

## The Prison Population Explosion California's Rogue Elephant

*By Caleb Foote*

**Elephantiasis**, n. pathol. A chronic disease characterized by enormous enlargement of the parts affected.

—*American College Dictionary*

### I. WE'RE NUMBER ONE

A few years ago the United States gained the dubious distinction of having the highest imprisonment rate in the world, passing South Africa and the Soviet Union. Our competitors are falling further behind. By 1990, 455 adult Americans per 100,000 population were behind prison and jail bars, compared to South Africa's rate of 311. Among black males our lead is overwhelming; the American black male imprisonment rate at 3,370 per 100,000 is almost five times greater than South Africa's 681 per 100,000 black males. Our total rate of 455 is more than four times that of Britain, five times that of Germany or France, and in most developed western countries the rates range between 50 and 90.

One out of eight American prisoners are in California, which has the largest prison system in the country and is second in the world behind China. California's prison system is larger than those of Great Britain and the former West Germany combined. For more than a decade now, overfilling existing prisons has been a favorite of our politicians, while building new ones is the state government's only remaining growth industry. In 1977, the inmate population of state prisons was about 19,000; today it is 113,000. The state has no coherent, overall

plan for criminal justice, and in its present plans and projections there is no end in sight to this exploding prison population.

Costs, of course, have escalated commensurately. In 1980 state funding for the prison system was \$300 million; by 1994 it is expected to reach \$3 billion. But those figures are only the beginning. As our incarceration rate per 100,000 of the state's population has soared from 87 in 1977 to 358 today, the state has tried, at fantastic expense, to build its way out of its simplistic and futile method of dealing with the problem of crime. These building costs are not included in the general fund budget figures noted above.

Using bond funding as it would a credit card, last September the legislature and the Governor again authorized construction of more prisons; two to add 4,300 beds for men in Soledad and Susanville, and one in Madera for 2,200 new beds for women. The price tag is nearly a billion dollars, to be paid off in the future. When completed, each prison will have to be operated at an annual rate of around \$25,000 per bed from additional funds added to the Department's yearly budgets. And still more contemplated prisons are in the planning stage.

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Besides looking at these costs in greater detail, this paper will examine the flawed assumptions of a program that has not and cannot significantly affect crime rates but instead worsens the state's crime problem by diverting funds from education, children's health and welfare, and other vital governmental services. We starve programs which could have an impact on crime in order to pour money into a bloated imprisonment program which cannot work. The political and special interest pressures which got us into this fix will be analyzed, together with a discussion of the immediate measures required to check this elephantiasis now and of proposals for longer range rational criminal justice policy.

## II. PRISONS ON A PEDESTAL

The state budget crisis of 1993 offers Californians a grim picture of their future. To the extent that the legislature goes along with Governor Wilson's proposed 1993-1994 budget, state funding is to be reduced almost across the board. Beyond the millions who will be hurt directly by the governor's plans to cut or eliminate benefits in health, welfare, and educational funding, local county and city government services are to be mutilated because the Governor wants to take \$2.6 billion of their property tax receipts to help meet the state's deficit. This cuts to the bone local government's traditional funding source, upon which we all depend for essential neighborhood services that protect our safety and enhance the quality of our daily lives. Thus the Governor's proposed raid means that almost everyone will be hurt by the ripple effects of Sacramento's turmoil.

Almost everyone, that is—except for the California Department of Corrections. In striking contrast to this statewide scenario of cut and slash, prisons alone come through unscathed. In the 1993-94 budget proposal, Corrections is to receive

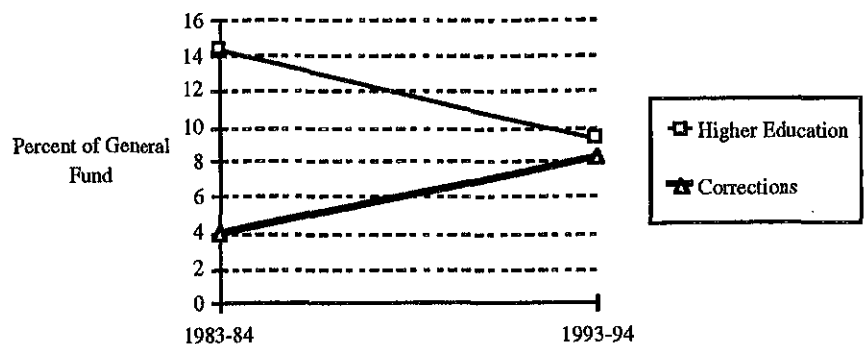
a nine per cent increase to about \$2.6 billion. With projected future increases in the prison population, prisons remain on a pedestal.

