

JOURNAL

THE
NATIONAL
PRISON
PROJECT

I regard the death penalty as a savage and immoral institution. A state . . . takes upon itself the right to the most terrible and irreversible act . . . the deprivation of life. Such a state cannot expect an improvement of the moral atmosphere in its country.
Andrei Sakharov

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Super-Max Prisons Have Potential for "Unnecessary Pain and Suffering"

Alvin J. Bronstein

The question of the "super-max" prison has plagued both corrections officials and prisoners' rights advocates for the last decade. It is assumed that in every jurisdiction's prisoner population there exists a small percentage of offenders whose criminal conduct is so violent or persistent, whose institutional behavior so inappropriate, that no acceptable alternative exists beyond incapacitation through long-term confinement in a secure prison. Many challenge the wisdom of concentrating all deep-end offenders in one institution or one

unit within a larger prison. We will put that question aside for the moment as we consider the various approaches to super-maximum security or "last resort" prisons.*

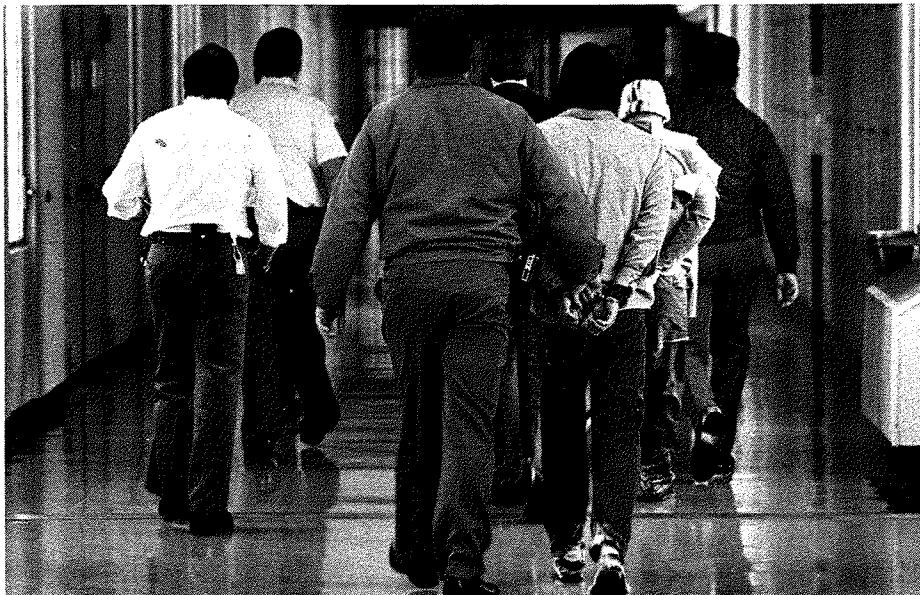
Long-term high security imprisonment serves no rehabilitative purpose, but is intended to punish and incapacitate. It is used to control those who

—continued on page 5.

*Some of the ideas in this article were first expressed in *Confinement In Maximum Security*, edited by David Ward and Kenneth Schoen (Lexington Books 1981).

Prisoners at the U.S. Penitentiary in Marion, Illinois, being escorted down the hall by correctional officers.

Photo courtesy of the Southern Illinoisan



Depo-Provera: Blessing or Curse?

Urvashi Vaid

RECENT INTEREST in the use of depo-provera to control the behavior of male "sex offenders" presents an immediate dilemma for prisoners' rights activists. On the one hand, the idea of providing treatment along with or even instead of incarceration is laudable. On the other hand, the specter of coerced prisoner participation in what is arguably medical experimentation is troubling. Beyond this dilemma there is an even greater ethical, legal and political quandary: should behavior be forcibly modified through chemicals to fit a clinically or even legally defined "norm"?

Generically known as medroxy-progesterone acetate, the drug depo-provera is no stranger to controversy. The drug was developed by the Upjohn Pharmaceutical Company as a long-lasting, injectible contraceptive for women. It has consistently been rejected by the Food and Drug Administration (FDA) for commercial distribution in the United States because of scientific controversy over its serious side effects. For women these include "heavy bleeding, possible permanent sterility, serious ovarian changes, and diabetes."¹ The side effects in men will be discussed in the text below. The drug has also produced cancer in laboratory animals such as beagles and monkeys. In 1984, the FDA advisory committee on depo-provera again recommended that the drug not be marketed in the United States because of potential health risks. Nevertheless, it is widely distributed in Third World countries. —continued on page 7.

¹See *Public Citizen Health Research Group's Response to Questions of the Public Board of Inquiry (of the Food and Drug Administration) on Depo-Provera*, January 13, 1983. For further information on depo-provera's use as a contraceptive, contact The National Women's Health Network, 224 7th Street, S.E., Washington, D.C. 20003.

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Jail Coalition Forced to Close; Work Continues

"I refuse to accept the notion that . . . those of you who have spilled your energies and your guts on it for 7 years, will now forget about it . . ."

Profoundly affected by the shrinkage of funding available to non-profit organizations, the National Coalition for Jail Reform, aptly described in its materials as the "first broad-based coalition in the criminal justice field," has had to close its offices and restructure its activities.

Composed of over forty different groups including the National Prison Project, the National Sheriffs' Association and the National Moratorium on Prison Construction, the Jail Coalition was formed in 1978 to "develop policies, action models, strategies and constituencies to bring about change in two basic areas: inappropriate confinement of many persons and inappropriate conditions in many jails." The diversity of the member-groups of the Coalition did not

inhibit the Coalition from taking strong and definite stands on a number of issues crucial to jail conditions and operations. The Coalition adopted policies opposing the inappropriate confinement of public inebriates, of juveniles in adult jails, and of mentally ill and retarded people. It urged the expanded use of pretrial release, and, in perhaps its most hotly debated policy, called upon communities to conform jail conditions to the constitutionally required minimum "to ensure conditions appropriate to the protection of the physical and mental health and welfare of those held."

The extraordinary task of coordinating the work of the Coalition, as well as negotiating agreement on policies from groups representing such seemingly divergent constituencies, fell mainly upon the Coalition staff. Executive Director Judith Johnson, in her 7-year leadership was the principal architect of all the Coalition's accomplishments. Johnson has gone on to become executive director of the Green Door, a mental health rehabilitation program. Other staffers like Assistant Director Keith McKeown (and former Assistant Director Deborah Kahn), Roberta James and Jeanette Richardson brought great energy and insight into the process of organizing the Coalition. With the closing of the Coalition's doors, the members themselves will

carry the work of urging adoption of Coalition policies and disseminating the brochures and information packets the Coalition prepared over the years.

The Coalition's advocacy on jail issues, the need for its excellent materials, and the positive results of the 43 national organizations working together for jail reform will continue under the new structure.

In her remarks to the final meeting of the Jail Coalition, Federal Court of Appeals Judge Patricia Wald said, ". . . I, for one, refuse to accept the notion that the Coalition itself - the coming together, if you will, of over 40 organizations on a problem as big as the 'jail problem', is over. Or that those of you who have spilled your energies and your guts on it for 7 years - will now forget about it . . . a group like the Coalition that has worked so hard, agreed on so much - means as well as end - achieved important tangible victories, learned some acid lessons, doesn't just die - it lives on in the agendas, actions, and aspirations of its members. The problem has not gone away - you must not either. Court reform, its architect Judge Arthur Vanderbilt once said, is not for the shortwinded. Jail reform, I say, is not for the sprinters - it needs long distance runners." ■

The following organizations will provide Coalition services. For general jail information and referral to experts on specific issues, as well as copies of "Covering the Jail: Resources for the Media," write:

National Coalition for Jail Reform
c/o Program Resources Center
School of Criminal Justice
Rutgers University
15 Washington Street
Newark, NJ 07102

To obtain copies of the following Coalition publications, "Look at Your Jail: First Steps Toward Jail Reform", "The Public Inebriate: Jail is Not the Answer", "Jail: The New Mental Institution", "Women in Jail: Special Problems, Different Needs", "Removing the Chronically Mentally Ill from Jail: Case Studies", call or write:

NIC Information Center
1790 30th Street, Suite 130
Boulder, CO 80301
(303) 444-1101

To obtain copies of the brochure and resource packet, "Juveniles in Jail: The Wrong Combination", call or write:

Jim Brown
Community Research Center
505 E. Green Street, Suite 210
Champaign, IL 61820
(217) 333-0443

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The National Prison Project JOURNAL is designed by James True.

