JOURNAL

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This issue we begin an exclusive four-part series on alternatives to incarceration. Russ Immarigeon takes a fresh look at the subject, and shows that public opinion, surprisingly, favors alternatives to incarceration.

For Detained Cubans Freedom's Still a Broken Dream

Mary E. McClymont

Give us your tired and weak
And we will make them strong
Bring us your foreign songs
And we will sing along
Leave us your broken dreams
We'll give them time to mend
There's still a lot of love
Living in the Promiseland
—Sung by Willie Nelson

Imagine the following situation: A government has taken a group of 1,800 people, locked them up and, for all practical purposes, thrown away the key. Not only have these people been locked away indefinitely, with no hope of release in sight, they have been confined to one of the most severe and antiquated prisons in the country under some of the worst living conditions any 20th century prison has to offer. Add the facts that these people remain incarcerated although virtually none of them have been convicted of any crime, and that there has been no reliable showing of a likelihood of danger to the community.

At first glimpse, one might guess that the country in question was some recognized human rights violator such as

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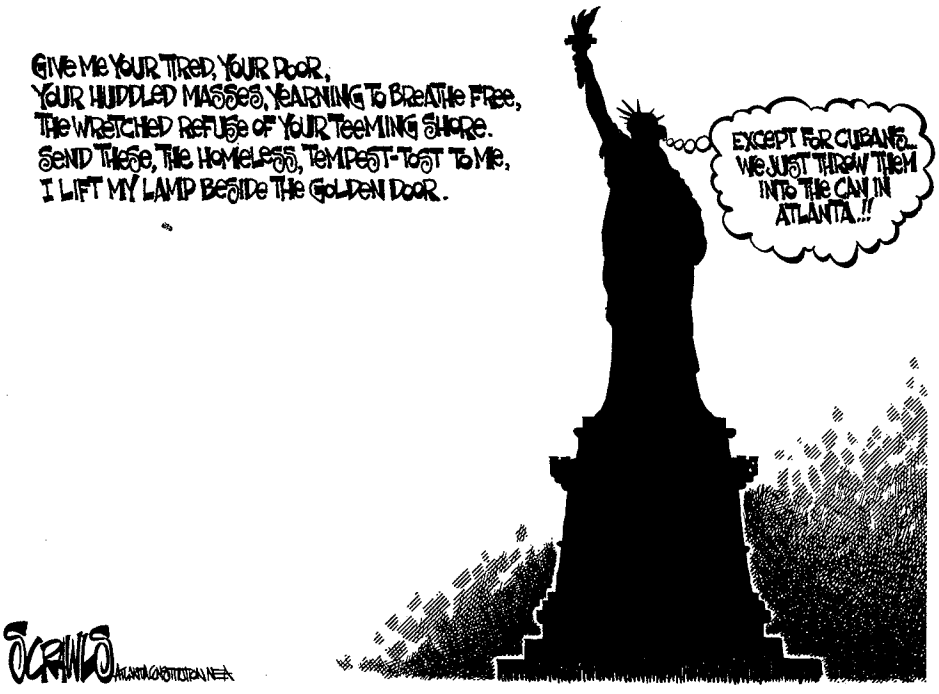

Surveys Reveal Broad Support for Alternative Sentencing

Russ Immarigeon

Jail and prison populations across the country are growing larger and larger.[1] Some jurisdictions understand that they can't solve correctional crowding problems simply through a building program designed to increase the penal system's housing capacity. However, few places on either local or state levels have instituted a comprehensive program designed to shift a significant part of their institutional population to community-based settings.

Among the barriers blocking the implementation of system-wide reform is the apparently "tough mood" of public opinion. Thus, in recent years legislators and criminal justice policymakers have shaped correctional policy according to what they see, or claim to see, as the public's active interest in society's being "tough enough" in its response to the criminal offender.

Two recent public opinion surveys argue that previous studies failed to sep-

—*continued on page 2*

[1] Since 1972, the nation's prison population has increased from 175,000 to over 500,000. Based on 1984 data, the capital cost for the additional 325,000 beds using a low $50,000 average cost is over 16 billion dollars, plus a staggering long-term cost for debt financing. At the $17,000 national average, the annual operating cost for these additional prisoners is over five and one half billion dollars. (Source, *The Corrections Yearbook*, Criminal Justice Institute, 1985.)

INSIDE . . .

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Recent studies indicate that legislator and policymaker perceptions may be out of line with public opinion.

—*continued from front page*

arate public views concerning violent and non-violent offenders or to supply adequate information about specific alternative sanctions. Partially as a result of these shortcomings, these surveys further argue, public opinion has been mistakenly seen as simply demanding imprisonment for more and more offenders. These surveys' findings seriously question policymaker assumptions about public opinion, and suggest important leads for the development of future correctional policies.

New Surveys

In April of 1986, findings were released from the University of South Carolina's *1986 Fear of Crime Poll*, a statewide survey of 1,218 citizens. Dr. Gene Stephens, the study's director, said that "given a choice between imprisonment or community-based alternatives for non-violent offenders, more than 80% of the respondents chose community-based programs—restitution, community service and closely-supervised probation." Moreover, the survey found that 53% of those interviewed supported the early release of non-violent offenders to reduce prison crowding, while 54% accepted the use of electronic bracelets as an alternative to prison.

While other public opinion polls have shown citizen support for imprisoning criminal offenders, Dr. Stephens argues that they have not distinguished between violent and non-violent offenders, and they have not assessed appropriate non-incarcerative sanctions for non-violent offenders. "It has just been assumed that one had to build more prisons to house more criminals," Stephens said.[2]

In May 1986, the North Carolina Center for Crime and Punishment, an independent organization of business and civic leaders, released the findings of another citizen survey which found strong support for prison alternatives for non-violent offenders. Significantly, the survey also discovered that citizens were more likely to support prison alternatives when they were better informed about problems facing the criminal justice system and the benefits of particular non-incarcerative sanctions, such as restitution and community service.

[2] "1986 Fear of Crime Poll," Columbia, SC: The College of Criminal Justice, University of South Carolina, April 1986.

The North Carolina survey of 621 registered voters differed significantly from traditional opinion surveys. Early in each interview, respondents were asked what they thought would be an appropriate sentence for particular types of offenses. Later, after they were provided with information about prison crowding, the percentage of people serving sentences for non-violent crimes, prison costs and possible consequences of confining non-violent offenders with violent offenders, they were again asked the same question.

Twenty-five percent of the respondents shifted their attitudes from disapproval to approval of community punishments; only an "extremely small" number of respondents shifted their attitudes in the other direction. Thus, an important finding of this survey was that a "public education program which stresses the economics of community punishment will effectively increase support for the program." Moreover, the survey found that those who shifted their support to community punishments knew about prison crowding, believed prison conditions were bad, thought prisoners worked all the time, and felt federal courts were likely to impose guidelines on the state's penal system.[3]

[3] Hickman-Maslin Research, "Confidential Analytical Report Prepared for North Carolina Center on Crime and Punishment Based on a Survey of Registered Voters in the State of North Carolina," Washington, DC: Hickman-Maslin Research, March 1986.

