this One Hundred and Thirty-Third Annual Report is presented to you on behalf of the Board of Directors with the request that you lay the same before the Legislature.

Respectfully,

George G. Walker
Chairman

Dan Pochoda
President

LETTER FROM THE CHAIRMAN

In 1978 there were two areas in criminal justice of particular importance to the citizens of New York City and New York State. One was the beginning of an effort to reevaluate the concepts of sentencing in New York State and to suggest changes for making the sentencing structure more equitable and more responsive to the interests of both prisoners and the community. The second was the proposed expansion of the State prison system, including the takeover of New York City's Rikers Island prison complex and the construction--at great cost--of replacement facilities for New York City.

Major activites of the Association in 1978 addressed these and other issues:

* Development of a position on sentencing and recommendations for reform of New York State's present penal statutes. These were submitted to the Governor's Executive Advisory Committee on Sentencing and presented in testimony at the Committee's public hearings.

* Ongoing oversight of the proposed transfer of Rikers Island to the State.

* Undertaking with the Citizens' Inquiry on Parole a study of criminal justice costs in New York State, New York City, and three representative counties to inform New York's taxpayers of how much they are paying for criminal justice services and what they are getting for their dollars.

* Visits to local and state prisons to monitor conditions.

* Direct services to prisoners, ex-offenders, and their families.

The following is a summary of these activities:

Rikers Island

The proposed expansion of the New York State prison system and long-term lease of Rikers Island to the State poses serious problems for our correctional systems, particularly the extremely high cost of the new facilities. A discussion of the proposed State take-over, and the Association's questions about its feasibility are on page 9.

Study of the Cost of Corrections

In 1977 the Correctional Association initiated the concept of a project to study what it perceived as an "invisible budget" -- the more than $2 billion spent yearly in New York State on criminal justice, approximately 10% of total government expenditures. The Association too often found that criminal justice agencies were unable to provide consistent answers as to how these huge sums of taxpayers' money were spent. In 1978 the Association, joined by the Citizens' Inquiry on Parole and Criminal Justice, began a study to learn where these dollars go. A discussion of the goals and results of the study begins on page 10.

Sentencing

The Association continued its effort toward reform of sentencing in New York State, which began in 1976 with sponsorship of a Roundtable Discussion attended by persons active in criminal justice. Concerned by the complexity of the problems and the need for a comprehensive approach to change, a majority of the participants signed a letter urging Governor Carey to form a blue-ribbon commission to undertake a thorough review of the problem and submit recommendations for change.

In December 1977, Governor Carey appointed such a commission, chaired by Manhattan District Attorney Robert M. Morgenthau. The committee, officially entitled the New York State Executive Advisory Committee on Sentencing, held public hearings in November, and details of its summary report were published in the press early in January 1979.

As a way of fulfilling its initiative in this area, the Board of Directors of the Correctional Association appointed a special committee to review the problems of criminal sentencing and to make recommendations. Its report as presented to the Morgenthau Committee on November 15 begins on page 12.

Prison Visits

During 1978 there were 30 visits to 15 New York City, county, and State correctional facilities. These were made by members of the Association staff, Board and Institutions Visiting Committee, and by the staff of the joint research project on the cost of corrections. A summary of findings begins on page 18.

Contact Visits

In March 1978, the Association President testified in a case originally brought in 1976 by prisoners in Monroe County Jail against the State Commission of Correction and the Sheriff of Monroe County concerning the denial of contact visits. This was a motion for class certification and for a preliminary injunction to stop the denial of contact visits. Both demands were denied, but in February 1979 the Court of Appeals reversed the lower court's decision. Details are on page 19.

Direct Services

In 1978, 301 individuals were seen in 817 social service interviews by Correctional Association staff. These included 34 members of inmate families and 267 ex-offenders. Our social worker appeared in court on 33 occasions in behalf of clients on matters such as sentencing, violation of probation, bail hearings and arraignments. Fourteen children in seven families were sent to sleep-away and day camps during the summer. The Association provided $350 toward the camp cost, with the balance coming from camp scholarships. Financial aid in the amount of $2,600 was disbursed, and 21 needy families received an average holiday gift of $72.38 from contributions raised by our Christmas Appeal. Seventy-five children from 32 families of men in prison attended the Association's annual Christmas party held at the Employees' Cafeteria of our neighbor, Con Edison. Details of direct services work begin on page 21.

Management Leadership of the Association

Adam F. McQuillan, who served the Association so effectively as its

President for three years, retired in November 1978 to return to private business. Mr. McQuillan carried out his responsibilities with a dedication and energy which strengthened the effectiveness and visibility of the Association. He served as a member of the Transition Team on Corrections to assist newly elected Mayor Koch in assessing the Department of Correction and in planning for change. Under Mr. McQuillan's leadership the Assocation's program of prison visiting was revitalized, and the trust placed in him by inmates and correctional personnel contributed greatly to the effectiveness of these visits.