The Minnesota Correctional Facility-Oak Park Heights represents an enlightened effort to deal with difficult offenders. Warden Frank Wood and his staff are proud of the fact that Oak Park Heights was the first institution of its kind to receive American Correctional Association accreditation within the first two years of operation, and that it received the highest ranking of any institution in the country on a first-time audit.

Oak Park Heights Sets High Super-Max Standards

Frank Wood

On March 23, 1982, the Minnesota Correctional Facility-Oak Park Heights became operational and began to house the first group of inmates.

A UNIQUE DESIGN

The design of the Minnesota Correctional Facility-Oak Park Heights incorporates advanced technology and architecture into its security, correctional living environment and energy conservation. The \$31.8 million facility is located on a 160-acre site which includes a 60-acre secured area within its double-fenced perimeter. The institution's housing units are staggered along the building's exposed wall, which encircles both the main yard and smaller, separate athletic courts adjacent to each unit. This earth-sheltered facility consists of attached complexes, with housing on the lower two levels and an industry/program space above each unit. Arranged in a u-shape, built into a hillside, the complexes are connected by two traffic corridors on separate levels - one for staff only, the other for routine inmate and staff traffic. There is also a core administration building, a gymnasium, a security/control center and multi-use areas for other activities such as religious services and staff training.

The facility has self-contained complexes, which allow the separation of inmates into small, manageable and more compatible groups. The design provides improved security, safety and control, and permits an environment for good staff-inmate communication. Each complex is a self-contained unit which can be operated independently from the other units. It can easily be isolated if the security needs of the unit or institution so dictate. Each work area and living area has a secure control station in it affording a full view of the complex. Each station is manned in addition to those staff working in direct contact with the inmates. Staff rotate frequently during the shift from the control station to the direct contact assignment.

Within the separate complexes of

the institution is a complex with 10 medical beds and 32 mental health beds. The other seven housing complexes, including a control (segregation) unit, have capacities of 52 inmates each. These housing complexes have two levels of cells or rooms which open into day spaces containing facilities for food services, indoor recreation and other activities. Each complex also adjoins its own outdoor recreation area. The cells are all designed for one inmate and contain a sink, toilet, bed, concrete desk and shelves. Each room also has a narrow security window facing outside (within the walls) and a window within the door that faces the complex commons area. The general population cells are 70 sq.ft.; segregation cells are 80 sq.ft.; and medical/mental health cells are 150 sq.ft.

Warden Frank Wood talks with an inmate working in the Oak Park Heights kitchen.

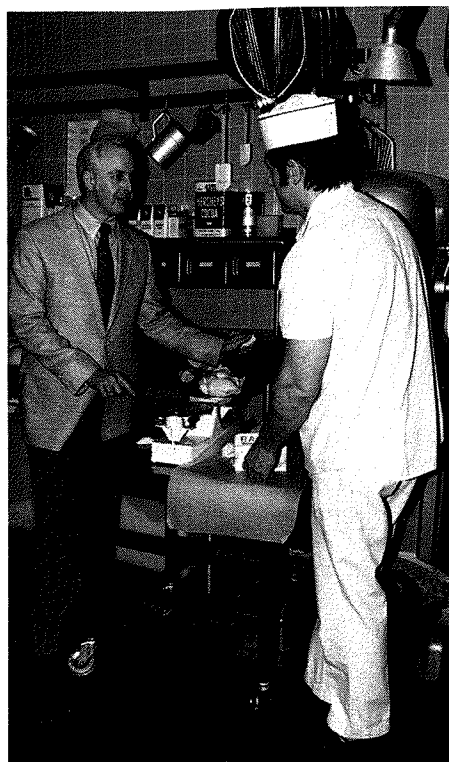


Photo courtesy of MCI-OPH

A REALISTIC MISSION

The primary mission of the institution is to operate Minnesota's maximum security correctional facility, placing the highest priority on public safety, while providing a secure, safe, clean, responsive, just and humane environment for inmates and staff. We are responsible for maintaining an environment which is conducive to and encourages the rehabilitation of those inclined to change, through emphasis on control, accountability, sensitivity and responsiveness to the real and imagined concerns of inmates and staff. Essential to that environment is a wide range of educational, vocational, treatment and work opportunities tailored to the needs of the inmate population, which provide full time, constructive assignments and structured leisure time activities. Those inmates who decide not to participate in constructive programming are provided with the necessary surveillance, supervision and control to ensure that they do not interfere with those who want to fully participate.

Our mission is to accept from the other adult male facilities, all inmates classified as maximum custody, or categorized as risks to the public. This includes those convicted of serious person offenses, high escape risks, and dangerous or serious management cases. Our program is designed to control, evaluate and facilitate the transfer of inmates to less secure facilities in the system after they have demonstrated a satisfactory adjustment over an established time period at Oak Park Heights. In those cases where the inmate does not make the desired adjustment, we maintain the necessary custody, control and program consistent with his identified needs until he meets our adjustment expectations or is released by proper authority.

In order to fulfill our mission, we must maintain a working climate where staff members at all levels are provided with training, supervision, encouragement, support and opportunities for varying assignments to help them reach their full personal and professional potential.

To be consistent with this goal and to follow through on the "sensitivity and responsiveness" that is part of that goal, we continually strive to ensure that inmates will be treated the way we would like to see a close relative or friend treated if he were incarcerated here.

There are some calculated risks in the operation of a humane facility with a dangerous population. We take those risks because we believe in what we are doing. We believe that the record docu-

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ments a significant decrease in violence with a very violent population. We have met our realistic expectations of reducing the frequency and seriousness of violence, and have experienced record intervals between the incidents we have had. We should all avoid creating unrealistic expectations for the public and the politicians. This in turn fuels the rhetoric and the political dialogue that is hurting so many states and systems. The only way to absolutely assure no escapes and no homicides is to keep the inmates locked up and prevent them from having direct contact with other inmates and staff. When the suicide rate becomes an issue, you could chain them to a wall or place them in four point restraints in their beds. You probably wouldn't have any homicides or suicides, but you would return to society some very real threats.

FULL PROGRAMMING

The institution's population has generally ranged between 360 to 370 inmates. By maintaining this population, we have found a number conducive to acceptable programming within the facility.

Inmates are involved in a structured, full day of program, including industry (which includes 3 of the complexes), education and institutional maintenance. Programming is also scheduled through structured recreation and a leisure time activity program, which involves individual and group activities. Recreational activities include inmates in each complex, as well as limited intramural recreation, involving no more than two complexes at one time in the gymnasium or the main yard.

The education program is delivered by contract through continuing education and extension with the University of Minnesota. This provides the administrative coordination of the six school consortium, offering classes on site at the institution. The schools, all of which have a long history of service at the Minnesota Correctional Facility-Stillwater, have provided the expertise and educational training that has led to the success of this program. By working closely together, this consortium puts on two major programs for the inmates at Oak Park Heights - one full time day program for the 52-man Education Unit, and one voluntary evening program for the men in the rest of the institution complexes. The day program includes a skills center/qualified instructor providing basic skills training on an individual tutorial basis, covering all skill levels from very remedial to college credit skill courses in math, spelling, writing, grammar, reading and vocabulary. G.E.D.

preparation in the skills center takes place with the aid of six Apple II's and two Control Data Corporation Plato terminals. In addition, a full time college program of 14 to 15 credits a quarter, is offered by regular or adjunct faculty members from the member schools. Through the education program, vocational programs are offered with instructors from vocational schools in technical areas such as electronics and drafting. Computer courses are offered on a regular basis and an art program is taught and supervised by an instructor from the University of Minnesota. Lastly, various short courses are held in job seeking and life coping skills. The evening program provides similar but less comprehensive educational opportunities for the remainder of the inmates.