Correction: The last issue of the *JOURNAL* was dated Summer 1985, instead of 1986.

Past Surveys

A review of other recent surveys shows that the North Carolina and South Carolina findings are similar to those in the reports which also stress that the general public, and many crime victims, are not as punitive as legislators and policymakers believe. Moreover, recent studies assessing the attitudes of correctional workers toward non-incarcerative programs have found a reservoir of support for these initiatives. Together, these findings strengthen an emerging challenge to the notion that the primary concern of those who want to "do something about crime" is more and more imprisonment.

Public Opinion

Public support for alternatives to imprisonment can be found in a number of studies:

A 1984 survey by the Governor's Office of Criminal Justice Services found that citizens in Ohio knew little in general about the prison system, but separated their support for alternative sanctions between first-time and repeat offenders. However, prison crowding seems to have had a moderating effect on citizens' attitudes. Ohioans "overwhelmingly approved" victim compensation, community supervision and early release from prison, and were "warmly tolerant" of part-time work and educational or training release options.

The survey observed that "the alternatives to incarceration suggested in the survey forced citizens to think in specific terms of how to address the overcrowding issue which they, themselves, had identified. Taken individually, and placed in the perspective of an ac-

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The National Prison Project is a tax-exempt foundation-funded project of the ACLU Foundation which seeks to strengthen and protect the rights of adult and juvenile offenders; to improve overall conditions in correctional facilities by using existing administrative, legislative and judicial channels; and to develop alternatives to incarceration.

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The National Prison Project *JOURNAL* is designed by James True.

tual response rather than simply an emotional reaction, these alternatives appear to be more acceptable to Ohioans."[4]

A 1985 national survey conducted by Figgie International, Inc., of Richmond, Virginia, found that 52% of the general public favored community service, 60% favored restitution, 53% were in favor of work release programs, and 52% supported the use of halfway houses. Moreover, 76% of the public supported probation for first-time offenders.[5]

Crime Victims

The National Organization of Victim Assistance's newsletter once suggested that "victim advocates have a stake in the future of community-based alternatives to the use of jails and prisons. Such alternatives make it much more likely that the victims will receive restitution, and some imaginative alternative sentences actually provide more protection of victim rights than do traditional sentencing practices."[6]

British studies seem to offer the most concrete evidence of victim support for non-incarcerative penalties. Mike Maguire's interviews with more than 300 burglary victims uncovered a significant lack of vindictiveness; less than 30% of these victims supported imprisonment for the offender in their case; more than 70% of this sample favored community service, restitution and rehabilitative sentences.[7]

More recently, Joanna Shapland, Jon Willmore and Peter Duff found that the 276 victims of violent crime they interviewed were not particularly punitive. One-fourth wanted fewer offenders imprisoned, while a slightly smaller number of victims wanted offenders incarcerated. Other important findings were that victims felt they should be better informed about the criminal justice system's processing of offenders and they should also receive more compensation for their losses.[8]

Home Office researchers Mike Hough and David Moxon have shown that British Crime Survey results of 1982 and 1984 offer "no evidence to suggest widespread punitive attitudes among the public." Like Shapland, et al., Hough and Moxon argue that victims are generally more interested in compensation or reparation than punishment and they want reliable and timely information about the court process.[9]

American victims also appear less punitive than many expect. A 1985 telephone survey of Michigan households found that "crime victims favor the more retributive aspects of criminal justice less than non-victims and are more supportive of rehabilitation as a goal for the system. Also, victims appear to be more supportive than non-victims of alternatives to incarceration."[10]

Legislators and Policymakers

Legislator or policymaker beliefs that the public's desire to "do something about crime" requires them to support the more extensive use of imprisonment is a key aspect in the development of incarceration-oriented sentencing policies. Recent studies indicate that legislator and policymaker perceptions may be out of line with public opinion.

In a 1980-81 survey of Maryland residents and policymakers, Stephen D. Gottfredson and Ralph B. Taylor found that policymakers were significantly ill-informed about public opinions. "The general public's opinions are very similar to those of the policymakers," Gottfredson and Taylor observe, "yet the policymakers thought that they were very different." As a result, policymakers didn't recognize that "citizens disagreed with the idea of abolishing parole, thought that moving prisoners to local jurisdictions was a good idea, and widely supported the idea of Community Adult Rehabilitation Centers."[11]

Similarly, in a survey of citizens, legislators and criminal justice interest groups in a "large, representative state," Bruce A. Johnson and C. Ronald Huff found that "while legislators and interest group representatives hold personal opinions similar to those of the general public, these groups may perceive the public as being more punitive, less tolerant with respect to certain alternatives, and generally more conservative than is actually the case."[12]

"... a public education program which stresses the economics of community punishment will effectively increase support for the program."

In 1985, a Michigan Prison and Jail Overcrowding Project (MPJOP) survey found significant discrepancies between the public's opinion and criminal justice policymaker perceptions of public opinion. Decisionmakers believed that only 22% of the public would support the use of alternatives to imprisonment, whereas 66% actually approved of using alternatives. Also, only 12% of the decisionmakers felt the public supported rehabilitation as a criminal justice goal, whereas 66% of the public responding to the MPJOP survey believed rehabilitation was a proper criminal justice objective.[13]

Correctional Workers

A final score of acceptance for alternatives to imprisonment comes from correctional workers, a little noticed but important sector of support. Billie Erwin and Todd Clear's study of intensive supervision probation workers in Georgia, for example, found that "surveillance officers found themselves forming warm, personal relationships with their clients, even when engaging in surveillance, while probation officers found that many clients remained cold and aloof."

Erwin and Clear suggest that "the surveillance function led surveillance officers to encounter their clients as more 'real' people, faced with human problems and imbued with human potential. Intensive contact gave intensive supervision probation workers information about clients that surpasses what is encountered as a consequence of the client's court case. While probation officers might have felt a professional obligation to develop this kind of view of probationers, surveillance officers were faced with information that unquestionably confirmed the humanity of offenders."[14]

In another study, Charles Lindquist and John Whitehead found that correctional officers assigned to Alabama's Su-

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[4] Governor's Office of Criminal Justice Services, "Ohio Citizen Attitudes Concerning Crime and Criminal Justice (Fourth Edition)," Columbus, OH: The Ohio Statistical Analysis Center, 1984.

[5] Figgie International, Inc., "Parole: A Search for Justice and Safety," Richmond, VA: Figgie International, Inc., 1986.

[6] National Organization for Victim Assistance and the Victim-Witness Support Center, *Victim-Witness Support Center News,* Vol. 1/No. 3, June 1981.

[7] Maguire, Mike, *Burglary in a Dwelling,* Brookfield, VT: Gower Publishing Co., 1982.

[8] Shapland, Joanna; Willmore, Jon; Duff, Peter, *Victims in the Criminal Justice System,* Brookfield, VT: Gower Publishing Co., 1985.

[9] Hough, Mike; Moxon, David, "Dealing with Offenders: Popular Opinion and the Views of Victims," *The Howard Journal of Criminal Justice,* Vol. 24/No. 3, August 1985, pp. 160-175.

[10] Clark, Patrick M., "Perceptions of Criminal Justice Surveys, Executive Summary: Victims and Non-Victims," Lansing, MI: The Michigan Prison and Jail Overcrowding Project, December 1985.