To succeed Adam McQuillan as Association President, the Board chose, effective April 1, 1979, Dan Pochoda, whose career in law, teaching and public service has been marked by a deep concern for civil and human rights, and the problems of crime and the criminal justice system. A graduate of Amherst (BA '63) and Harvard Law School (JD '67), Mr. Pochoda came to the Association from the New York City Board of Correction where he served as Special Counsel, supervising the research, drafting and promulgation of minimum standards for all New York City correctional facilities. Mr. Pochoda was also the Executive Director of the New York State Commission of Correction and has represented prisoners in cases concerning denial of constitutional rights in numerous courts, including the United States Supreme Court. An adjunct professor at New York University Law School, he currently teaches a course in Correctional Policy.

Dan Pochoda has a concern for the human condition of both victim and offender. He has the ability to translate that concern into action for positive change.

Board Changes

In September 1978, C. Douglas Ades, Vice President of Chemical Bank, resigned from the Board because increased other duties conflicted with his active participation. In April 1979, Peter Ames also resigned, having moved to Boston to become International Director and Treasurer of WorldPaper. Also in April, Archibald S. Alexander and Louis B. Warren, after many years of membership, did not stand for reelection as active directors.

On the Board for three years, Mr. Ades made valuable policy suggestions and worked hard to advance the Association's objectives. Mr. Ames, also on the Board for three years, participated actively as a member of the Institutions Visiting Committee.

Mr. Alexander was elected to the Board in 1933, and for 46 years he served the Association in many capacities: as a member of the Law Committee for 21 years; as recording secretary for 11 years; and on three successive committees on institutions (Prison Administration, Detention, and Institutions Visiting) for a total of 17 years. He was chairman

of the last-named committee, and under his leadership the Association's efforts were in part responsible for implementation of contact visits in New York City detention facilities and improvements in other conditions in various City institutions. The committee also offered strong support to the New York State Commission of Correction in its campaign to reduce overcrowding and remove sanitation violations at the House of Detention for Men on Rikers Island.

Mr. Warren joined the Board in 1969 and served on the Law Committee from that year until his retirement. His contributions to the Association's legislative recommendations and to its own legal affairs were most valuable. In addition, Mr. Warren obtained financial support for two important special projects of the Association. The first was the Legal Services Bureau, which he helped to develop in 1971. Mr. Warren obtained private funding for its first 16 months of operation and for an additional year following expiration of a federal grant, through February 1977, when the Bureau was terminated. The Bureau established the importance of free civil legal services for indigent prison inmates and was the prototype for Prisoners' Legal Services of New York. The second project was the Criminal Justice Cost Study.

Although the Board's loss is great with the resignation and retirement of these valued members, it is delighted that both Mr. Alexander and Mr. Warren have agreed to serve the Association as Directors Emeriti.

Recently elected to the Board are:

Amalia V. Betanzos, President of the Wildcat Services Corporation, a non-profit supported organization established in 1972 to bring hard-core unemployed ex-addicts, ex-offenders, mothers on welfare, and disadvantaged youth into the regular work force. A former Commissioner of the New York City Housing Authority, she is active on many government boards and voluntary organizations, including the Vera Institute of Justice, Fortune Society, Drug Abuse Council, and St. Luke's Hospital.

Frederick T. Davis, partner in the law firm of Patterson, Belknap, Webb and Tyler. A graduate of Harvard University, AB '67, and Columbia Law School, LLB '70, where he was an editor of the Columbia Law Review. For two years following his graduation from Harvard, he was with the Peace Corps in Senegal. Mr. Davis served as clerk for Supreme Court Justice Potter Stewart before his appointment as Assistant U.S. Attorney for the Southern District of New York.

Barbara D. Fiorito, Vice President of Chemical Bank and an associate of C. Douglas Ades whom she had represented at several Board meetings, becoming importantly involved in the Association's work. A graduate of Rutgers University, BA '64, she served in the Peace Corps in the Philippines for two years. Ms. Fiorito was Vice President in the Urban Affairs Department at

Chemical Bank before her promotion to Vice President in charge of not-for-profit organization accounts.

Dennis E. Mulvihill, Ph.D., partner in the accounting and management consulting firm of Touche Ross & Co. Dr. Mulvihill is a graduate of Duquesne University (BA '49, MA '52), with a Ph.D. (Univ. of Pittsburgh '59) in Public and Industrial Administration. He is an adjunct professor at the Columbia University Graduate School of Business, and has in progress a text-book, Management Accounting for the Not-for-Profit Organization. The author of a number of papers on public administration, he serves on several professional organizations.

Peter Swords, Associate Dean, Columbia Law School. A graduate of Harvard, AB '57, and Columbia Law School, LLB '62, Dean Swords served as counsel to the Income Tax Bureau of the New York City Finance Administration. Before his election to the Board, he was active in prison visits as a member of the Association's Visiting Committee. Among other affiliations, Dean Swords is a director and counsel of the Harlem School of the Arts.

These young and talented persons bring fresh ideas and additional energy to the work of the Association.