The Treatment (Chemical Dependency and Sex Offender) Unit is a full time treatment environment. Complex #1 inmates participate in all routines of the institution. It is not a "mental health" or "medical unit." It is governed by all the policies and procedures that are afforded to the other institution residents. The program is designed to be very flexible. Our current program supports inmates as they evaluate themselves and set new behavioral goals. The program focuses on developing personal behavioral controls, changing addictive/abusive chemical use patterns, changing sexually addictive/abusive behavior patterns, educational achievement, vocational skill development, and development of a personal philosophy which can guide daily behavior. The program is designed to be completed very early in a man's stay in the Department of Corrections. There are other programs available for the transition to an inmate's home community. The Treatment Unit emphasizes daily living and personal responsibility. It is planned that all inmates will develop close, supportive relationships with each other as they participate in the group programs.

The Oak Park Heights Industry Program is operated with the latest equipment in order to provide up-to-date employment experiences for inmates. Working in a realistic industrial setting such as office products and garment manufacturing, inmates become acquainted with a variety of production and programs. Minnesota Micrographics is a full service microfilm shop, and includes a full line of vinyl and canvas notebooks, envelope imprinting, garment manufacturing, bookbinding and the manufacture of tab cards and file folders. In addition to providing work experience, the program gives inmates an opportunity to earn money based on their production and quality of workmanship. The industry's goal is to become self-sufficient,

thereby providing each inmate with a marketable skill at no cost to the taxpayer.

The Mental Health Unit at Oak Park Heights was created by Minnesota Statutes to provide in-patient psychiatric services to all Department of Corrections adult males. The only Department of Corrections cases that presently go to the State Security Hospital are those individuals who have reached the end of their present sentence but continue to need treatment. The Mental Health Unit staff offers such treatment programming as individual psychotherapy, chemotherapy, and group therapies which include: a) traditional group therapy; b) problem solving group; c) anger control group; d) rational thinking group; e) interpersonal skills group; f) goal directed group; g) daily community meeting; h) arts and crafts group. In addition, biofeedback and A.A. are part of this programming within the Mental Health Unit.

There is also daily recreation and educational programming within this complex. The Mental Health Unit staff has developed a sophisticated point system within the complex, whereby residents are given points for personal hygiene, room care and attendance at treatment activities for motivational purposes. They may use these points to rent radios and televisions, or buy candy and cigarettes. Disruptive behavior may also result in a resident being fined a specific number of points. Another important aspect of the health services unit is the close working relationship developed between correctional and clinical staff. This relationship has not only been highly effective within the unit, but has had a positive influence on the institutional environment.

WELL-TRAINED, QUALIFIED STAFF

As we fulfill our mission and commitment to the Department of Corrections by accepting high risk inmates from the other adult male facilities, we recognize the problems in managing that type of population. Incidents and problems are inevitable when approximately 85% of the inmates at this facility have been convicted of person offenses and over 1/3 of our inmate population has been convicted of a homicide-related offense. Because of the documented propensity that our inmate population has demonstrated toward solving problems with violence, staff has been well-trained and has demonstrated an unusually high level of professional control and restraint in the most provocative situations. Even under the most extreme provocation, staff has not resorted to violence, but uses only the force necessary to restrain an individual or group.

In Minnesota we choose to do what we're doing because 98% of those sent to our state facilities return to the community, and because what we are doing appears to be working for us. We are not perfect; we have incidents and we will have them in the future. We have, however, experienced extended periods between the incidents. We interpret this as success, given the tasks and challenges that our excellent staff faces every day. The combination of the executive, legislative and departmental support, along with the fiscal and personnel resources to do the job, are essential. The physical plant is an excellent tool, but the staff is really the primary ingredient in our "success." Without it you could have all the other ingredients, but in my judgment, you could not manage this population

without the intelligent, competent, restrained, and professional correctional officer.

Our approach to management of this very challenging inmate population over the last three years has been successful. This success is directly attributable to the excellent quality and the commitment and competence of the staff, the support and confidence of experienced and competent departmental leadership, and at this point, the cooperation of the majority of the inmate population. ■

Frank Wood, former warden of the Minnesota Correctional Facility at Stillwater, is a long-time employee of the Minnesota Department of Corrections.

We have also learned that the psychological and physiological effects of long-term close confinement can be serious.

trol Unit of the Federal Bureau of Prison's maximum security prison at Marion, Illinois, said, "In several instances, this criterion has been used to silence prison critics. It has been used to silence religious leaders. It has been used to silence economical and philosophical dissidents. And it has been used when no other rationale was available to justify incarceration in the control unit."²

Men and women are committed to maximum security prisons for different reasons—seriousness of the crime, prior criminal record, an escape attempt, or prison misconduct. What happens with staffing, programming, and management when such different types of offenders are confined? Too often, in the past, the answer has been no programming, repression, and living conditions equal to solitary confinement. In the Marion case, the court found that prisoners "were locked up in a closed-front cell 23½ hours per day. Little, if no, activity was offered to relieve this boredom . . .

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Super Max

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continue to violate the law in a serious manner or who have consistently broken the rules of more open correctional settings. Maximum security prisons or units are often troubled by serious management problems, by violence directed against prisoners and staff, and by inhumane conditions. We will see, however, that there are some high security prisons unaffected by these problems.

Who are these violent, dangerous, or habitual offenders who should spend long periods of time in very secure facilities? Much has been written about the difficulty of predicting dangerousness, the desire to be "safe" through over-prediction, and the false-positive problem that results.¹ One federal court, commenting on a general catch-all criterion for placing prisoners in the Con-

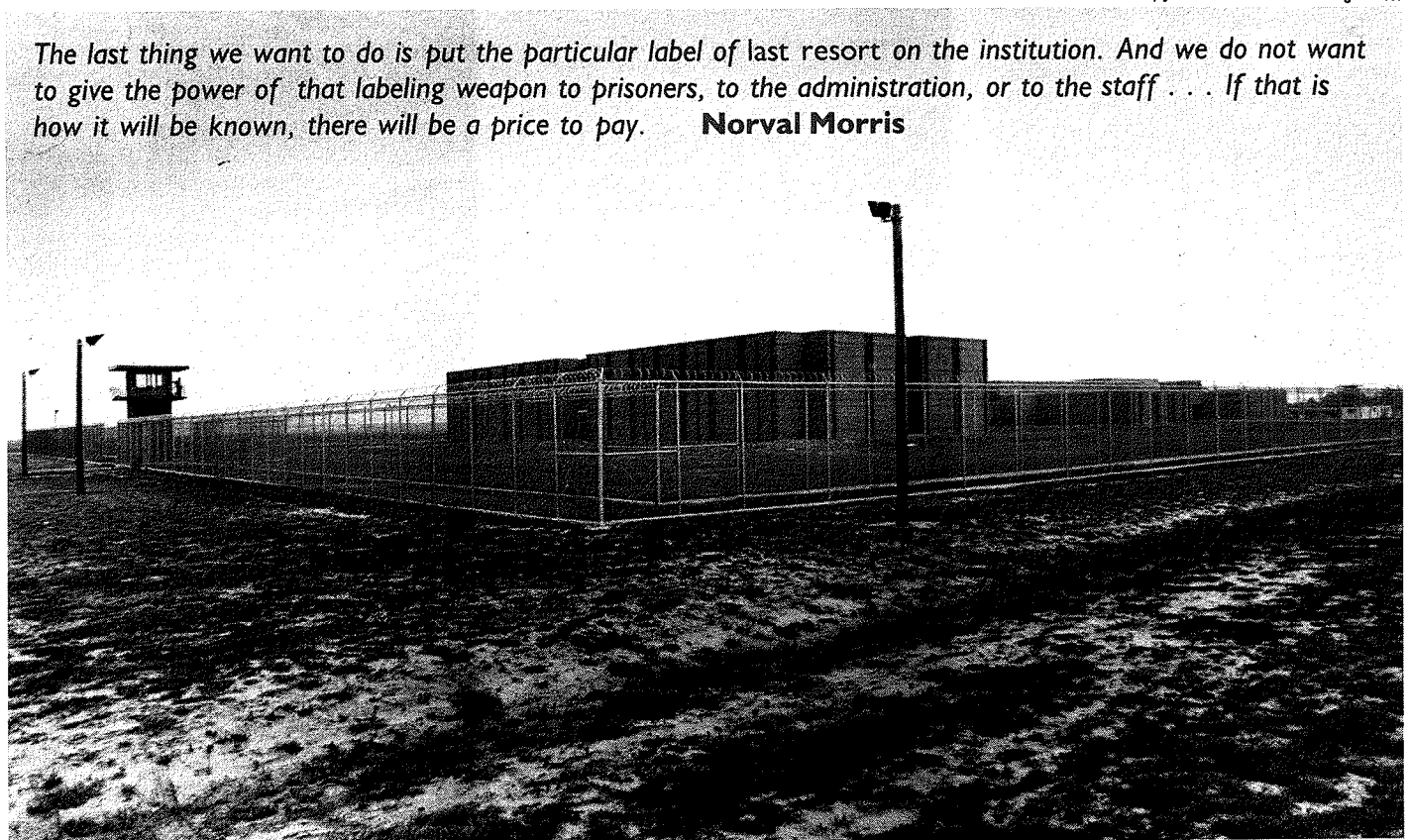
¹See, e.g. Norval Morris, *The Future of Imprisonment* (University of Chicago Press, 1974).