Continuing to try to build our way out of the prison population explosion compounds the budget crisis—in the long run by saddling our future with debt and increased operating costs, and immediately because of the very high cost of running today's prison juggernaut. The problem was partially masked as long as the state had a surplus, part of which the prisons could soak up. But the days of painless quick fixes are over. Instead the legacies of Proposition 13 and tax policies in the eighties, aggravated by the recession, have plunged us into fiscal crisis.

Under present revenue constraints, every dollar spent on prisons is a dollar lost to something else. These are not trivial tradeoffs. Consider the fate of higher education. In the last ten years Corrections' share of the state's General Fund has risen from 3.9 per cent to the 8.2 per cent projected for 1993-94, while higher education's share declined from 14.4 per cent to 9.3 per cent, with the threat that it may well end up even lower. (See Graph 1)

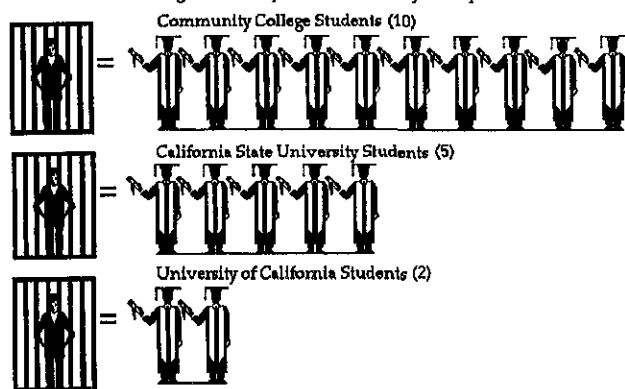
The substantial majority of California prisoners are not violent offenders, but violators of non-violent property or drug laws or of parole supervision rules. There are many types of alternative sanctions widely used in this country and abroad which are cheaper than state prison, offer far better prospects of rehabilitating the offender, and pose a lower risk to the public than the release of untreated, uneducated

Graph 1: Higher Education Versus Prison Costs



**Graph 2: Education Versus Confinement Costs**

The cost of confining one state prisoner for one year equals:



and embittered convicts. Yet the Governor's preference is to keep that non-violent offender locked up at an average annual cost sufficient otherwise to provide the state's support for a year's education of nine or ten community college students, or five state university students, or two University of California students. (See Graph 2.)

California has had a long and honorable tradition of making college available at low cost to every qualified applicant. The wisdom of such a policy today is reinforced because of the country's urgent need for an expansion of higher education to supply trained professionals to meet growing international economic competition. The budget's educational cuts are slashing community colleges and causing sharp annual increases in University fees. In the last three years, fees at UC have more than doubled, another \$1,000 increase has been approved for the next year, and, while students are paying more, campus programs and classes are being reduced. This will deprive thousands of students from low and moderate income families of a chance to help meet their country's needs as well as to enrich their career potentials. What is one to say about the priorities of a state's political leadership which keeps non-violent offenders in state prison with funds which in effect have been transferred to Corrections from higher education?

Higher education, of course, is not the only victim of grossly distorted budget priorities. Among states ranked according

to personal income, California's expenditures for elementary and secondary education put it in 42nd place. A fifth of the nation's children live in poverty, and for black, hispanic and other minorities that proportion is far higher. Cuts in welfare and health benefits impact the poor and the homeless, and children most of all. Yet it is in such deprivations suffered by children that the roots of crime flourish. Ironically, we keep unnecessary prison spending untouched while slashing these other programs. For example, the state could support four three-member families on AFDC or fourteen children on AFDC for what we now spend to incarcerate one prisoner. (See Graph 3)

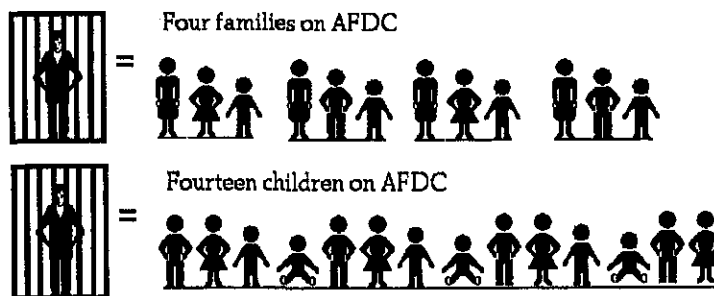
But even such trade-offs within the state's General Fund no longer suffice to satisfy the prison program's insatiable hunger. The revenue shortfall in the General Fund is so great that, to replenish it, the state last year began taking property tax revenue from cities, counties and other local governmental entities. For 1993-94, the proposed amount to be taken from this source has more than doubled to \$2.6 billion. This will have devastating impacts upon fire and police protection and all other local government services, traditionally dependent on property taxes as their primary resource.