Finance

There was a considerable improvement in cash flow in 1978. The cash deficit was reduced to $14,095, from $50,135 the previous year. In conformity with accounting principles issued in a Statement of Position by the American Institute of Certified Public Accountants, the book results reflect a write-down of securities held in the portfolio to cost or market value, whichever is lower.

Progress in the work of the Association would not be possible but for the concern and financial support of its members, the effective and time-consuming involvement of its Board members, as well as their generous financial backing, and the skill and hard work of its small but dedicated staff. For all these efforts we express our grateful thanks.

On behalf of the Board,

George G. Walker
Chairman

RIKERS ISLAND TRANSFER

The most significant development in the area of corrections in 1978 was the proposal to transfer the Rikers Island prison complex to New York State and to construct replacement facilities for New York City detainees. Indeed, if implemented the plan will determine the future of the criminal justice system in New York City for years to come, at an initial cost of at least $400 million.

In light of this, the Correctional Association closely monitored developments in this area. Meetings were held involving the President of the Association, members of its Board and Institutions Visiting Committee, and various New York City officials, including Correction Commissioner William Ciuros, Jr.

Early in 1979 the City announced the appointment of Kenneth Schoen as project director of the Rikers Island transfer plan. Mr. Schoen has a national reputation as a progressive administrator as a result of his work as Commissioner of the Minnesota Department of Correction. Representatives of the Correctional Association met regularly with Mr. Schoen and his staff to discuss the progress of the proposed transfer.

The Association was primarily concerned with two issues. The first was the extremely high costs involved. It is estimated that it will cost New York City between $75,000 and $90,000 to construct each of the projected 3,600 replacement cells; this amount would triple if it is necessary to borrow the funds. Thus, assuming the receipt of $200 million from the State, the City estimates an expense of $73.5 million in capital costs, and increased operating and debt service costs of $23.4 million a year, to build and maintain the new facilities.

State operating costs will also rise significantly as a result of the Rikers acquisition. This will occur despite the fact that many criminal justice professionals maintain that, with proper planning, there is no need to expand the State prison system. At a minimum the acquisition of Rikers Island by the State should be accompanied by plans to discontinue the use of Attica and Clinton prisons. Their large size, outdated architecture, and great distance from New York City make these institutions counterproductive and inhumane.

In light of the financial burden, as well as the need to avoid unnecessary punishment of unconvicted persons, the Association pressed the City to hold down the number of replacement beds to those clearly necessary. There is strong evidence that a significant reduction in the number of pretrial detainees is possible, without increasing the risk to others. For example, approximately 50% of the persons remanded to the New York City Department of Correction after arraignment are released within one week.

Procedures facilitating the release of such persons directly after the court appearance would result in significant savings, with no loss of safety.

On the other hand, the Association has long recognized the serious problems involved in the use of Rikers Island for persons awaiting trial. Travel to the Island is a difficult and time-consuming process by public transportation, and its isolated location results in infrequent attorney visits and increased tension and anxiety amongst the prisoner population. Further, the existing facilities are for the most part inadequate and dangerous for prisoners and employees. Finally, the City is presently spending large sums of money because of the need to transport hundreds of prisoners daily to the courts.

The second major concern of the Association is the possibility that City detainees will be inadequately housed during the five-year transition period, and that the new facilities will fail to meet minimum standards of care. City officials stressed that control of Rikers Island would not be relinquished until the renovated Manhattan House of Detention ("The Tombs") and the new institutions were ready for use. The existing Rikers facilities will be phased out over the five-year period as new ones become available. The first institutions that will be transferred to the State are the Women's Correctional Facility and the Adolescent Reception and Detention Center.

Although the wording of the "contract" between the City and the State has been agreed upon by the parties, many critical decisions--and potential pitfalls--remain. The Correctional Association's Visiting Committee will continue to monitor developments closely. It is vital that the public be fully informed at every stage of this project, and have direct input into all final decisions.

COST OF CORRECTIONS REPORT

Despite intense interest in matters of crime and punishment, even the most basic costs of the criminal justice system in New York State are not available to public policy makers and taxpaying citizens. Therefore the Correctional Association, in conjunction with the Citizens' Inquiry on Parole and Criminal Justice, has been working on a report to put together for the first time the costs of adult criminal justice in New York State, with special attention to the correctional agencies: *jails, prisons, probation and parole.* This focus on the post-conviction stages was chosen because of the great amount of monies involved and because public debate concerning criminal sentencing has intensified in recent years.

The report examines the criminal justice costs incurred by New York State, as well as by one municipality (New York City), and three counties (Rockland, Westchester, and Rensselaer). New York City's costs are by far the largest in the State. The three counties were chosen because they differ in the extent to which they are rural, urban, or suburban, in the size of their tax bases, and in the makeup of their corrections systems.

Project staff found that stated agency budgets were inaccurate reflections of actual criminal justice spending. Consequently, the principal sources of fiscal information were the reported or estimated expenditures for criminal justice and corrections. These were located only after researching the records of numerous public agencies, including the New York State Department of Correctional Services, the State Division of Parole, the State Division of Probation, the State Commission of Correction, the State Department of Audit and Control, the State Division of the Budget, the New York City Departments of Correction and Probation, the City Office of Management and Budget, and the Office of the Comptroller. In each of the three counties information was provided by corrections and probation officials as well as the county executives and fiscal officers.