[11] Gottfredson, Stephen D.; Taylor, Ralph B., "Public Policy and Prison Populations: Measuring Opinions About Reform," *Judicature,* Vol. 68/Nos. 4-5, Oct.-Nov. 1984, pp. 190-201.

[12] Johnson, Bruce A.; Huff, C. Ronald, "Public Opinion and Policy Formulation in State Government," unpublished paper, n.d.

[13] Clark, Patrick M., "Perceptions of Criminal Justice Surveys, Executive Summary: Findings for Criminal Justice Decision Makers," Lansing, MI: The Michigan Prison and Jail Overcrowding Project, September 1985.

[14] Clear, Todd; Erwin, Billie S., "Rethinking Role Conflict in Community Supervision," unpublished paper presented to the 1985 meetings of the American Society of Criminology.

—continued from previous page
pervised Intensive Restitution (SIR) program showed "less preference for maintaining social distance from offenders, greater preference for rehabilitation, less concern that close offender contact might lead to corruption of authority, and *less of a punitive orientation* than either probation/parole officers or institutional correctional officers (emphasis added)."[15]

Policy Implications

These studies suggest a significant, existing pool of support for alternatives to confinement, particularly the use of community service, restitution and intensive supervision for non-violent property offenders. These studies indicate the importance of concrete information in shaping public, policymaker and victim opinions about the appropriateness and acceptability of different sentencing options.

The clearest implication of these studies, however, is that alternative, non-incarcerative sanctions for non-violent offenders can be developed and used with public support. These studies suggest that the public does not disavow the importance of punishment, but nonetheless places a higher emphasis on changing offenders' behavior than simply incapacitating them.

Citizens seem to resist prison-building programs both for their high cost and because they don't want to abandon approaches using educational, housing, mental health, social and vocational services. These studies suggest, then, that there are practical limits on the use of punishment and retribution as the primary goals of correctional policies. ■

Russ Immarigeon is the associate editor of Criminal Justice Abstracts *and a research associate for the UUSC's National Moratorium on Prison Construction.*

[15] Lindquist, Charles A.; Whitehead, John T., "Guards Released from Prison: A Natural Experiment in Job Enlargement," *Journal of Criminal Justice*, Vol. 14/No. 4, 1986, pp. 283-294.

OVERCROWDING

Court Orders South Carolina To Comply with Decree

Julie Edelson

"I'm going to turn them out, and I'm going to keep turning them out until the Department of Corrections is in compliance with the settlement agreement they entered into . . . with their eyes open . . .

"Now [they're] going to comply with it."

Thus spoke federal district court Judge C. Weston Houck on July 21, 1986, during a hearing in Columbia, South Carolina regarding overcrowding, including triple-celling, in the South Carolina Department of Corrections (SCDC). The original lawsuit, *Nelson v. Leeke*, was filed in federal court by inmate Gary Nelson in a class action in 1981. Nelson had charged that the severe overcrowding in the SCDC caused rampant violence, threatening the safety and security of both inmates and staff, and therefore violated the Eighth Amendment.

The prisoners were represented by lawyers from the National Prison Project, the Southern Prisoners' Defense Committee, and Gaston Fairey, local counsel from Columbia. After two years of negotiations, the parties settled the case in January 1985, and Judge Houck approved the 169-page consent decree in November 1985.[1]

The main issue addressed by the settlement is overcrowding. The consent decree establishes minimum space standards to which each prisoner is entitled, through a series of steps toward eventual compliance which span a five-year period. These standards are to be phased in according to custody level, giving relief first to those confined under the more restrictive conditions. For example, the decree ordered that triple-celling end immediately, except in a few work release centers; that prisoners in segregation be single-celled by January 1986; that half of the medium security general population prisoners be housed in single cells in late 1987; and that minimum security prisoners be entitled to a certain amount of square footage, with no double-bunking, by January 1990.

The settlement also required that some of the older, dilapidated facilities be closed, such as the Midlands Reception and Evaluation Center (a lockdown unit housing three people in cells as small as 35 square feet), and that new ones be built as replacements. The population at each institution also had to be reduced to reach population ceilings required by the decree.

During the last three months of 1985, the Department saw a net increase of 138 prisoners per month. Due to this huge influx, by the spring of 1986 defendants had failed to comply with several critical housing provisions of the decree, including the bans on triple-celling of general population prisoners and double-celling of prisoners in segregation.

We immediately filed for supplemental relief, and at the July 1986 hearing Judge Houck ordered a "rapid reduction" in population. He began the hearing by stating that the plaintiffs were entitled to enforcement of the terms of the settlement, even if that meant early release of some prisoners, and despite the probability that such a ruling would put the Department of Corrections in a difficult political position.

The explanation for the "unprecedented" increase in prison population was twofold. On the one hand, the Parole Board drastically reduced the percentage of eligible prisoners paroled each month. Moreover, the South Carolina Legislature passed much stricter sentencing statutes. Thus, more people were receiving longer prison sentences, and fewer were paroled. The monthly net increase in prisoners over the previous 18 months averaged 80 prisoners, resulting in further overcrowding.

While SCDC maintained the hope that its population increase was just temporary, others believed it stemmed from the public's angry reaction to high crime rates.

Mediator Allen Breed[2] testified at the July 1986 hearing that, based on his earlier investigation of the system's overcrowding, SCDC's population predictions were too conservative. He stated that the dramatic prison population increases were neither new nor unforseen. One need look only at the national scene, Breed noted. Rather than an unexplainable fluke, he maintained, overcrowding is a political problem for which neither the Parole Board nor the state legislature was willing to take responsibility. "Political pressures have forced the Department of Corrections into non-compliance," Breed testified.

Judge Houck apparently agreed with Breed's analysis. In his ruling, the Judge stated that he did not like interfering in the operations of the state's prison system, "but I do not have to

[1] For an earlier article on the settlement, see Kluger, Mark, "South Carolina Settlement Limits Population, Enforces Standards," *NPP JOURNAL* 5 (Fall 1985):p.1.

[2] The decree provides that in the event of a substantial dispute, either party may request the assistance of a mediator. If the mediator is unable to resolve the dispute with the parties, the dispute may be brought before the court, and the mediator may testify as an expert witness. As part of the settlement, Allen Breed, former director of the National Institute of Corrections, agreed to serve as Mediator.

Don Sturkey—The Charlotte Observer

Prisoner stands in the center of the tiered cellblock at the Central Correctional Institution in Columbia, South Carolina

worry about politics. I look at what's right and wrong." What was right in this instance was enforcing the decree because the plaintiffs were entitled to the rights established by it.

In the spring of 1986, SCDC notified plaintiffs' counsel of various housing violations at approximately 10 of SCDC's 28 institutions. Most of these violations consisted of triple-celling prisoners in cells designed for one and, in some cases, housing four men in a cubicle designed for two.

In answer to Plaintiffs' Motion for Supplemental Relief, SCDC indicated that they intended to attain compliance by "building" their way out of the overcrowding problem through the use of temporary barracks, and requesting permanent supplemental prisons. At the hearing they asked the court to modify deadlines with respect to some of the housing provisions.