²*Bono v. Saxbe*, 450 F.Supp. 934, 943 (E.D.Ill. 1978).

The bleak landscape of the Arkansas Maximum Security Unit, Tucker, Arkansas

Photo by Joel Richardson - The Washington Post

The last thing we want to do is put the particular label of last resort on the institution. And we do not want to give the power of that labeling weapon to prisoners, to the administration, or to the staff . . . If that is how it will be known, there will be a price to pay. **Norval Morris**



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Meaningful contact with other persons was virtually nonexistent."³ In a case involving a similar "problem prisoner" unit in Georgia, a federal court said: "The most restrictive aspect of H2 is that the inmates are kept in their small individual cells almost all the time."⁴

We have also learned that the psychological and physiological effects of long-term close confinement can be serious.⁵ Again, in the Marion Control Unit case, the court recalled that "... Plaintiffs' uncontroverted evidence showed the debilitating mental effect on those inmates confined to the control unit ... "The sensory deprivations occasioned by use of the box cars [closed front cells], along with the lack of any idea of what could be done to be released from the control unit, resulted in both mental and physical deterioration. Simultaneously, unnecessary pain and suffering was the result."⁶ In the Georgia case, the court found that "... Long periods of lock up in a confined space, limited contact with others, continued and unexpected surveillance and limited exercise take a serious toll on the mental health of the inmates."⁷

In each of these cases, the very repressive confinement came hand in hand with a "behavior modification" program, formal or otherwise. Prison officials thought the programs would motivate prisoners to more acceptable behavior. However, in these cases, as in others, the programs were poorly designed, and based on increased punishment. They were destined to fail. A Federal Bureau of Prisons Professional Program Consultant, who helped design and operate the early 1970's controversial START (Special Treatment and Rehabilitative Training) program at Springfield, Missouri, described the program: "Project START has been developed for prisoners who have failed to adjust in normal institutional environments. While in this program, they will be confined to an isolated area until they have demonstrated consistently a potential to respond appropriately in a regular institution. Some inmates may never leave the program."⁸ (Emphasis added.)

Labeled as the worst or most dangerous offender and given the physical

The prisoner may then demonstrate even more of the very behavior that the administration is trying to change.

and psychological impact of harsh long-term imprisonment, the prisoner often becomes even more difficult to manage: it becomes a self-fulfilling prophecy. Some prisoners withdraw, become passive, refusing to do anything; others act out. One or the other kind of objectionable behavior may emerge, causing the imposition of greater restraints. The prisoner may then demonstrate even more of the very behavior that the administration is trying to change. The vicious cycle goes round and round.

The legal implications are quite serious. The courts have pierced the "treatment" label which prison officials use to cover what is essentially punishment, and punishment of a kind that goes beyond deprivation of liberty. Thus, in each case mentioned earlier—Marion, Georgia and Springfield—the courts found serious violations of the Constitution's prohibition against cruel and unusual punishment, and/or the Due Process Clause. They have enjoined certain practices. More recently, a legal challenge to Virginia's "super-max" at Mecklenburg, the scene of major and predictable disturbances in the summer of 1984, resulted in a consent decree ordering sweeping changes. (See "Judge

Halts Meddling With Access To Clients," Vol. 1, No. 3, Spring 1985.) A special large unit at the Arizona State Prison was the subject of a massive legal challenge which went to trial this spring. (The settlement negotiations in this case described in the Fall 1984 *JOURNAL* were broken off at the last minute by prison officials.)

The picture is not totally grim, however. There are some brighter spots; we begin this series with an article describing one of the more interesting and enlightened efforts to deal with difficult offenders in this country. Frank Wood, warden of the new maximum security prison in Oak Park Heights, Minnesota, describes the prison and its programs for "deep-end" offenders. In the Fall issue, the Governor of a new and innovative maximum security prison in Denmark will be sharing his views with us. Some skeptics may dismiss the European prisons as representative of countries too different from the United States and may argue that Minnesota is unusual among American states. Our view is that while differences among countries or states exist, they need not be complete barriers to change. National and even international standard setting is reducing those differences as well. The skills and policies required to operate a decent maximum security prison are essentially the same in all penal systems. If we never try to change, we never will change. ■

Violations in South Dakota Prison Lead to Lawsuit

Elizabeth Alexander

In April of 1983, inmate Roger Flittie of the South Dakota State Penitentiary in Sioux Falls, South Dakota, wrote a desperate letter to attorneys at the National Prison Project. The inmate class of plaintiffs was within a month of going to trial on a totality of conditions lawsuit, but they had no money for expert witnesses or other necessary trial preparation.

Inmate workers took all the X-rays. On an evening or weekend, they would not only take the X-ray, they would also read it.

The Project put together a team of experts to investigate. A corrections expert, a specialist in environmental health, safety and sanitation, and a spe-

cialist in internal medicine all reviewed operations at the Penitentiary. Their findings convinced us to enter the case.

Attempts to settle the case failed, and Judge Donald Porter rescheduled trial for June 1983. During the trial, the plaintiffs showed that the Penitentiary was overcrowded and poorly ventilated. Among the fire safety violations documented was the use of an antiquated locking system. Parts of the Penitentiary were over a century old. More than 1/3 of the inmates were double-celled, including inmates in the intake unit and those assigned to protective custody.

The institutional kitchen flunked a standard health and sanitation inspection. Records kept by the Penitentiary showed that random tests of pasteurization operations in some cases found some of the milk produced unfit for

³Id. at 946.

⁴Hardwick v. Ault, 447 F.Supp. 116, 121 (M.D.Ga. 1978).

⁵E.g., David A. d'Atri, "Measuring Stress in Prison," from *Confinement in Maximum Security*, edited by David Ward and Kenneth Schoen (Lexington Books 1981); Carl Clements, *Crowded Prisons: A Review of Psychological and Environmental Effects*, 3 Law and Human Behavior 217 (1979).

⁶Bono v. Saxbe, supra at 946-7.

⁷Hardwick v. Ault, supra at 125.

⁸Clonce v. Richardson, 379 F.Supp. 338 (W.D.Mo. 1974).

Female inmates . . . were even more isolated from the courts, since they had neither law books nor law clerks.

human consumption. The basement food storage area was pest and rodent-infested.