The data were collected by correspondence, meetings, and conversations with scores of public officials who supplied fiscal information, descriptions of how monies were spent, and assistance in developing estimates where the existing information was incomplete. To aid in identifying all corrections-related costs, visits were made to three State prisons, and to numerous jails in New York City, and Rockland, Westchester, and Rensselaer Counties.

The report should provide a data base for more informed decision-making by public officials and private citizens in the area of criminal justice policies and practices. Among its conclusions are:

1) Present fiscal reporting by criminal justice agencies is woefully inadequate. Current monitoring efforts at all levels of government by administrative and legislative bodies are not sufficient.

2) The total spent on criminal justice by all agencies was extremely high, approximately $2.8 billion during fiscal year 1977-1978. This sum was 10% of all governmental spending in New York State; only public education and social services cost the taxpayer more.

3) The cost of operating our penal institutions has risen dramatically during the past decade, over 200% to operate the State prison system. This is not a simple consequence of inflation and having more criminal offenders to accommodate.

These costs will continue to expand rapidly if recent statutory revisions requiring lengthy and mandatory prison terms for many offenders remain in effect.

4) Reliance on institutionalization as the primary weapon in the fight against crime is a prohibitively expensive strategy. New York State has not *sufficiently studied* or utilized less costly alternatives that have proven successful in other jurisdictions, at no additional risk or increase in criminal activity. Moreover, there is little, if any, evidence that lengthy and mandatory prison terms significantly reduce the incidence of crime.

Financial support for this project was generously provided by grants from the North Shore Unitarian Veatch Program, the Mary Reynolds Babcock Foundation, the Chemical Bank, and several anonymous donors. Their contributions also will enable the publication of a second document, Calculating Criminal Justice Costs: A Manual for Citizens, prepared at the suggestion of the Mary Reynolds Babcock Foundation. This is a "how to" manual that sets out general principles and specific procedures for cost studies of governmental expenditures. It is based on the experience gained in collecting information for the project and should be a valuable tool for persons concerned about fiscal accountability. Both the Report and the Manual will be available by the end of 1979.

REPORT ON SENTENCING

In June 1978 a Special Committee on Criminal Sentencing was appointed by the Board. David Rudenstine was selected chairperson, and the Committee members were Archibald S. Alexander, William J. Dean, Elizabeth B. Hubbard, Malcolm MacKay, Adam F. McQuillan, Michael B. Mushlin, Susan A. Powers, and George G. Walker.

After many days of deliberation the Committee's report was issued in November 1978. It was submitted to the Governor's Executive Advisory Committee on Sentencing, and discussed by David Rudenstine at the Committee's public hearings. The Report of the Governor's Committee, submitted in December 1978, adopted with little exception the recommendations of the Correctional Association. It is expected that the Report of the Governor's Committee will serve as the basis for a comprehensive revision of New York's sentencing statutes that will be considered during the 1980 legislative session.

The following are the recommendations of the Correctional Association's Committee on Sentencing:

Introduction

The imposition of the criminal sentence is a critical moment at which the authority of the state to limit individual liberty is dramatically focused. Why a certain sanction is imposed, how it is imposed, and what the purpose of the sanction is are some of the most significant and controversial questions currently being debated in the criminal justice system.

The current New York State sentencing scheme vests broad discretion in the judiciary and the parole board. It is designed to effectuate the rehabilitation of the offender based upon the assumptions that prison self-improvement programs work and that future criminal behavior can be predicted. Social science evidence fails to support these assumptions.

The failure of the indeterminate sentencing system to fulfill its idealistic goals has resulted in some harsh and disturbing consequences. First and foremost, the broad discretion endemic in the present structure has by necessity resulted in gross sentencing disparity. That is, defendants who commit the same or similar offenses and have a similar criminal history receive widely divergent sentences. This disparate treatment is not only inconsistent with the important principles of equality and proportionality under the law, but allows important public judicial officials (judges, prosecutors and defense attorneys) to shift their socially imposed decision-making authority to a somewhat invisible parole board empowered to release prisoners on parole. This fosters public cynicism toward the criminal justice system by making the sentencing process and philosophy unintelligible.

Attempts to structure a sentencing system which would respect and fulfill the principles of equality and proportionality, and establish coherence within the system are not easy. The values at stake are often conflicting and the policy choices are difficult. Moreover, trying to graft a sentencing proposal onto the grim realities of the entire criminal justice system is hardly an occasion for optimism. Nevertheless, it is untenable to suspend changing our currently deficient sentencing system until other aspects of the system are remedied or because all the results of change cannot be anticipated. Change is required and now is an appropriate time to commence.

The determinate sentencing scheme outlined below is offered in the hope that it will enhance the values of equality, proportionality and fairness in sentencing. There is no expectation, however, that it is a basis for a flawless system. Every sentencing scheme will yield unfair and harsh results. The challenge is to minimize them, not eliminate them.