Although, coincidentally, the amount of this raid on local government is about the same sum as the proposed allocation for the Department of Corrections, of course the prison spending splurge is only partially responsible. But as a significant part of

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**Graph 3: Confinement Versus Welfare Costs**

The cost of confining one state prisoner for one year equals:



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available discretionary funds, the ripple effects of prison expenditures will be felt throughout the state.

We have reached the point where this costly misallocation of limited state resources threatens to cripple or bankrupt many other essential services throughout the state in ways that will affect the lives of all Californians. It is essential that the state explore alternatives, examine the assumptions alleged to require such an extreme imprisonment strategy, evaluate its effectiveness in containing crime, and control the political pressures which have fueled it and make it so resistant to change.

### III. IMPRISONMENT'S COSTS

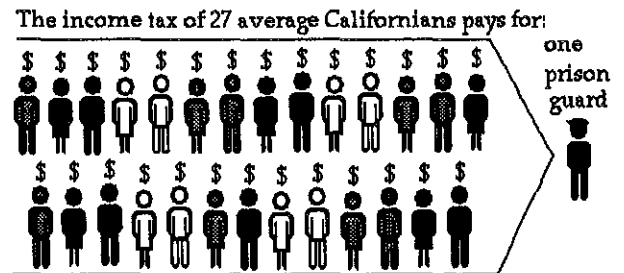
#### 1. Operations

Dividing the proposed budget allocation of \$2.6 billion by 113,000 prisoners, the state's method of estimating the annual cost per inmate, results in a figure of about \$23,000 for the keep of one prisoner. Even this figure is staggering, exceeding the annual cost of the most expensive private college education. The inevitably high cost of maintaining prisoners is aggravated by the large proportion of its budget targeted for personnel costs. If the Governor has his way this year, the ten year growth in California's correctional employees will exceed the growth of all other state employees combined. (See Graph 4.) The powerful California Correctional Peace Officers Association has negotiated substantial pay increases in recent years for the prison guards it represents, for whom the average compensation has reached \$55,000 in salary and benefits. As such, it now takes

the state income taxes of about 27 taxpayers to pay for 1 prison guard. (See Graph 5)

But the \$23,000 per inmate figure is deliberately deceptive. It not only understates real immediate costs because it excludes capital costs, but it takes no account of indirect imprisonment impacts for which taxpayers are ultimately responsible. While these cannot be precisely quantified, the amounts are substantial and raise the true annual cost per prisoner by at least 30 per cent above the state's published figure. With these added, a real cost figure of between \$27,000 and \$30,000 per inmate per year would be a conservative figure. These omitted or hidden additions include capital costs, prison overcrowding, and indirect costs.

**Graph 5: Tax Dollars and Prison Guards**

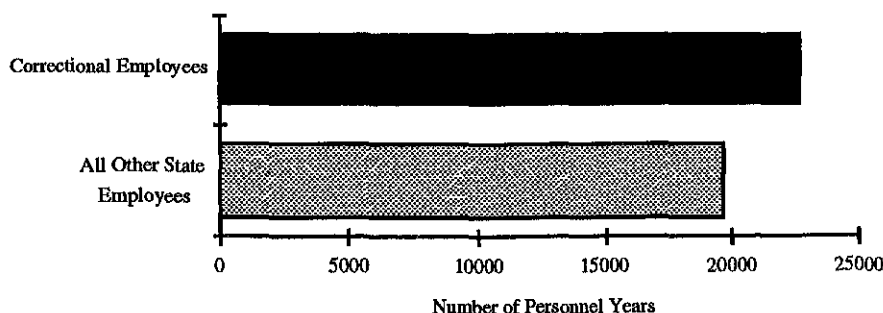


#### 2. Capital Costs

For each bed California's new prisons are designed to accommodate, construction costs alone run as high as \$105,000 in high security institutions, while the overall average is about \$80,000 each. As building is financed by the sale of bonds, seventy-five per cent of the actual construction price must be added to cover debt service charges. These costs do not appear in the General Fund's Corrections budget.