Inmate "nurses" at the Penitentiary provided a variety of medical services. On evenings and weekends, in the absence of civilian medical staff, inmates conducted medical examinations to determine whether staff should be called for a sick or injured inmate. Prisoners operated the medical and dental equipment, including oxygen tanks, asthmatic equipment and dental drills.

Inmate workers took all the X-rays. On an evening or weekend, they would not only take the X-ray, they would also read it. If the prisoner worker read the X-ray to show a "minor" break, he would wrap the break in an ace bandage and tell the patient to report to the infirmary when civilian staff were on duty. None of the inmate workers had any formal training for their duties.

. . . random tests of pasteurization operations in some cases found some of the milk produced [in the institutional kitchen] unfit for human consumption.

Indigent prisoners who needed dentures or partial plates had to pay for them themselves. One inmate with a severely deformed foot, which apparently could have been helped by surgery, was told that he would have to pay for his own shoes when he found that he could not wear the state-issued shoes. When an outside specialist ordered a relatively expensive medication for another prisoner, the prescription was not allowed in by an Assistant Warden.

Psychiatric care at the Penitentiary was woefully inadequate. The staff psychologist testified that in some cases, problems of physical deterioration related to psychological disorders were not followed up on, either by referral or treatment. The prisoner's health would thus continue to decline.

The Penitentiary had failed to carry out an earlier consent judgment requiring that inmate law clerks be trained for the law library. The staff also discouraged the clerks from helping other inmates prepare any action which challenged the Penitentiary or its staff. Female inmates at the Yankton Facility for Women were even more isolated from the courts, since they had neither law books nor law clerks.

Depo-Provera

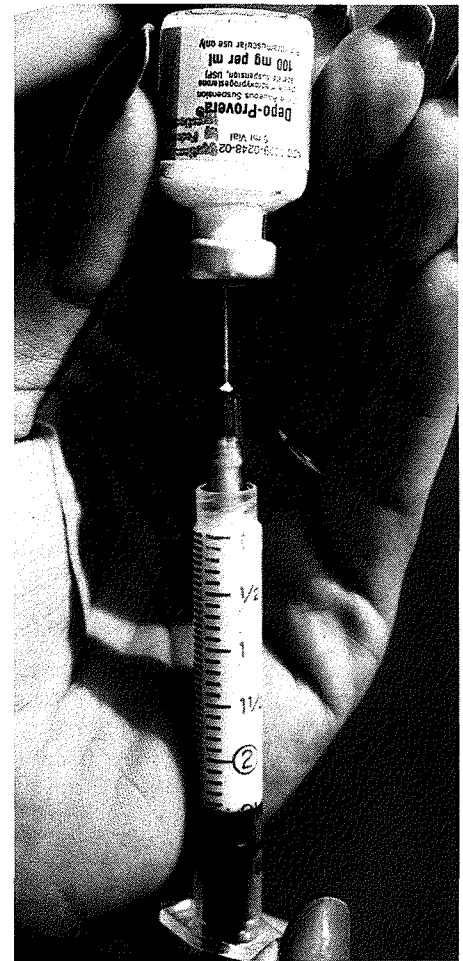
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Presently, there are only two FDA approved uses of the drug in the U.S.: first, for the treatment of certain metastatic cancers of the endometrium and kidneys; and second, under a provision of the Food, Drug and Cosmetic Act which exempts the individualized practice of medicine from regulatory scrutiny. The Hopkins Clinic recently obtained an Investigational Exemption for a New Drug (IND) from the FDA for a research study designed by Dr. Fred Berlin, a leading advocate for depo-provera use. The IND procedure provides for more stringent reporting and controls, and its absence has been a longstanding bone of contention between the FDA and the Public Citizen Litigation Group (a nonprofit consumer advocacy group). The Public Citizen group has also urged the FDA to take stronger protective action, such as requiring labeling or package inserts pointing out the drug's experimental nature and known side effects. The FDA has adopted a case-by-case review policy for depo-provera programs which treat sex offenders.

Proponents of depo-provera believe that the drug can help men with sexual deviation syndromes, called paraphilias, control their behavior.² The drug has

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²The term paraphilia means attraction to deviance. The major subcategories of paraphilia as identified by the American Psychiatric Association are: pedophilia, exhibitionism, transvestism, voyeurism, zoophilia, fetishism, exotic sadism,



Depo-provera being prepared for injection into the arm of an offender in order to control sexual behavior.

On May 31, 1984, Judge Porter issued his decision, which is reported under the name *Cody v. Hillard*, 599 F.Supp. 1025 (D.S.D. 1984). He found that the totality of conditions at the Penitentiary violated the Eighth Amendment ban on cruel and unusual punishment and that the rights of male and female inmates to have reasonable access to the courts had been violated. Judge Porter gave the defendants 120 days to develop a suitable plan to cure the numerous constitutional violations he had found.

Prisoners operated the medical and dental equipment, including oxygen tanks, asthmatic equipment and dental drills.

The defendants failed in their attempts to persuade Judge Porter, or the Eighth Circuit Court of Appeals, to stay the order.

Although there is some dispute as to whether the defendants' remedial

plan fully satisfies Judge Porter's order, the defendants are making most of the necessary corrections. Fire safety improvements in the cellhouses are proceeding, and food services operations are much improved. All double celling should end by June 1985. Prisoners no longer provide health services. Medical and dental care which meets community standards will be provided to prisoners. A new psychiatric facility will open shortly to provide acute and intermediate level psychiatric care. Psychiatric and psychological staffing at the Penitentiary has been increased, even though the inmates with the most serious needs will be moved to the new facility.

The South Dakota case demonstrates the continuing importance of litigation to redress intolerable conditions in our nation's prisons. Because prisoners and their loved ones have no political clout, prison conditions are too often allowed to deteriorate below the level of human decency. It is more critical than ever that courts continue their role as the defenders of the Constitution for all. ■

—continued from previous page.

been described by Dr. Berlin as a "sexual appetite suppressant"³ and termed chemical castration by others.⁴ Depo-provera lowers the level of testosterone in the blood by inhibiting the release of luteinizing hormone (LH), a chemical messenger secreted by the pituitary gland which stimulates the testicles to produce androgen. The effects reported by men on depo-provera include: a decrease in aggressive fantasies, decrease in the ability to have an erection, decrease in ejaculation, and some shrinkage of sex organs. Men on depo-provera report that it helps them control their urge to act out sexual desires.

Men receiving depo-provera treatment receive weekly injections ranging from 100 mg to 800 mg (by comparison, the recommended dosage in depo-provera's use as a contraceptive is 150 mg every 3 months). Under the Johns Hopkins program, the men receive psychotherapy in conjunction with the injections, a practice strongly encouraged by researchers.

According to data collected in the National Disease and Therapeutic Index (NDTI), approximately 3,000 prescriptions for depo-provera were written between October 1982 and September 1983 to treat "sexual deviation."⁵

In the United States, leading the use of depo-provera in treatment of sex offenders have been researchers at the Biosexual Psychohormonal Clinic at Johns Hopkins University, Baltimore, Maryland. The Clinic has been experimentally using the drug on both incarcerated and free world men since 1966. Other places which have used, or are using, depo-provera to treat sex offenders include: the Sex Offender Unit, Oregon State Hospital (Salem, Oregon); New Hampshire State Hospital (Concord, New Hampshire); Isaac Ray Center (Chicago, Illinois); Gender Clinic, University of Texas Medical Branch (Galveston, Texas); Northwest Treatment Associates (Seattle, Washington); Rosenberg Paraphilia Treatment Clinic (Galveston, Texas); Ka Cor Associates (San Diego, California). In 1984, 192 men were treated with depo-provera by the Johns Hopkins Clinic; 20% of these men were incarcerated at the time of treat-

erotic masochism, and paraphilic or compulsive rape. *Diagnostic and Statistical Manual of Mental Disorders*, 3rd ed. (DSM-III). Task Force on Nomenclature and Statistics of the American Psychiatric Association, LI-L33, 1978.

³"Drug Helping Sex Offenders" by Kenneth Weiss, p. 1, *Montgomery Journal*, 3/28/84.