Because determinate sentencing has been sufficiently criticized to cause this committee concern, this report is divided into two parts. Part One briefly reviews some of the important considerations which influenced the committee and specifically sets forth the committee's view of some of the more frequently made criticisms of determinate sentencing. Part Two sets forth the committee's specific proposals for a determinate sentencing system.

Part One

This part sets forth four considerations which influenced the committee, and the committee's views of four criticisms frequently made of determinate sentencing.

First, the considerations:

1. There are four traditional goals of criminal sentences: rehabilitation, deterrence (special and general), incapacitation, and retribution, more commonly known as just deserts. For different reasons, this committee rejects rehabilitation, deterrence and incapacitation as a basis for building a sentence structure. Those reasons are: (1) we lack the capacity to predict criminality accurately as required by rehabilitation, deterrence and incapacitation; (2) we lack the capacity to reduce recidivism through prison programming as required by rehabilitation; (3) the best evidence indicates that the relationship between deterrence and criminal sentencing is nebulous and speculative; (4) the criminal sanction is not primarily responsive to the act (or crime) committed when administered pursuant to a goal of rehabilitation, deterrence or incapacitation. The committee accepts, with disquiet, the goal of just deserts as a basis for building a sentencing system. Under that goal, the sanction is responsive to the act committed and is proportional to its severity.

2. The safety of communities and the level of current crime are of critical concern to us all. Government at all levels must continue to address these problems and their causes directly. The relationship, however, between safe communities and criminal sentencing is nebulous. The best evidence indicates that the certainty of prompt arrest and conviction and the imposition of some penalty may deter some types of crimes. There is little or no evidence that the imposition of a certain kind of penalty or enlarging the severity of a penalty will make our communities safer.

3. Our current sentencing process is not only unfair but repressive. As a general matter our society relies more heavily on the imprisonment sanction than any other Western democratic society. The current trend is to increase that reliance by incarcerating a greater percentage of convicted defendants for longer terms. Besides being harsh and inhumane, this trend has resulted in the overcrowding of our prison system and the necessity to use limited tax revenues during lean fiscal times to build new prisons.

With few exceptions, our prisons are horrible institutions. They effectively serve no purpose other than confinement. Although the destructive influence of prisons on prisoners may not be precisely measured, it is generally acknowledged. And while there are some individual cases where imprisonment should have been the sanction and it was not, or in which the imposed prison term should have been lengthened, the strength of the general conclusion that we incarcerate too many for too long remains intact.

Many observers believe that determinate sentencing will result in longer sentences, the imprisonment of a larger percentage of convicted defendants, and make our already overcrowded prisons more so. Moreover, as a practical matter, it is argued, prison overcrowding might be exacerbated under determinate sentencing for parole release would be abolished and thus not available, even though an improper function, to relieve prison overcrowding by granting more paroles. Plainly these would be terrible consequences, and if they inevitably flowed from a determinate sentencing scheme this committee would not only not recommend determinacy, but would oppose it. But they are not the inevitable consequences of determinate sentencing. There is nothing endemic to determinate sentencing which determines when prison should be the sanction or the length of prison terms. More importantly, these harsh consequences should not occur under a determinate sentencing proposal such as the one we present because penalties other than imprisonment would be more extensively used and prison sentences, as a general rule, would be substantially shorter. A sentencing process that was more fair than the current one, but at least as, if not more repressive, would be a hollow reform.

4. The adoption of a determinate sentencing process will require close monitoring and evaluation. Research projects to determine its impact on other aspects of the criminal justice system, in reducing sentencing disparities, and in facilitating fair results in cases should be instituted when it is implemented. Too often the value of research and the usefulness of accurate and relevant data in criminal justice have been ignored to the detriment of all. This monitoring and evaluation should produce helpful information guiding future change.

Determinate sentencing has often been criticized on four grounds:

1. An attempt to create and implement a fair and just sentencing structure may be undercut by the defects embedded in the other aspects of the criminal justice system. A carefully designed sentencing model may be severely limited and flawed in its application because of such present realities as police overcharging, unreviewable prosecutorial discretion, plea bargaining, judges of uneven quality, frequently inadequate representation by counsel, and harsh prison conditions. These and other problems in the criminal justice system may need to be remedied before any well wrought sentencing model will work as well as possible in practice.

This criticism plainly has merit, but it is unrealistic to expect all important defects in the criminal justice system to be corrected simultaneously. Change comes in stages, and a comprehensive alteration of our approach to criminal sentencing is sufficiently important to be a stage by itself. The fact that its intended benefits may not be fully realized until other aspects of the system are improved should motivate further change, not justify a sense of paralysis.

2. Determinate sentencing schemes have often been criticized as enlarging the discretion of prosecutors at the expense of judges. The criticism implies that this consequence will lead to harsh and unfair results contrary to the intentions of those urging the changes in the first place. Although the criticism is cause for concern, it should not be a bar to change. It is far from clear that this result will diminish the fairness and equality determinate sentencing is intended to achieve. On the other hand, if that is the result, it may be that prosecutorial discretion may be structured so as to complement the values of fairness and equality advanced by determinate sentencing without inappropriately invading the province of a prosecutor.