We objected to the use of these so-called "temporary" barracks for several reasons, the most important being that the proposed structures would be dormitory-style housing. The decree specifically prohibited the placement of dormitories in new medium security institutions, because both sides agreed that such housing was historically conducive to violence. At the hearing, we submitted exhibits which demonstrated that the medium security prisons with dorms had a higher rate of violence than other institutions with cells for housing similarly classified inmates. Defendants maintained that the bed shortage was most critical in the medium security institutions, and that they should be allowed to use those barracks.

We objected to the use of barracks for other reasons as well. The requirements in the settlement regarding such housing are particularly stringent—both sides intending, during the negotiations, to make it difficult to utilize temporary housing.

For example, all such temporary units must comply with basic fire codes, and American Correctional Association standards regarding plumbing, lighting and ventilation. In addition, all prisoners housed in such structures are to have the same access to services available to others housed in permanent buildings. Thus, we argued that the defendants' failure to hire additional staff and expand programming and medical and mental health services diminished overall access to these services. Defendants claimed that such expansion was unnecessary.

Prior to the hearing, we asked Mediator Breed to investigate the dispute. Mr. Breed, accompanied by representatives of defendants' and plaintiffs' counsel, toured several facilities where the defendants admitted there were violations of the decree, as well as several areas about which there was a dispute. He also inspected the temporary housing units, which were in various phases of construction. In addition, he discussed population trends and predictions with the Department's Division of Resource and Information Management.

After completing this investigation, Breed met with both parties to explore resolution of the problems. There was little dispute with regard to violations; the appropriate remedy was the core of the disagreement.

Because we had twice earlier

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agreed to temporary modifications of the decree's housing provisions in an effort to accommodate what the defendants had described as temporary overcrowding, we felt we could not compromise further on this aspect of the agreement. Our position was that a release mechanism was the only solution, since the overcrowding problem showed no signs of abating.

While acknowledging the potential for sustained overcrowding, and the failure of state law provisions to remedy the situation to date, the defendants could not support a court-ordered release which bypassed state authority. Because of the impasse, the matter was set down for a hearing.

Mr. Breed filed a report with the court in which he recommended that the court implement a structured early release mechanism. This recommendation was based upon his findings that (1) there was no indication that the rise in prison population would slow anytime soon; (2) the defendants' proposed solution involved using housing which did not meet the requirements of the decree; and (3) the overcrowding and inappropriate housing of prisoners at several institutions harmed all prisoners at that institution because each person's access to services was diminished.

At the hearing, plaintiffs' counsel sought to buttress the findings of the Mediator by submitting testimony and evidence showing problems with medical care and access to other essential services. The court found that logic demanded the conclusion that when people were added to an institution, without a corresponding increase in medical staff, the attention given each individual would decrease.

Judge Houck's principal interest, however, was focused elsewhere. The issue was simply that both parties, after extensive negotiations, had entered into an agreement which set standards for housing. The state legislature had endorsed the agreement before it was signed, as had the State Budget and Control Board and the Governor. "I didn't force you to agree to the decree," the Judge told defendants at the hearing. But he *would* order relief to bring the Department into compliance with that decree, he continued.

And that he did. The Judge ended the hearing with his order that the Department comply by having all prisoners properly housed within 60 days, through whatever appropriate means available. He made it clear that he was not ordering the Department to accelerate the release of prisoners, but told them to find a way to alleviate the overcrowding. Because "the need for the decree dictates that something be done now," he ordered that at least 200 of the 530 people who the parties agreed were improperly housed be appropriately housed within 15 days of his order.

The Judge also ordered that no additional temporary housing units be constructed at medium security institutions. He allowed continued use of the one which the defendants had opened prior to the hearing, but gave the plaintiffs' counsel six months in which to further object to its use.

The Judge's last statements in the courtroom were warnings to the defendants. He stated they should not come to him for a stay of his order since it was "unlikely" that he would grant it.[3]

[3]On August 4, 1986, the U.S. Court of Appeals for the Fourth Circuit denied the state's application for a stay and an appeal is pending.

After the hearing, Board of Corrections Commissioner William D. Leeke acknowledged that the order was no great surprise. "I think that it was inevitable that sooner or later we would end up in federal district court. We've been warning for years that unless we continue to move forward [in expanding bedspace], we can risk this sort of thing."

Speaking for the plaintiffs, Steven Ney of the National Prison Project said, "We asked the Judge to enforce the overcrowding portions of the consent decree. We achieved the basic objectives we wanted, that is, to have the state live up to the agreement that it entered into." ■

Julie Edelson, a staff attorney with the Southern Prisoners' Defense Committee, served as co-counsel on the South Carolina case.

Official Crime Reports Conflict

Samuel Walker

Confused about crime statistics? Perplexed by conflicting reports of increases and decreases in the crime rate? Uncertain about how to evaluate the reported "success" of crime reduction programs?

You are not alone. The world of official crime statistics is extremely complex. The nonspecialist is easily confused and public officials are often misled.

This article is a brief introduction to the mysterious world of official crime statistics. It describes the basic data systems that exist, discusses their strengths and weaknesses, and offers some guidelines on how to evaluate claims and counterclaims about fluctuations in criminal behavior.

A. Official Crime Data

There are presently two separate "official" measures of criminal activity in America. The first is the well-known FBI Uniform Crime Report (UCR). The second is the newer and less well-known National Crime Survey (NCS), popularly known as the "victimization survey."

The National Crime Survey is far more reliable than the FBI's Uniform Crime Report. You should always rely on it rather than the UCR. There is a long-standing bias in favor of the UCR, owing largely to its seniority (1930 vs. 1973). The UCR is always referred to as the "official" set of crime statistics. Don't believe it. Both systems are produced by the United States Department of Justice and are, therefore, equally "official."

B. Problems with the UCR

Criminologists recognized serious flaws in the UCR system when it was developed in 1930, and these problems remain today. Contrary to its claims, the UCR does not provide an accurate measure of criminal activity in the United States. Although there have been some technical improvements in the system over the years, the fundamental flaws remain. Here are the most serious problems:

1. Many crimes are not reported to the police. The rate of non-reporting varies according to the type of crime and its seriousness. About 80% of all auto thefts are reported (required for insurance claims), while only 50% of all rapes and about one third of all larcenies are reported. The more serious the financial loss the more likely a burglary is to be reported. The point is that if you do not report the crime it never occurred, as far as the FBI is concerned.

2. Even if you do report the crime, the responding police officer(s) may not fill out a report. What?, you ask. Aren't police officers required to file crime reports? Forget it. Officers exercise complete discretion in this area, regardless of official departmental policy or state law. They may (a) report the crime in a different category (e.g. "assault" rather than "rape"), (b) file no report at all, or (c) record it as a misdemeanor rather than a felony (option 'a' removes it from

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the "high fear" crime category, while 'c' removes it from the FBI's Crime Index altogether).

3. Even if the officer fills out a crime report, it can be altered or lost by the department. Over the years a number of police departments have been caught "unfounding" crimes (that's police jargon for deciding that the crime never occurred), downgrading reports from felonies to misdemeanors, or simply not forwarding reports to the FBI.