⁴See, e.g., *People v. Gauntlett*, No. 76435, Mich. Ct. App. (5/17/84), released 8/2/84, reported in 35 Cr.L 2403 (9/5/84).

⁵Letter from Eric Glitzenstein, William Schultz and Alan Morrison, Public Citizen Litigation Group, to Mark Novitch, FDA, June 22, 1984.

ment; 80% were on probation or parole.⁶



STEMMING PERHAPS from a frustration with the criminal justice system's inability to prevent crimes involving sexual aggression, the idea of using depo-provera to control behavior has generated enormous interest. The definition of what offenses should be treated, however, varies. For instance, the Oregon Legislature recently passed a bill initiating a pilot program in which drugs are to be used to "inhibit the psychological or physical inclination toward forcible sexual compulsion."⁷ The bill restricts depo-provera use to rapists. Yet in the Hopkins Clinic, depo-provera is used to "treat" behaviors such as transvestism, sadomasochism and peeping-toms, along with "compulsive rape" and pedophilia.

The dangerous irony underlying the interest in depo-provera is that the drug has simply not been proven effective: the fundamental question of "does it work?" remains unanswered. There have been no controlled double-blind studies of the drug (studies in which a control group receives another drug which produces the same side effects but not the therapeutic effect being studied, thus allowing behavioral changes reported by subjects to be evaluated more objectively).⁸ There have been only a handful of studies dealing with long-term therapeutic effects, and their results have not been as impressive as researchers claim.⁹ There have been no studies of long-term side effects, even though potentially serious side effects are quite numerous. As Dr. Berlin candidly noted, there is question as to the "optimal dosage . . . long-term side effects, compliance rates, and precise long-term recidivism percentages."¹⁰

Even the question of which syndromes depo-provera can control remains unanswered. As the Connecticut Department of Corrections Depo-Provera Study Group concluded in its report, "there is very little research to

⁶Information obtained from Dr. Gregory Lehne, at Johns Hopkins Clinic on March 5, 1985.

⁷Senate Bill 284, 62nd Oregon Legislative Assembly, 1983 Regular Session. The Bill authorizes the sentencing court and the State Parole Board to make participation in the program a condition of parole.

⁸This has been acknowledged by Fred Berlin, the leading depo-provera proponent. Berlin et al., "Sexual Deviation Syndromes," 149 *Johns Hopkins Medical Journal* 119, 123 (1981).

⁹See e.g., analysis of results reported by Dr. Fred Berlin in his studies, in a letter by Public Citizen Litigation Group to Robert Brooks, Johns Hopkins, dated 10/17/83.

¹⁰Berlin, F.S., "Pedophilia," manuscript to be published in *Medical Aspects of Human Sexuality* (N.Y. 1984), pp. 8-9.

support the claim that aggressive rapists can be controlled by this therapy."¹¹

Relying in part on their concern for the drug's safety, the difficulty of informed consent in an institutional setting and on the lack of community resources to handle post-incarceration treatment, the Study Group recommended that the department not use the drug. Researchers themselves acknowledge that without a strong willingness to change on the part of the man being treated, the drug and therapy are ineffective.

Another question raised by the use of depo-provera on prisoners is that of informed consent. Informed consent to medical procedures is generally acknowledged to have three elements: 1) the legal capacity to consent; 2) an understanding of the procedure to be employed, risks involved, and alternatives; and 3) voluntary assent.¹² There is an inherent lack of voluntariness inside the coercive environment of a prison. Prisons are entirely controlled environments, in which the variables among which a prisoner can choose are themselves established by prison administrators. Since a major motive for prisoners is the possibility of early release, a program which is perceived as leading to release is likely to be undertaken regardless of the consequences. When a program such as depo-provera "treatment" is presented as a therapy rather than as experimental research, the incentive to embrace it despite attendant risks is even greater. Indeed, judging from Johns Hopkins treatment statistics the most frequent use of depo-provera, as a condition of probation, involves no choice on the part of the man.

The seriousness of this coerced consent is evident when the side effects to depo-provera are considered. Animal studies have shown that the drug causes cancer in dogs and monkeys at dosage levels far lower than those given to male sex offenders.¹³ Other reported side effects include the following: hypertension, phlebitis, weight gain, hypoglycemia, insomnia, nausea, cold sweats, change in weight, nightmares, hair loss, and fatigue. When these effects are coupled with the fact that the behavior of a person on depo-provera can only be affected as long as he remains on the drug, the long-term consequences for men receiving this treatment become apparent.

¹¹Report of the Depo-Provera Study Group, Connecticut Department of Corrections, 340 Capitol Avenue, Hartford, CT 06106 (October 4, 1983), p. 5.

¹²Rada, R., "Legal Aspects in Treating Rapists," 5 *Criminal Justice and Behavior* 369 (1978). See also, *Bailey v. Lally*, 481 F.Supp. 203, 220 (D.Md. 1979).

¹³National Women's Health Network, Depo-Provera Information Packet.

In *Kaimowitz v. Department of Mental Health of the State of Michigan*,¹⁴ the court was faced with the issue of whether an involuntarily confined mental patient could consent to psychosurgery designed to cure his aggressive behavior. The court held that the consent was invalid given the experimental status of the surgery, the substantial danger it posed and the "particularly vulnerable" position of the inmate.¹⁵ In *Kaimowitz* the court also held that mental processes are constitutionally protected. Therapy such as psychosurgery, which intrusively alters or interferes with a person's mental process, violates the right to privacy of mind which is implicitly protected by the First Amendment guarantees of free speech and expression. Arguably, depo-provera effects a similar intrusion.

A recent case in which the defendant was sentenced to receive depo-provera points out a number of other problems with the drug. The case ironically involved one of the heirs to the Upjohn pharmaceutical fortune, Roger Gauntlett, who pled guilty to charges of sexually molesting his step-daughter and stepson. The sentence called for five years of probation, with the first year to be served in the county jail, payment of the county's expenses, and "castration by chemical means patterned after the research and treatment of the Johns Hopkin[s] Hospital . . . [and] continue[d] . . . for the five years of your probation . . ."¹⁶

The Michigan Court of Appeals struck down the sentence as "an unlawful condition of probation"¹⁷ based upon state law. The court further held that "the Depo-Provera treatment prescribed by the trial judge also fails as a lawful condition of probation because it has not gained acceptance in the medical community as a safe and reliable medical procedure."¹⁸ The court cited a host of other problems with the sentence including practical "impossibility of performance," and "the problem of informed consent."¹⁹ Although the court in *Gauntlett* refused to reach the Eighth Amendment issue raised by the defendant, it held, in an interesting twist, that the leniency of the probation sentence

¹⁴Civil Action No. 73-19434-AW, Circuit Court for Wayne County, 42 U.S. Law Week 101 (1973).

¹⁵But see, *Bailey v. Lalley*, 481 F.Supp. 203 (D.Md. 1979) (holding that consent of prisoners to medical research program was voluntarily given).

¹⁶*People v. Gauntlett*, Nos. 76435, 76564, 76568 (Michigan Court of Appeals, 5/17/84), p.5. The sentencing judge also suggested that defendant contribute money for research and treatment of sex offenders.

¹⁷*Id.*, p.6.

¹⁸*Id.*, p.9.

¹⁹*Id.*, p. 12.

Swedes See U.S. Death Penalty As Premeditated Killing

Gunnar Marnell

"Do you really mean we were that uncivilized as late as 1880?" That question was asked last summer by an elderly lady who had come to see an exhibition in a local museum, originally used as a courthouse. My wife and I happened to witness her indignant reaction, when the guide told the visitors that offenders had been executed on the hill behind the courthouse until 1880. I couldn't withhold the truth from the group: the last execution in Sweden took place as late as 1910 and not until 1920 was the death penalty abolished. I could also have

added that nowadays a life sentence after commutation, as a rule, means on an average about seven years of imprisonment.