3. Determinate sentencing has also been criticized on another important ground. It is often contended that individual criminal cases vary too much to permit the substantial narrowing of the sentencing authority's discretion envisioned by a determinate sentencing scheme. According to this view, the sentencing authority must have broad discretion to respond to the variation in facts inherent in criminal cases falling under the same substantive crime and to the differences in offenders' backgrounds. If the discretion is narrowed so that the penal sanction cannot be tailored to respond to these variations, unfairness and harshness will result, it is charged.

There are two responses to this argument. Determinate sentencing proposals do not grant the relevance of an offender's background to the choice of sanction. Rather--to use broad terms--they focus on the offense rather than the offender. Or in other words, determinate sentencing generally posits that a sanction should be proportional to the crime committed and prior record. The enormous differences among offenders when individual backgrounds are examined are not relevant. Secondly, although there are differences in the way the same crime may be committed, these differences may not warrant a different sanction, and to the extent that they do, the sentencing authority under a determinate scheme will have discretion to respond to those differences. Of course, if experience proves that these variations require wider discretion, the discretion of the sentencing authority may be enlarged.

4. Determinate sentencing is criticized out of fear that its adoption may result in prisons becoming more overcrowded and inhumane than they already are. Notions of rehabilitation have provided a banner under which to justify developing prison programs in education, job training and counseling and for improving prison conditions generally. Because determinate sentencing is generally viewed as rejecting the philosophy of rehabilitation, it is feared that the adoption of a determinate system will undercut the rationale for prison programs, and thus cause them to be reduced. As a practical matter, this is a real fear. The pressures to diminsh the current underfinanced prison programs are substantial. But this pressure exists regardless of whether the sentencing system is determinate or indeterminate. And while it is possible that prisons may become more harsh under a determinate scheme, that result is hardly mandated and would be contrary to the empathic urgings of those recommending a determinate scheme. Prisons are already intolerably harsh; what is required is that they become more humane and decent.

Despite these reservations, we strongly urge the following proposals. We believe that they will be the basis for a better system than the one we have today, but we acknowledge that they may require modification and that change may be the only constant in this field.

Part Two

Because the firm belief of this committee is that imprisonment is the sanction for too many different kinds of crime today and that the average length of prison sentences currently being served is excessive, it would rather that its recommendations be discarded entirely than distorted and used to justify or structure a sentencing system as harsh or harsher than the current on.

Specific Recommendations*

The present New York State indeterminate sentencing system should be abolished and replaced by a determinate sentencing structure consistent with principles of equality and proportionality as well as the guidelines set forth below.

The judiciary should impose the criminal sanction shortly after conviction. The parole board should be denied authority to determine the date of release from confinement.** Release to the community pursuant to some kind of statutory good time provisions should be retained.***

Sanctions should be proportional to the seriousness of the offense (the more serious the offense, the more severe the sanction) and prior criminal record. Probation, fines, restitution, public and community service, and intermittent confinement are strongly preferred to the penalty of unbroken

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* These recommendations contemplate sanctions other than the death penalty which the Correctional Association opposes.

** Plainly the current parole system should continue to be available to prisoners serving indeterminate sentences imposed prior to the effective date of a determinate sentencing system.

*** The Committee takes no position on the continuation of a parole supervision program or the usefulness of sentences split between incarceration and community supervision. Obviously, the possibility of community supervision programs may help reduce time spent in prison and as a general matter that would be a beneficial result. But those programs, if they are to continue, must be restructured so that their functioning is not dependent on the continuation of a discretionary release system, which the Committee opposes.

confinement, and should be the penalties imposed unless the State satisfies a heavy burden justifying incarceration. Incarceration should be the sanction of last resort. As a general rule, the average length of incarceration should be substantially less than the current average now served.

Humane considerations require that prison self-improvement programs be maintained and expanded and prison conditions be improved.

The legislature should establish a Sentencing Guideline Commission empowered to determine the sanction or possible sanctions for each crime. Whenever imprisonment is the sanction, the Commission should establish a narrow range consisting of an upper and lower limit between which the sentencing court should determine the determinate prison term. A prison sentence should not be set outside the range established by the Commission. Probation should be a permissible sanction when the maximum period of imprisonment is at the lower levels as established by the Commission.

Whenever imprisonment is a possible sanction, the sentencing court should hold a hearing to determine the presence of aggravating or mitigating circumstances.

These circumstances are difficult to enumerate and perhaps are best left to the court to evolve with experience, but they should include such factors as harm to the victim, the presence and nature of a weapon, and the presence of provocation.

Whenever the sanction of incarceration is imposed, the sentencing court should write a sentencing opinion which recites those mitigating or aggravating circumstances which guided the sentencing court's exercise of discretion in choosing the prison term.

There should be meaningful appellate review over the sentencing court's choice of sanction and over the length of imprisonment, if imprisonment be the sanction.