Since 1981, voters have authorized the sale of general obligation bonds for prison and jail construction totalling \$2.6 billion. The Legislature and Governor have also bypassed the constitutional requirement for voter approval for the issuance of general obligation bonds by authorizing the sale of another \$2.6

**Graph 4: Growth in State Employees (1983-84 thru 1993-94)**



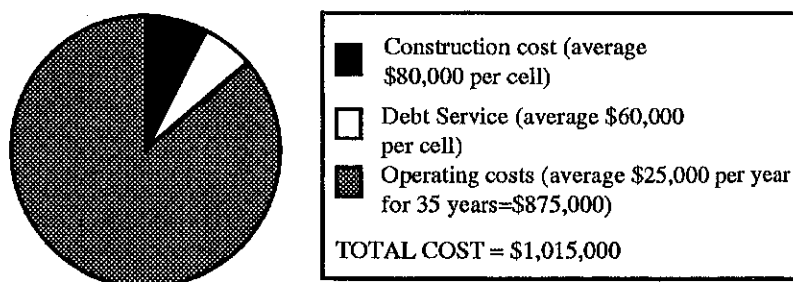
billion in lease purchase revenue bonds. That is a debt obligation of \$5.2 billion plus another \$3.9 billion in interest and other associated expenses. These bonds are paid off over a period of years, as one would pay off one's mortgage. Of the state's total 1993-94 debt payment for construction of highways and other capital needs, prison construction debt payments make up 18.2%, a rather hefty proportion for a department that uses 8.2% of the our General Fund budget.

As everything to do with prison costs has an impact on other state programs, this high debt level makes it more difficult to float bonds for other purposes such as college campuses. The State Treasurer is so concerned about this situation that she warned legislators in early 1993 not to authorize more than \$2 billion worth of bonds each year for the next several years.

But the deception by which the state's prison building program has been sold to the public goes far beyond our politicians' failure to include construction and debt service costs in the cost per prisoner figures which the state reveals. Unless we are planning to leave these new prisons unoccupied as architectural monuments to the foolishness of our times, the public will be locked into paying over the next 30 to 40 years the cost of construction (\$80,000) and debt service financing (\$60,000) of each cell plus the cost of operating that cell. But that \$140,000 for bond indebtedness is only 15 percent of its real long term cost. Assuming annual operating costs continue at \$25,000 over the next 35 years that cell's total cost to taxpayers will be over a million dollars. (See Graph 6)

How many prisoners each of these new cells can accommodate depends on the length of their sentences. But we already have more than 1,000 million-dollar prisoners serving life without the possibility of parole. Assuming that these prisoners will survive an average of 35 more years, what a judge imposing that penalty is really saying is, "I sentence you to a million dollars worth of imprisonment paid for by the taxpayers."

**Graph 6: The Million Dollar Cell**

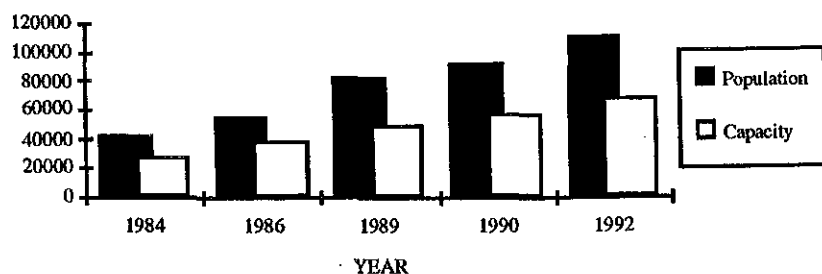


### 3. Prison Overcrowding

Because even the massive prison building program has not enabled it to keep up with the swelling inmate population, more and more prisoners have had to be jammed into available space. The resulting overcrowding of existing institutions has now filled them to 180 per cent of the maximum capacity for which they were designed. (See Graph 7.) In one prison whose 4,825 inmates more than double its design limitations the gymnasium is jammed full of metal bunks. Deplorable conditions resulting from overcrowding have been the principal cause of the succession of prison riots which punctuate the history of American penology.