Of course you may, for instance, as a first reaction to a violent crime, hear people advocate the introduction of the death penalty. But it isn't likely that anybody in a responsible position would raise the question today. When some conservative members of our Parliament about 30 years ago brought up a bill on reintroduction of the death penalty, it

—continued on next page.

Gunnar Marnell recently retired after a long career with the National Prison and Probation Administration in Sweden. He was Superintendent of the Hall Prison, and at the time of his retirement was Director of the Stockholm Correctional Region of the National Administration. He was a Visiting Fellow at the Center for Criminal Justice at Harvard University, contributes regularly journal articles about Swedish penal policy and now works actively for the Swedish Section of Amnesty International.

itself "shocks our conscience because it is so significantly disproportionate to the sentence generally imposed upon similarly situated defendants."²⁰ A state appeals court in South Carolina recently invalidated a sentence of surgical castration against three convicted rapists, holding that it was cruel and unusual punishment. The court held that "castration, a form of mutilation, is prohibited by Article I §15" of the state constitution.²¹



THE EFFICACY of depo-provera as a tool to control sexual behavior is at best questionable. It is an experimental drug, gaining a credence far greater than its scientific foundation merits at this time.

The premise that sexual behavior can be controlled chemically begs the question of whether or not it should be controlled. To answer yes to this question vastly increases the state's power to intrude upon and dictate the lives of prisoners, and opens the door for even more coercive experimentation. The horrifying reality of crimes against women, like rape and battery, and of forcible assaults against children will, sadly, not disappear with the injection of depo-provera into a few

dozen men, whose behavior may or may not change. Deeper cultural solutions to violence against women and sexual dysfunction must be pursued.

The suggestion that depo-provera can help society control rapists (although it is euphemistically phrased in terms of helping rapists control themselves) rests on two key assumptions: that rape is in essence a sexual act, and that rapists are abnormal, even oversexed men. Both assumptions are contrary to feminist analysis which sees rape as primarily an act of domination and aggression against women. The frequency of the occurrence of rape (one out of three women are raped during their lives) explodes the myth that rapists are a handful of abnormal men. To forcibly lower a man's sex drive is not synonymous with control of his aggressive impulses. Long-term recidivism studies which track freed rapists who receive depo-provera to see if they in fact rape again are needed. The results of such studies would not, however, be entirely accurate since most rapes are not reported and most reported rapes do not lead to arrest, much less conviction. Since studies indicate that depo-provera is effective only as long as it is taken, there is no surety that behavior will remain changed if injections are discontinued.

If men choose freely, without the inducement of benefits like probation or parole, to undergo drug treatment to change their behavior, that is their choice. But the state and the courts cannot be allowed to force such a course upon them. ■

²⁰*Id.*, p.13. The judges remanded the case to the trial court, holding that the defendant opened himself up to the imposition of a greater sentence by challenging the severity of the initial one.

²¹*State of South Carolina v. Brown, Braxton and Vaughn*, opinion No. 22235 (Supreme Court 2/13/85).

—continued from previous page.

caused a rather painful attention. The leading conservative newspaper was among the most unmerciful critics.

So I dare say that in Sweden we have a firmly rooted resistance to the death penalty. The explanation is simple: the death penalty contrasts in such an obvious way with the basic values of free democracies, first and foremost the right to life. Isn't it significant that Turkey, the only not true democratic state in Western Europe, is also the only one that still practices the death penalty?

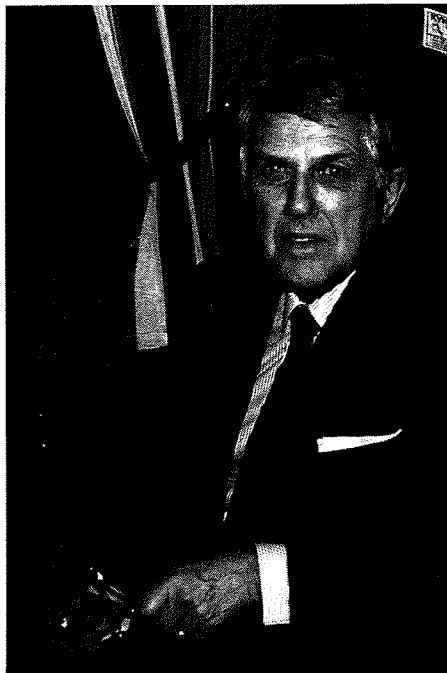
"Free democracies," that's exactly it.

Ever since the old days when the first Scandinavian immigrants arrived in the big Western country, we in our countries have had a great interest in the U.S. For generations we have looked upon and expected the U.S. to be the leading free democracy of the Western world. The development of your country has therefore always seemed very important to us and we have been anxious to get information of what is going on there even when the development has been disappointing. There cannot, of course, be any balance at all between our interest in your big and important country and yours in little Sweden with a population less than 4% of that of the U.S. In fact, we sometimes feel that in the eyes of the ordinary American, Sweden is hardly "on the map." It is mixed up with the other Scandinavian countries or often with Switzerland, thanks to the sound similarity.

So while your mass media very seldom bring any news from Sweden, we daily receive a flow of information of American life, supplied by correspondents but also by the Swedish News Agency, TT. Naturally the information cannot cover everything. A choice is necessary, especially for the Swedish News Agency. But, interestingly, they have so far chosen to distribute news about each execution in the U.S. In so doing, I think they act in accordance with the basic values of a free democracy. They continually report not only the name and age of the offender concerned, but as a rule also his crime, the date of the planned execution, the town and the prison where it is going to take place. This is mostly published in our 140 daily newspapers. Information about executions that have provoked special attention is often also broadcast. When information about executions in other countries is available that is also forwarded. But as we all know, open information is mostly just Utopian in countries outside the Western world.

Thanks to this coverage by the Swedish news media the Swedish general

Photo by Al Bronstein



Gunnar Marnell, a leading Swedish spokesman against the death penalty.

public is well aware of the sad fact that, after a long period of no executions, the U.S. a couple of years ago resumed the gruesome practice. And we now face the fact that the number of executions is increasing. To our astonishment this happens in spite of the classical workings of the Eighth Amendment of the American Constitution, which forbids "cruel and unusual punishment" and contradictory to the United Nations Declaration of Human Rights that says "Everyone has the right to life, liberty and security of person," (Art. 3.) and "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (Art. 5.)

Of course it is true that United Nations declarations are followed differently in different countries according to political, financial and cultural differences. It is also well known that the constitutions of politically unstable states may be drastically changed due to a sudden "coup d'etat."

But the U.S.? To us it seemed inhuman enough that American judges in spite of the Eighth Amendment did sentence people to death, and that those sentenced could be kept in uncertainty in the death rows for years. If anything, that is a cruel punishment! Anyhow, as long as there is life there is hope. The decision, however, by a conservative majority of the Supreme Court to declare the death penalty as not being "cruel or unusual punishment" was incredible and shocking to us. We know that this decision and the change of practice that has followed have made many people in the U.S. very upset and

unhappy. All the same it did not seem to arouse that enormous attention in your country that we in Sweden had expected. And it still does not seem to be a question of very great importance. I may be wrong, but as far as I could follow the Presidential campaign last fall -and it was very well covered by the Swedish mass media - none of the candidates had to answer a single question about the death penalty. In my opinion the attitude of a future president on this question must be of utmost importance. Not that he, according to your Constitution, is allowed to intervene into the judicial power, but he has the prerogative to nominate the members of the Supreme Court with their right to interpret the Constitution and to remain in office for life. The result of the composition of the Supreme Court has become obvious by the interpretation that, in plain language, society has the right of premeditated killing of fellow human beings.

From a moral and human point of view that is a terrible right and very frustrating for all those in our country who still would like to look upon the U.S. as a free democracy. The greatest frustration, however, I think you can find among the considerable number of people dedicated to human rights. Among those is the Swedish Section of Amnesty International, which is in the lead in combating the death penalty. In the year 1977 Amnesty International held a conference on "The Abolition of the Death Penalty" in Stockholm. The over 200 delegates came from Africa, Asia, Europe, the Middle East, North and South America and the Caribbean region. The conference finished by adopting the "Declaration of Stockholm," from which I quote:

- The death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life.
- Execution is an act of violence, and violence tends to provoke violence.
- The imposition and infliction of the death penalty is brutalizing to all who are involved in the process.
- The death penalty has never been shown to have a special deterrent effect.
- Execution is irrevocable and can be inflicted on the innocent.
- It is the duty of the state to protect the life of all persons within its jurisdiction without exception.