PRISON VISITS

In 1978 the following prison visits were made by members of the Correctional Association staff, Board and Institutions Visiting Committee, and staff of the joint project on the Cost of Corrections:

Jan. 11	Rikers Island: House of Detention for Men
Jan. 23	Rikers Island
Mar. 7	Nassau County Jail
Mar. 11	Westchester County Jail and Penitentiary
Mar. 13	Monroe County Jail
April 3	Nassau County Jail
April 4	Brooklyn House of Detention
April 10	Bronx House of Detention
April 12	The Tombs
April 17	Rikers Island Bronx House of Detention
April 20	Bronx House of Detention
May 10	Adolescent Reception and Detention Center
May 13	Fishkill Corr. Facility
May 23	Bronx House of Detention
May 27	Wallkill Corr. Facility
June 6	Westchester County Jail and Penitentiary
June 13	Green Haven Corr. Facility
June 14	Rikers Island: Corr. Facility for Women
June 21	Rockland County Jail
June 28	Queens House of Detention
June 29	Arthur Kill Corr. Facility
July 25	Fishkill Corr. Facility
July 26	Wallkill Corr. Facility
Aug. 2	Rikers Island: House of Detention for Men
Aug. 8	Bronx House of Detention
Aug. 22	Rensselaer County Jail
Sept. 21	Fishkill Corr. Facility
Sept. 24	Green Haven Corr. Facility
Sept. 30	Wallkill Corr. Facility

Findings made during a visit by the representatives of the Association were reported to the persons responsible for the operation of the facility. The Association worked with all relevant parties to resolve any problems observed and to monitor progress toward all recommendations.

The Visiting Committee focused on recurring problems. At the county level these included the lack of contact visits in most facilities, and very limited programmatic and recreational opportunities. The primary cause of concern at the State level was loss of contact with family and friends because of the inaccessibility of the major institutions, resulting in increased problems of reintegration upon release, and constant complaints about the medical delivery systems. New York City facilities also exhibited serious problems relating to visiting, including lengthy waiting periods and insufficient space and time, exacerbated by overcrowded conditions in some institutions, and a shortage of counseling and programmatic staff. The House of Detention for Men on Rikers Island was identified as "the most problem-ridden institution in the City system, particularly in the areas of overcrowding and poor sanitation, and staff shortage."

CONTACT VISITS

In March 1978, Association President Adam McQuillan testified as an expert witness in Federal District Court in Rochester on the matter of contact visits. The case had been brought by two Monroe County Jail inmates as a class action against the State Commission of Correction and the Sheriff of Monroe County. The prisoners were represented by the Monroe County Legal Assistance Corp.

Although New York State prisons have long provided contact visits for sentenced prisoners, such visits are denied to the majority of pre-trial detainees, persons presumed innocent of any crime and who in many cases will not be convicted. In about 40 of the State's county and local jails, visits are conducted through a metal partition with a small window separating the detainee from his/her visitor, precluding any physical contact, with communication usually by telephone. Detainees in the remaining 17 counties have either achieved contact visits through individual law suits or are in the process of such legal action.

In June 1977, Federal District Court Judge Harold P. Burke denied the demands of the Monroe County Jail inmates for certification of their suit as a class action and for a preliminary injunction prohibiting the denial of contact visits. A motion to vacate the order was filed by the prisoners, which included a supporting affidavit from Mr. McQuillan. The motion was denied, but in November the Second Circuit Court of Appeals reversed Judge Burke's decision and returned the case to the District Court. At the trial in March 1978, Mr. McQuillan testified to the importance of contact visits in heightening inmate morale and reducing the depressive atmosphere of incarceration. He observed that although the Monroe County facility was modern and provided much in the way of programs and services, visiting conditions were the source of much inmate frustration.

Judge Burke again denied the class action certification, but granted partial relief on the substance of the case--the contact visits--for Monroe County only. The decision was appealed by both sides, and on February 27, 1979, the Federal Appeals Court ruled in favor of the plaintiffs.

The 2-1 decision requires that the 40 counties not yet providing contact visits for prisoners awaiting trial must submit plans to allow them. Chief Judge Irving R. Kaufman wrote the decision and stated that the Appeals Court had repeatedly ruled that "due process forbids denying detainees the right to shake hands with a friend, to kiss a wife, or to fondle a child," and that additional cost or inconvenience were "simply insufficient to justify blanket denials of contact visits." Judge Burke was directed to require each county sheriff to submit a plan to provide contact visit facilities. Any plans designed to provide contact visits within a year are to be accepted by Judge Burke if they meet constitutional standards.

The Correctional Association has long advocated contact visits as a humane measure, and to reduce institutional tension and the potential for unrest. The Appeals Court decision is gratifying evidence of the importance of this effort.

DIRECT SERVICES

During 1978 direct services were provided to 267 ex-offenders and 34 prisoner families. The Association's social worker appeared in court on 33 occasions to testify on behalf of clients as a character witness, to plan programs as alternatives to incarceration, and to guarantee appearance in lieu of bail. No client ever missed a court appearance. Six visits were made to institutions to help inmates work through their family problems and to assist where possible with those related to incarceration.