Practices vary widely from officer to officer, supervisor to supervisor and department to department. Two serious problems result: (1) year-to-year fluctuations in the "crime rate" may have nothing to do with the actual level of crime, and (2) cross-city comparisons are virtually meaningless since departmental practices are not comparable (unfortunately, this has not stopped criminologists from conducting studies). The following illustrates the comparability problem: The FBI's category of "burglary" includes both completed and attempted burglary. Many departments systematically fail to record the attempted burglaries. "Unfounding" is a convenient way of keeping the crime rate down. But some departments are more conscientious about recording the attempts. Thus, there is no comparability from city to city. The FBI simply accepts the information sent to it by the local agencies.

4. The FBI's "Offical Crime Rate" (the one that gets all the media coverage) is based on only eight felonies (murder, rape, robbery, assault, burglary, larceny, auto theft, arson). It does not even attempt to measure other serious categories of crime, notably white collar crime and organized crime.

This selectivity has enormous social and political implications. It focuses attention on those crimes which are disproportionately committed by low-income and racial minorities. And it directs attention away from those crimes committed almost exclusively by white, middle-income, and business and professional people. White collar crime, according to the Chamber of Commerce, costs us at least ten times as much as the property crimes in the FBI's UCR. Retail stores lose four to ten times as much from employee theft as they do from shoplifters. Yet, the FBI's UCR skews the public debate over crime to a particular category of offender: those already victimized by racial and economic injustice.

5. The UCR treats all eight felonies equally. Thus, one murder is equal to one $75 theft. This defies all common sense and does not provide a realistic measure of the actual risk of serious crime.

C. Some Practical Consequences

With these problems in mind, you are ready to deal with some of the most common situations arising in the crime debate.

1. Evaluating programs. When your local police department claims to have reduced crime by X%, don't believe them. The reduction could be the result of factors having nothing to do with actual crime (including political or bureaucratic pressure to produce the right results). You should ignore all reports about police crime reduction programs unless the research has been done by an independent agency and involves a before and after victimization survey.

2. Evaluating research. Research based on the flawed UCR system should be viewed with great skepticism. The best example is Isaac Ehrlich's famous study "proving" the deterrent effect of capital punishment. There were many problems with the study, and our discussion here highlights one of them. In determining the level of crime, Ehrlich used UCR data from 1930 to the present. Yet, the figures were even less reliable then than now. Thus, the level of crime was probably seriously undercounted during the years when executions were more frequent, thereby producing an apparent "deterrent" effect.

D. The Victimization Survey

The victimization survey technique was developed in the late 1960s because of dissatisfaction with the UCR. It is now institutionalized in the National Crime Survey. Why does the Justice Department produce two national crime data systems? Because of bureaucratic politics, particularly the entrenched power of the FBI.

A victimization survey is similar to a standard public opinion survey. A randomly selected sample of households is surveyed (by phone, mail, or door-to-door contact) about their experiences with crime. (If you are skeptical about these sampling techniques, remember that pollsters have accurately called each of the last seven presidential elections, including four landslides and three very close ones.)

Using the victimization techniques, the National Crime Survey offers a better measure of crime than the FBI's UCR for the following reasons:

1. It measures unreported crime, and on that basis alone provides a more accurate picture of criminal activity. As a supplemental benefit, the survey asks people why they didn't report the crime, and this yields a wealth of useful data. It is important, for example, to know how many rape victims do not report the crime, why they did not, and whether the rate of reporting has changed in recent years.

2. The victimization technique circumvents the problems of police officer discretion and agency manipulation. As a result it provides a more accurate picture of year-to-year fluctuations.

3. The NCS provides more specific information about crime victims and, consequently, the actual risk of crime for particular groups of people. The burden of crime is not equally shared in this country. Racial minorities and the poor are victimized far more often than are middle-class whites. Households with incomes of less than $7,500 a year are burglarized 57% more often than households in the $25,000 to $30,000 range. Black women are raped 30% more often than white women.

—continued on next page

Conference Studies Impact of Imprisonment on Black Families

A conference entitled "Imprisonment: Its Effects on the Black Family and Community" was held in Washington, D.C. on June 6 and 7, 1986. It was jointly sponsored by the National Prison Project, the National Conference of Black Lawyers, the National Moratorium on Prison Construction, the Shiloh Baptist Church, and the American Friends Service Committee. More than 100 young people attended the Special Youth Day on June 6, and more than 100 adults participated in the two-day conference.

The conference focused on the negative impact of incarceration and the need to develop alternatives to imprisonment. The following workshops were offered: "Being Black is Not a Crime;" "Turning Stumbling Blocks into Stepping Stones;" "Hard Times/Hard Choices;" and "Community or Jail: Does Doing Time Stop Crime?" Speakers at the opening reception were D.C. Councilwoman Wilhemina Rolark and the Rev. Benjamin Chavis, Director, United Church of Christ Commission for Racial Justice. Ms. Rolark also was the keynote speaker for Youth Day. L.C. Dorsey, long-time prisoners' rights activist, and the Rev. Willie Wilson of the Union Temple Baptist Church spoke on the final day of the conference.

A follow-up meeting of community residents who have indicated an interest in continuing this community work was held in July. Call Adjoa Aiyetoro at 202/331-0500 for further information.

—continued from previous page

E. Practical Consequences

The NCS produces a very different picture of long-term trends in crime. According to the FBI, the crime rate rose 24% between 1973 and 1983. (Actually it rose 42% between 1973 and 1980 and declined in the next three years.) But the NCS reports a nearly stable level of crime. Violent crime rose by 1.6% in the same period (and rapes actually declined by 28.6%!). Which to believe? This is not a purely academic question. Whether or not crime is going up or down has enormous practical consequences for the national crime debate.

The NCS system provides a more accurate picture of long-term trends in crime. The increase in crime reported to the FBI can be attributed in part to continuing technical improvements in the system. The crime rate has not gone up; we just do a better job of recording it.

Finally, a few significant points are worth mentioning:

1. The NCS data tells us we are not in the middle of a continuing "crime wave." The great increase in crime was a one-time event that occurred roughly between 1962 and 1973. Unfortunately, crime has now stabilized at an extremely high and unacceptable level.

2. The leveling off of the crime rate has had nothing to do with presidential politics and the ideology of the incumbent administration. The stabilization of the crime rate began under Nixon and continued under Ford, Carter and Reagan. Crime is a local phenomenon, under the jurisdiction of local agencies, and is not affected in any significant way by federal policy (and not at all by White House rhetoric).