That the Amnesty message has gotten a strong response from people in our country is mirrored by the ever-growing number of members from all kinds of trades and professions. Right now the

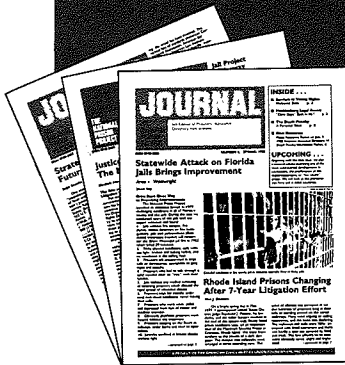
Swedish Section has about 30,000 paying members. To a large extent those also voluntarily take on different tasks, like participating in the 300 working groups, each engaged in individual prisoners' cases in different countries. There is also a special Action Group against the death penalty. Amnesty enjoys a very wide press coverage in Sweden. Its name is well-known and respected all over the country.

To summarize, why do people in Sweden care about the death penalty in the U.S.?:

- because we live in a welfare state with concern for all people and with adherence to the basic values of free democracies, first and foremost the right to life;
- because since long ago we have special bonds to the U.S., the country that once received so many of our people and gave them a home and a future, and where most of us still have relatives and friends;
- because for a long time we have appreciated the U.S. as a free democracy with basic values similar to ours;

- because we are continually well-informed of what happens in the U.S. and cannot help feeling concerned and sorry to notice the development towards less respect for life;
- because in this time we badly need the U.S. in the struggle for human rights, threatened all over the world;
- because we hope and believe that one day our voices will be heard in the U.S. and the respect for life restored. Didn't little David once upon a time, against all odds, conquer the giant Goliath? ■

PUBLICATIONS



The National Prison Project JOURNAL, \$15/yr. \$2/yr. to prisoners. Back issues, \$1 ea.

The Prisoners' Assistance Directory, the result of a national survey, identifies and describes various organizations and agencies that provide assistance to prisoners. Lists national, state, and local organizations and sources of assistance including legal, library, medical, educational, employment and financial aid. 6th edition, published January 1985. Paperback, \$15 prepaid from NPP.

Offender Rights Litigation: Historical and Future Developments. A book chapter by Alvin J. Bronstein published in the **Prisoners' Rights Sourcebook** (1980). Traces the history of the prisoners' rights movement and surveys the state of the law on various prison issues (many case citations). 24 pages, \$2.50 prepaid from NPP.

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The National Prison Project Status Report lists each state presently under court order, or dealing with pending litigation in the entire state prison system or major institutions in the state which deal with overcrowding and/or the total conditions of confinement. (No jails except District of Columbia). Periodically updated. \$3 prepaid from NPP.

Bibliography of Women in Prison Issues. A bibliography of all the information on this subject contained in our files. Includes information on abortion, behavior modification programs, lists of other bibliographies, Bureau of Prison policies affecting women in prison, juvenile girls, women in jail, the problem of incarcerated mothers, health care, and general articles and books. \$5 prepaid from NPP.

A Primer For Jail Litigators is a detailed manual with practical suggestions for jail litigation. It includes chapters on legal analysis, the use of expert witnesses, class actions, attorneys' fees, enforcement, discovery, defenses' proof, remedies, and many practical suggestions. Relevant case citations and correctional standards. 1st edition, February 1984. 180 pages, paperback, \$15 prepaid from NPP.

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Prisoners' Rights 1979. Course handbooks prepared for the Prisoners' Rights National Training Programs held January-March 1979. Includes articles, legal analyses, and litigation forms. Prepared by the staff of the National Prison Project. Available in paperback. \$35 per set, from the Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019. 2 Vols., 1163 pages. This set, plus **Representing Prisoners** (below), can be purchased for \$40.

Representing Prisoners. The course handbook prepared for the Prisoners' Rights National Training Programs held in June and July 1981. Includes articles, legal analyses, and litigation forms. Prepared by the staff of the National Prison Project. Available in paperback from the Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019. 1 Vol., 980 pages. \$35.

ACLU Handbook, The Rights of Prisoners. A guide to the legal rights of prisoners, pre-trial detainees, in question-and-answer format with case citations. Bantam Books, April 1983. Paperback, \$3.95 from ACLU, 132 West 43rd St., New York, N.Y. 10036. Free to prisoners.

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HIGHLIGHTS

The following are major developments in the Prison Project's litigation program since January 15, 1985. Further details of any of the listed cases may be obtained by writing or calling the Project.

Abbott v. Richardson - This is the national class action which challenges the mail and literature policies of the Federal Bureau of Prisons. On February 6 we filed our appellate brief and our case will be argued in the September term of the court of appeals.

Arias v. Wainwright - This is the statewide jail suit challenging conditions in Florida's jails. A court order was entered awarding plaintiffs attorneys' fees for compliance monitoring.

Black v. Ricketts - This case challenges conditions at the Administrative Segregation Unit of the Arizona State Penitentiary. Settlement was reached on May 9, and is pending approval by the court.

Brown v. Sialoff - This case challenges conditions and practices at the super-maximum security prison, Mecklenburg Correctional Center, in Virginia. A settlement agreement was entered into which abolishes their behavior modification program and affects a wide range of conditions and practices.

Bush v. Viterna - This is a state-wide class action challenging certain actions of the Texas Commission on Jail Standards in regulating the conditions and practices in all of Texas county jails. The defen-

dants appealed the favorable recommendations we had received from the Magistrate on the state's motion to dismiss and we argued the appeal before the district court in February. We are still awaiting a decision.

Canterino v. Wilson - This case challenges conditions at the Kentucky Correctional Institution for Women. We received an order from the judge awarding attorneys' fees and costs. The defendants have moved for reconsideration.

Delgado v. Cady - After challenging overcrowding and double celling at the Waupun Correctional Institution in Wisconsin, plaintiffs were awarded attorneys' fees in March.

Duran v. Anaya - Due to continuing findings of non-compliance in this New Mexico state-wide conditions case, we filed a motion seeking contempt and appropriate sanctions.

Flittie v. Solem (reported as *Cody v. Hillard*) - This case challenges a variety of conditions at the South Dakota State Penitentiary. On February 15 the parties presented a proposed comprehensive remedial order to the judge which commits the defendants to keep the prison population at 95% of its capacity and to provide legal access. We are awaiting a decision.

Garza v. Heckler - Challenges the 1983 Amendments to the Social Security Act which denies retirement benefits to incarcerated felons. We filed our dis-

positive motion for summary judgment in January.

Harry P. and Gerald M. v. Dupuis - Challenges conditions at the New Hampshire training school for juveniles. The New Hampshire Supreme Court ruled that the state must adhere to the 107-person population capacity recommended by the Fire Marshal.

Spear v. Aryoshi - This case challenges conditions at the Oahu Community Correctional Center for men and the Hawaii Women's Correctional Facility. The defendants filed a motion for summary judgment and we filed our response. The motion was heard on April 11 and defendants' motion was denied.

Terry D. v. Rader - Challenges conditions at six juvenile institutions in Oklahoma. The judge ordered defendants to pay certain costs owed plaintiffs.

Witke v. Crowl - After challenging conditions at the North Idaho Correctional Institute for women, a stipulated settlement agreement was signed by all parties. The attorneys' fees and costs were settled as well.

During this period the National Prison Project received \$48,966 in attorneys' fees and costs, in the following cases: Arias v. Wainwright, Delgado v. Cady, and Palmigiano v. Garrahy. These fees and costs help make up part of the Prison Project budget and enable us to continue our work. ■

National Prison Project

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