A highlight of the year was the annual Christmas party, complete with Santa Claus. Seventy-five children of prisoners, and their mothers, came together for companionship with others facing the same problems. There were donated gifts of toys and clothing, and a sincere feeling of joy and relaxation.

An important function of the social worker was to act as liaison in two areas: 1) between parolees and their parole officers, and 2) between clients and the Department of Social Services. Many ex-offenders had welfare problems, such as obtaining records and seeking certification, and the caseworker acted as the clients' advocate in such cases. Several clients decided to return to school during 1978 and received help in applying for admissions and financial aid, and in writing letters of reference.

In addition to providing the customary social services, a primary function of the Association's program is to provide clients with someone to listen to them with understanding and sensitivity to those problems that are peculiar to the wives/husbands and children of prisoners. Most of them have had bad experiences with traditional service agencies, including the Department of Social Service, Probation, and Parole, often encountering an adversary relationship. At the Correctional Association they find a very different atmosphere, offering personal attention as opposed to bureaucratic indifference.

Case History: Mr. H.B.

Mr. B was no stranger to the criminal justice system. He had been arrested many times in his 59 years, and now once again was on parole. However, this time was different: Mr. B felt old. His health was failing, he was unable to keep a job because of this, and he wanted only to live his life without any "problems."

Unfortunately, he was assigned to the parole officer he had had previously, one who believed that Mr. B was malingering. Basing his judgment on prior experience with Mr. B, the parole officer assumed that his client was again looking for an "angle."

The Association's social worker had numerous conferences with the officer and his supervisor. Only after she had compiled all of Mr. B's clinic and hospital records to document the seriousness of his physical condition were they convinced that he was unable to work, and their insistence that he find employment ceased.

The social worker then helped Mr. B to obtain SSI and to locate his grown daughter whom he had not seen in 16 years. A reconciliation took place and today, two years after his last release, Mr. B is receiving proper medical attention and is getting to know his daughter and grandchildren.

Case History: Mrs. D.Z.

Mrs. Z is a young mother of eight children, ranging in age from one to ten years. Last year her husband was arrested, convicted, and sentenced to 2-1/2 to 5 years on a charge of robbery. Mrs. Z found herself unable to cope with the needs of her family and sought assistance from the Bureau of Child Welfare (BCW), which placed the seven oldest children in good foster homes. Her in-laws took her and the baby into their home, and stored her furniture in their basement.

After six months of counseling arranged through BCW, Mrs. Z felt she could resume caring for her family and asked that her children be returned to her. BCW informed her that she could have the children back when she had an apartment large enough and adequately furnished to accommodate them. Mrs. Z went promptly to the Department of Social Services (DSS) for housing assistance. There she was told that with only one child on the budget she was entitled only to a one-bedroom apartment at a maximum rent of $180. No amount of explanation could change the rules: with one child she could have a one-bedroom apartment; with a one-bedroom apartment she could not have her eight children together; without her eight children together she could not get more than a one-bedroom apartment.....

Her frustration mounting, Mrs. Z went to the Daily News to tell her story. A sympathetic employee gave her a copy of the paper's feature article on families of offenders which listed the Correctional Association as a resource.

After checking Mrs. Z's story, the caseworker contacted DSS but was unable to make any headway with them. Finally she enlisted the aid of Congressman Theodore Weiss's office, and after a call from one of his assistants, DSS agreed to approve a rent of $300 based on a family of nine.

Mrs. Z located used furniture to add to what she already owned, and with a grant from a special Association fund she was able to show BCW a large, clean, adequately furnished four-bedroom apartment, directly across the street from an elementary school. Mother and children were reunited during the Christmas vacation.

THE CORRECTIONAL ASSOCIATION OF NEW YORK

Balance Sheet
at December 31, 1978 and 1977

	Total all Funds 1978	1977[1]
ASSETS		
Current assets:		
Cash	$ 21,116	$ 25,039
Investments in marketable securities - at market value (cost $578,252 in 1978 and $605,119 in 1977)[2]	518,534	583,676
Total current assets	539,650	608,715
Fixed assets - at cost, less accumulated depreciation of $69,674 in 1978 and $60,845 in 1977	93,410	102,239
Other assets	7,421	4,240
	$640,481	$715,194
LIABILITIES AND FUND BALANCE		
Current liabilities:		
Accounts payable and accrued expenses	$ 3,764	$ 3,682
Deferred support	-	6,584
Total current liabilities	3,764	10,266
Fund balance:		
Current funds - unrestricted:		
Designated by governing board for investments	373,527	410,494
Available for general activities	10,868	8,613
Endowment fund	158,912	183,582
Property and equipment fund	93,410	102,239
Total fund balance	636,717	704,928
	$640,481	$715,194

1. Restated to conform with 1978 presentation.
2. See Note 2, page 26.

The complete Audit Report of Mahoney, Cohen & Company is available at the office of the Association.