F. Conclusion

The world of crime statistics is very complex. The cynical politician can easily manipulate them to "prove" virtually any point. Hopefully, we can contribute to a more informed and rational discussion of the crime problem. The best source of data is the annual report on "Criminal Victimization in the United States," prepared by the Department of Justice's Bureau of Justice Statistics. Equally important and useful are the many supplemental reports drawn from the NCS. These include reports on "Crime and the Elderly," "The Hispanic Victim," "Criminal Victimization in Urban Schools," and others. There is a wealth of useful data here, and anyone who wishes to participate in the crime debate should become acquainted with them. ■

Samuel Walker, Associate Professor of Criminal Justice at the University of Nebraska, Omaha, is the author of A Critical History of Police Reform *(1977),* Popular Justice: A History of American Criminal Justice *(1980),* The Police in America *(1983),* Sense and Nonsense About Crime: A Policy Guide *(1985), and "The Limits of Segregation in Prisons: A Reply to Jacobs,"* Criminal Law Bulletin, *Vol.21, No.6, Nov.-Dec. 1985, and other articles.*

Detained Cubans

—continued from front page

South Africa, Libya, or Chile, where arbitrary detention of citizens is the rule, and not the rare exception. The reader, living in the United States of America, instantly, almost instinctively, recognizes that such a situation runs contrary to fundamental notions of fairness—notions which most any American school child can understand.

Yet the situation just described exists in the heartland of America. Over 1,800 Cubans have been detained for years at the maximum security Atlanta Federal Penitentiary. They face, in the words of a U.S. Congressional subcommittee,[1] "no practical hope of ever being released," and are "worse off than virtually all other Federal sentenced inmates" in the most overcrowded prison in the federal system.

But why? How did these people end up in this never-never land, this legal limbo, caught at the core, in fact, of an intergovernmental quarrel between the Reagan administration and Castro's Cuba?

Along with approximately 125,000 of their fellow Cubans, the detainees came to the U.S. in 1980, partly in response to a statement made by President Jimmy Carter who welcomed "tens of thousands" of Cubans with an "open heart and open arms."[2]

Most arriving Cubans were held in temporary detention facilities across the U.S., while the weeks grew into months. By August 1981, over 123,000 Cubans were released following riots in detention camps in Arkansas, Florida and Pennsylvania, and a special immigration status was created for most of the Mariel Cubans.

However, approximately 1,800 Cubans were imprisoned upon their arrival. They were merely suspected by U.S. authorities of having criminal backgrounds in Cuba. Most of the detainees, who were initially paroled or released into the community, have been subsequently confined for revocation of their parole for various reasons.

Strikingly, many have never committed any crime whatsoever, either in Cuba or in the U.S. Instead, each detainee may have committed no more than a technical, non-criminal violation of his parole, such as failure to report to an immigration officer on time or running away from an immigration halfway house. Some have been convicted of criminal offenses in the U.S., many minor in nature (such as possession of marijuana) for which the detainee was generally sentenced to probation rather than any jail term. Even those Cubans who committed more serious offenses have served their time and, under the most commonly understood principles of due process, should now be released.

Under the U.S. judicial system, you commit the crime and you do the time. Not so, apparently, if you are an alien whom the U.S. has determined to be deportable. That your own government won't take you back is, apparently, of no consequence.[3] Neither is the fact that you have been shown to pose no danger whatsoever to the community.

For about two years the government undertook a somewhat more formalized review process of the detainees' status. However, despite lengthy class action litigation by vigorous and capable immigration lawyers, at the present time no valid review process exists at all. Guidelines for making parole revocation decisions are vague, at best; lack any specific criteria; and provide for no prior notice, hearing, interview, or for input of any kind from the parolee before parole may be revoked.

In short, no reliable and fair procedures or criteria have at any time been established and implemented, nor has adequate justification been shown that any of the Cubans currently in detention pose any danger whatsoever to the community, the public order, or national security. The U.S. Congressional subcommittee implicitly acknowledged this fact by urging, in its recently published

[1] *Atlanta Federal Penitentiary,* Report of the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Committee on the Judiciary, U.S. House of Representatives, 99th Cong., 2d Sess. (Comm. Print April 1986).

[2] In April of 1980, approximately 10,800 Cubans sought sanctuary in the Peruvian Embassy in Havana. President Carter determined them to be "refugees" and allowed the admission of 3,500 of them to the U.S. Thereafter, large numbers of Cubans began to leave Mariel harbor in flotillas of small boats, headed for the U.S.

[3] These detainees, deemed excludable aliens by the U.S., are unable to return to their country. Although there was a deportation agreement in place for several months, it was suspended in 1985 by Cuba when the U.S. initiated Radio Marti broadcasts. Recent news reports suggest that renewed negotiations for their return have faltered since the U.S. refuses to permit any radio broadcasts to the U.S. from Cuba, apparently a prerequisite to any agreement, according to the Cuban government.

report on the detention crisis, that a "structured review of the legal status of all these Cuban detainees" and the use of "explicit criteria for [their] release" is essential.

The current conditions under which the Cubans are confined have been described by the subcommittee, headed by Representative Robert Kastenmeier, as "brutal and inhuman" and "intolerable considering even the most minimal correctional standards." According to the Congressional report, the Atlanta Federal Penitentiary is 45% over capacity. Many detainees are housed in cells designed for 4 men which in fact hold 8, allowing each man only 28 square feet for sleeping, eating and living day after day. The problem is exacerbated because most inmates are in "lockdown" status, which means that they must remain in their cells 23 hours per day.

The prison was locked down in October of 1984 following a riot which occurred as a result of some Cubans complaining about their indefinite imprisonment. The two Cubans charged with starting the riot were acquitted. After the trial, jurors stated to the press that "the living situation of the detainees was shameful."

The incidence of violence and symptoms of stress at the prison are startling, with seven successful suicides, 158 serious suicide attempts, 6,000 incidents of self-mutilation, and nine homicides reported over the last five years. Fifteen inmate-on-inmate assaults occur on the average each month (one-half the monthly total in the entire Federal Bureau of Prisons), yet another striking sign of tension and stress. Representatives of the prison's correctional employees testified before Congress, expressing their "concern about the level of stress within the institution and the failure of the prison administration to address this problem."

Numerous other substandard living conditions exist, including inadequate light and ventilation; inadequate recreational facilities and library; unsanitary food services; limited access to showers and to items of personal hygiene and other personal property; and limited medical care, according to the Congressional report. "Substantial language barriers" were also found to exist between staff and detainees.

Hope for relief has dimmed. Although federal court litigation on behalf of the Cubans at the Atlanta Penitentiary has been pending since 1981, the U.S. legal system has utterly failed to alleviate the plight of those currently confined to this arbitrary and prolonged detention. In the most recent federal appellate court decision, the failure of domestic remedies to resolve this situation was obvious; the court rejected all legal theories advanced by the Cubans. Although the lawyers for the Cubans have recently sought review of the case by the Supreme Court, the likelihood of the Court granting any review is, at best, uncertain.

Faced with this fundamental violation of human rights, a complaint was filed by the ACLU, the National Council of Churches, America's Watch, along with other human rights and church organizations. It was filed in conjunction with the Lawyers' Committee for Human Rights for submission to the Commission on Human Rights of the United Nations. Gene Guerrero, Executive Director of the Georgia ACLU, led the initiative, having closely followed the Cuban detention crisis since it began years ago. The complaint alleged that the arbitrary and indefinite detention of these men and the cruel and degrading conditions under which they are forced to live violate various international legal instruments.

Given the rejection of legal claims in the U.S. courts, we concluded that few other avenues were available. Alleging a consistent pattern of gross human rights violations, we invoked the procedures developed pursuant to U.N. Economic and Social Council Resolution #1503. The complaint could result in a review of the situation by the U.N. Commission on Human Rights and its independent investigation or full study of the situation.

At the very least, the U.S. will be forced to respond to our complaint and thereby reassess its inaction regarding this clear violation. We hope that more pressure on the U.S. will also result from the complaint once the attention of the international community is brought to bear. In short, one more avenue has now been opened toward resolution of the desperate plight of the Cubans.

Newsweek, the Washington *Post*, the New York *Times*, and ABC's "Nightline" have reported on this story. Will that be enough? What will it take to render some reason and fairness to this inequitable and intolerable problem? Whatever that may be, it cannot happen soon enough for the confined Cubans in Atlanta, who, given the current impasse, may be there for a lifetime.

So they came from a distant isle
Nameless woman, faithless child
Like a bad dream
Until there was no room at all
No place to run, and no place to fall
Give us our daily bread
We have no shoes to wear
No place to call our home
Only this cross to bear
We are the multitudes
Lend us a helping hand
Is there no love anymore
Living in the Promiseland? ■

Mary McClymont is a staff attorney with the Prison Project.

DRUG TESTING

Is Urinalysis Reliable?

Daniel Manville
Caroline Smith

Prison administrators are utilizing urinalysis test results in disciplinary hearings often as the sole evidence to prove that individual inmates are using unprescribed drugs or marijuana. This raises troubling questions regarding the standard of proof necessary to invoke disciplinary sanctions. Yet such tests are being used with increasing frequency in prisons around the country to subject inmates to probation revocation, loss of good time and even disciplinary segregation. The tests are less than 100% accurate under the most controlled circumstances. Improper handling of the specimen and other environmental factors can further reduce their accuracy rate. Disciplinary boards have failed to address these problems.

Several urine surveillance tests are available, each involving different procedures, with differing costs and rates of accuracy.

The EMIT (Enzyme Multiplied Immunoassay Technique) test uses antibodies which are established in rabbits and then extracted. These antibodies then react to any drugs in the urine by binding with them. The EMIT test has a small computer which measures the quantity of the substance, or metabolite, in the specimen and gives either a positive or negative reading.

This test was referred to recently by the U.S. District Court for the Southern District of New York as a "purely mechanistic, 'idiot proof' device requiring the operator to exercise no discretion, read no graphs and make no subjective interpretations." *Peranzo v. Coughlin*, 608 F.Supp. 1504, 1505

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(S.D.N.Y. 1985). It is the least expensive testing device on the market, since it can be performed by persons with no medical training. This test has a substantial rate of inaccuracy, however. The Syva Company, which manufactures the EMIT test, indicates that the accuracy rate of the test is only 95%.[1] Independent testing has indicated that the accuracy rate may be well below 90%. The Syva Company, in its own literature, recommends that independent confirmation be obtained on each sample where a positive result is found.

Several problems have been identified which produce the inaccuracy rate in the EMIT test. The Syva Company found at least 11 substances other than marijuana which could produce a false positive (a positive EMIT result where no marijuana had been ingested). These substances include aspirin, secobarbital, amphetamine and morphine. This cross-reactivity can only be checked by using an alternative confirmation method since a second EMIT test will simply react to the masquerading substance to produce a second false positive result.

The potential for false positives to result from passive inhalation of marijuana smoke by non-smokers or from substances produced by the human liver has also been suggested by studies of the EMIT test.[2]

The radioimmunoassay (RIA) test is very similar to the EMIT test except that it uses a different assay to check for the presence of the drug; medically skilled personnel must perform the test since the results require some interpretation. This test has problems similar to those of the EMIT test.

The most accurate test is the gas-chromatography/mass-spectrophotometer (GC/MS). This test is currently being used by the military to confirm positive EMIT tests of people in the service. It is the most expensive test, requiring trained medical personnel to accurately identify the chemical substance in the urine. The GC/MS test can still be challenged on the basis of passive inhalation and on procedural grounds. It is unlikely that the GC/MS test will become the normal method of confirmation used by prison officials due to its expense.

None of these tests are accurate without proper handling of the specimen. Normally the inmate who is being subjected to the test is required to urinate into a container in the presence of a guard. The guard then removes the sample for testing. To assure the highest degree of accuracy, the specimen must be refrigerated if there is to be any delay in testing. To assure continued accuracy over several days, the specimen must be frozen. Without these precautions, the rate of false positives escalates.

A review of several of the most important cases which have challenged the use of the EMIT and similar tests follows. Although the court decisions are not entirely consistent, it is obvious that the unsubstantiated use of these tests in prison disciplinary hearings raises difficult issues for the courts.

The most comprehensive decision to date regarding the use of the EMIT test as evidence in a prison disciplinary setting is *Storms v. Coughlin*, 600 F.Supp. 1214 (S.D.N.Y. 1984). The court determined that urinalysis testing constituted a search and was therefore entitled to the Fourth Amendment requirement that it be reasonable. The court further held that although entry into prison does not entirely dispel an inmate's legitimate expectation of privacy in his or her body, that privacy interest is limited by the security needs of the institution.

The specific findings of the court in *Storms* show the breadth of possible issues which can be raised regarding the testing procedures. The court enjoined the prison's procedure for selecting inmates to be tested from a board containing cards with the name of each inmate, because it presented an "unjustified potential for abuse in the face of readily available alternatives." 600 F.Supp. at 1223. This procedure was unreasonable because the official who chose the inmates to be tested could see the names of the inmates he was choosing. This presented the possibility that "the commander may, consciously or unconsciously, steer his choices toward less favored inmates." *Id.*

The court scrutinized the process employed in taking the urine specimen. It held that forcing an inmate to urinate in front of others where there was no legitimate need to do so would be unreasonable, but requiring a guard to be present while the inmate provided the urine sample was found to be reasonable.

The court addressed two issues dealing with procedures to assure the reliability of the test result. It found that the state's method of retesting a positive EMIT result using another EMIT test would correct for human generated error. The court further determined that a single positive drug test coupled with other conduct or with possession of a regulated substance would constitute persuasive evidence of drug use.

The most substantial challenge to the use of urinalysis by prison officials is that the tests are not reliable, especially the EMIT test, which is the only one reported in use by prison officials.

Only one federal court has allowed a prison to impose disciplinary sanctions based on an unconfirmed EMIT test. *Jensen v. Lick*, 589 F.Supp. 35 (D.N.J. 1984). The plaintiff in *Jensen* was punished for refusing to submit to the urine test. He did not allege that he had received an inaccurate test result, thus the discussion of the EMIT test reliability is dictum.

Two recent federal courts have held that due process requires that all positive EMIT results be confirmed by a second test. *See Wykoff v. Resig*, 613 F.Supp. 1504 (N.D.Ind. 1985) (initial positive test should be confirmed by a second EMIT test or its equivalent), and *Higgs v. Wilson*, 616 F.Supp. 226 (W.D.Ky. 1985) (punitive sanctions cannot be based only on one EMIT test). The latter case is being appealed.

Two other federal courts have dealt with the reliability of the EMIT test.[3] In *Storms*, the court dismissed the due process claim that a second alternative method was required since none of the plaintiffs had received a disciplinary sanction, but ordered trial on the Fourth Amendment claim that the EMIT test itself was unreliable. 600 F.Supp. at 1222.

In *Peranzo*, the court denied the plaintiffs' request for injunctive relief (which would have precluded prison officials from confirming a positive EMIT test by a second EMIT test), and set the issue for trial on the merits. The court stated that prisoners have a substantial due process interest in the accuracy of the drug testing procedures used by prison officials (608 F.Supp. at 1507), but warned that "due process is not synonymous with a requirement of scientific exactitude or error-free procedures." *Id.* The court went on to discuss the reasonable doubt standard of evidence required in a criminal trial, and held that this standard was not required at a disciplinary hearing. *Id.* at 1508, citing *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

Two state courts have found unconfirmed EMIT tests unreliable. In *Kane v. Fair*, No. 126229, 33 Cr.L. 2492 (Mass.Sup.Jud.Ct. 8/5/83), the court held that a positive EMIT test result could not be used as evidence at a disciplinary hearing unless confirmed by an alternative method. Similarly, a Vermont Superior Court held that the chance of false positives using an unconfirmed EMIT test result and the concomitant loss of liberty violated fundamental fairness and a prisoner's minimum due process rights. *Johnson v. Walton*, No. 561-84 Rm. (Rutland Superior Court, Vermont, 2/14/85).

[1] See O'Connor and Regent, "EMIT Cannabinoid Assay: Confirmation by RIA and GC/MS"; *Journal of Analytical Toxicology* (July-August 1981).

[2] See Syva Company's *Clinical Study No. 74* and Zeidenberg, et al., "Marijuana Intoxication by Passive Inhalation: Documentation by Detection of Urinary Metabolites," *American Journal of Psychiatry*, January 1977.

[3] See *Storms v. Coughlin, supra,* and *Peranzo v. Coughlin, supra.*

The court required confirmation of a positive drug test result by either mass-spectroscopy or Thin Layer Chromatography (TLC).

Recently, the Supreme Court looked at the amount of evidence required in a disciplinary record to support a finding of guilt when the revocation of good time was involved. *Superintendent, Mass. Corr. Institution v. Hill*, 105 S.Ct. 2768 (1985). The Court held that the disciplinary record must contain "some evidence to support the decision to revoke good time." *Id.* at 2774. In defining what "some evidence" meant, the Court said:

> *Ascertaining whether this standard [of some evidence] is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. Id.*

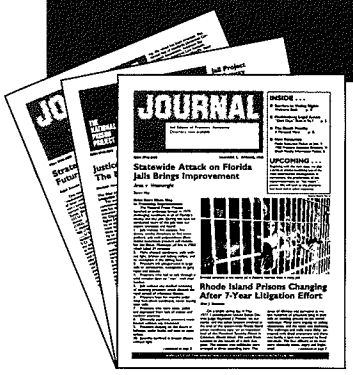
Hill may make scrutiny of the EMIT test and its use as evidence in disciplinary hearings less strenuous, as the unconfirmed test result may constitute "some evidence" sufficient to meet the *Hill* standard. However, if a prisoner refuses to submit to the test, and is charged with substance abuse rather than refusal to obey an order, that charge could be challenged under the "some evidence" rule.

There are other challenges to the use of urinalysis tests, including improper handling of the sample prior to testing and chain of command concerns. An analysis of these theories is available from the National Prison Project. ■

For further information contact Dan Manville at the National Prison Project. An excellent memo,on the subject was also done by the Lewisburg Prison Project, P.O. Box 128, Lewisburg, PA 17837.

Dan Manville is a research associate at the Prison Project. Caroline Smith is an attorney currently practicing in Massachusetts, and a former law clerk at the Project.

PUBLICATIONS



The National Prison Project JOURNAL, $20/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. NEW 7th Edition, published April 1986. Paperback, $20 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.

The National Prison Project Status Report lists by state those presently under court order, or those which have pending litigation either involving the entire state prison system or major institutions within the state. Lists only cases 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.

The **Jail Litigation Status Report** gives a state-by-state listing of cases involving jail conditions in both federal and state courts. The **Report** covers unpublished opinions, consent decrees and cases in progress as well as published decisions. The **Report** is the first nation-wide compilation of litigation involving jails. It will be updated regularly by the National Jail Project. 1st Edition, published September 1985. $15 prepaid from NJP.

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 June 30, 1986. Further details of any of the listed cases may be obtained by writing the Project.

Duran v. Apodaca—This case challenges conditions in the entire state prison system of New Mexico. Following the state legislature's cutbacks in the Department of Corrections' budget, the court granted our motion for a preliminary injunction to restore those essential services which were to be cut.

Inmates of D.C. Jail v. Jackson—This case involves the conditions and overcrowding at the D.C. Jail. In June we filed a motion to hold the District and the Mayor in contempt.

Inmates of Occoquan v. Barry—After a major disturbance at these three overcrowded D.C. prisons, we filed suit in early August and asked for a preliminary injunction dealing with overcrowding and fire safety. After an evidentiary hearing on August 13, the court granted our motion establishing population caps at each facility and requiring the defendants to develop a plan to correct fire safety deficiencies in 21 days. The order imposing caps has been stayed pending a trial on the merits scheduled to begin October 21.

Jerry M. v. D.C.—This case deals with conditions in the District's juvenile facilities. A consent decree was entered on July 10, 1986, which ordered the closing of one of the facilities by 1987, single-celling at all facilities, the development of educational programs, community-based facilities, as well as the appointment of panels and a monitor.

Nelson v. Leeke—In this case involving the entire prison system of South Carolina, a recent monitor's report found the state in substantial violation of the consent decree. After a hearing last July, we obtained an order setting new population caps and requiring the release of non-violent prisoners. On August 4, the Court of Appeals denied the Attorney General's application for a stay.

Palmigiano v. DiPrete—This case challenges conditions in the entire Rhode Island prison system. In May we received an excellent court opinion ordering, among other things, population caps and a ban on double-celling. We thereafter negotiated a slightly modified version of the court order which provided that the defendants waive their right to appeal.

Terry D. v. Rader—This action challenges the conditions in six juvenile institutions in Oklahoma. The settlement of attorneys' fees was approved by the court.

U.S. v. Michigan/Knop v. Johnson—This action challenges conditions and practices at four major Michigan prisons. The trial in Knop was adjourned last June after four days; the judge ordered defendants to show cause why they should not be sanctioned for filing frivolous motions. Sanctions were imposed on the defendants, were paid, and the trial commenced again on August 4. It is expected to last for 6 to 8 weeks.

During this period the National Prison Project received $653,000 in attorneys' fees and costs in various cases. These fees and costs help make up part of the Prison Project budget and enable us to continue our work.

The Lewisburg Prison Project (P.O. Box 128, Lewisburg, PA, 17837) has published a series of moderately priced manuals for the use of prisoners and their advocates. They include: "A Guide to Federal Parole," "Prisoners' Civil Actions in Federal Court," and "Paralegal Manual for Prisoner Advocacy: A Training and Reference Guide." There are also two series of "Legal Bulletins," giving guidance and case citations on 25 different issues such as access to the courts, protective custody, and medical treatment. Write for a free brochure.

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