Besides this danger, overcrowding results in deterioration of prison services. Rehabilitative programs require space which is included in the design in sufficient volume for the population for which the institution is planned. But with populations approaching double that number, not only are facilities for programs grossly inadequate, but much of the physical space originally planned gets converted to provide additional housing. Currently nearly 20,000 prisoners desiring to work or attend classes while imprisoned are shut out of such opportunities, partly due to lack of institutional program space. Aggravating these constraints, a 1993 report of the Assembly Ways and Means Committee notes that apparently "the only correctional programs in jeopardy are those that benefit inmates and contribute to successful rehabilitation and community transition," which, "while perhaps politically palatable, will ultimately increase correctional spending."

Graph 7: State Prisoner Population &amp; Capacity



Illinois has problems comparable to California's although on a lesser scale. A Task Force on Crime and Corrections, appointed by its governor and headed by a former U.S. Attorney in Chicago, issued a report earlier this year. It stressed the importance of expanding drug treatment programs to reduce recidivism:

*Prison based programs may be the only chance we have to treat a significant number of substance-abusing offenders successfully.... Intensive substance abuse education and treatment programs have proven effective in helping inmates to stop substance abuse—itsself one of the major contributors to the likelihood that an offender will return to prison.*

The Task Force also stressed educational and vocational training programs which have "been shown to be effective in reducing recidivism." It said its findings were based on 36 meetings over the last year and input from 150 outside experts.

But in California's prisons today there are long waiting lists for most programs and only a tiny fraction—three per cent—of prisoners in need of drug treatment receive it. Overcrowding prisons may achieve savings in the operational short run, but there will be far larger long term losses because of the failure to enable prisoners to obtain the training and treatment which will improve the prospects for their future lives.

While prisons are serving the function of punishment, it is shortsighted in the extreme not to recognize that dead time behind bars can be utilized for training, education, drug

treatment, and other therapies for inmates, the large majority of whom will be returned to the free world within a few years. Substantial numbers are illiterate or have substance abuse problems, and many others could benefit from vocational training or other education. Since the Civil War, progressive prison programs have supplemented punishment with rehabilitation, and twenty-five years ago California had a nationwide reputation for its innovative programs—but no more.

#### 4. Other Criminal Justice and Indirect Costs

Gross overpopulation of state prisons impacts all other levels of the criminal justice process. Youth Authority populations are also up. Today California, with 11 percent of the nation's population, locks up 20 percent of the nation's imprisoned juveniles. Increasingly punitive law and administration swells local jails, by increasing the numbers held in pretrial detention or sentenced to jail instead of probation. It also requires more prosecutors, defenders and judges as well as provision of the facilities they require.

When a family's breadwinner is imprisoned his or her children are often forced onto welfare. The isolated location of prisons, hundreds of miles from prisoners' homes and often with no public transportation, is likely to have devastating effects upon family ties.

Of the approximately 1.3 million Americans in our nation's prisons and jails, 80 per cent of women prisoners and 60 per cent of male prisoners have children. Many women prisoners are pregnant when they enter jail. More than half a million children are separated from their primary parent due to that caretaker's imprisonment for drug-related and non-violent offenses.

That this is likely to severely harm these children is self-evident, and it is little wonder that nearly half of youths entering the criminal justice system are the children of parents who have been incarcerated. The Illinois Governor's Task Force on Crime and

Corrections, in the course of recommending ways to relieve prison overcrowding, said that the final answers to the problems of crime and violence were beyond the scope of the task assigned to it, for "the ultimate solutions to crime and prison crowding must focus not on the current prison population, but on the current preschool population and their families."

In California, however, we are doing the reverse. Imprisonment of women has been growing at a faster rate than for men. A study of the 7,000 women presently in California state prisons found that two thirds were locked up for non-violent property or drug crimes, the majority of whom were young single heads of household with an average of two dependent children. Many are poorly educated, have health problems, have been homeless and/or drug dependent, and over half of all female offenders have been physically abused. Forty per cent of their children are under the age of six.

Nothing could better illustrate the insanity of current California criminal justice "policy" than the facts in the three preceding paragraphs. Services for these children, who are surely the ultimate innocents whatever their parents may be, are slashed in order to provide the funds to separate them from their mothers.

In addition, while the majority of prisoners come from urban areas, we continue to build prisons in rural areas and place prisoners far from their families. For example, almost 60% of prisoners at Pelican Bay prison on the California-Oregon border are from Southern California. Similarly, almost one-third of the women prisoners at the Northern California Women's Facility at Stockton are

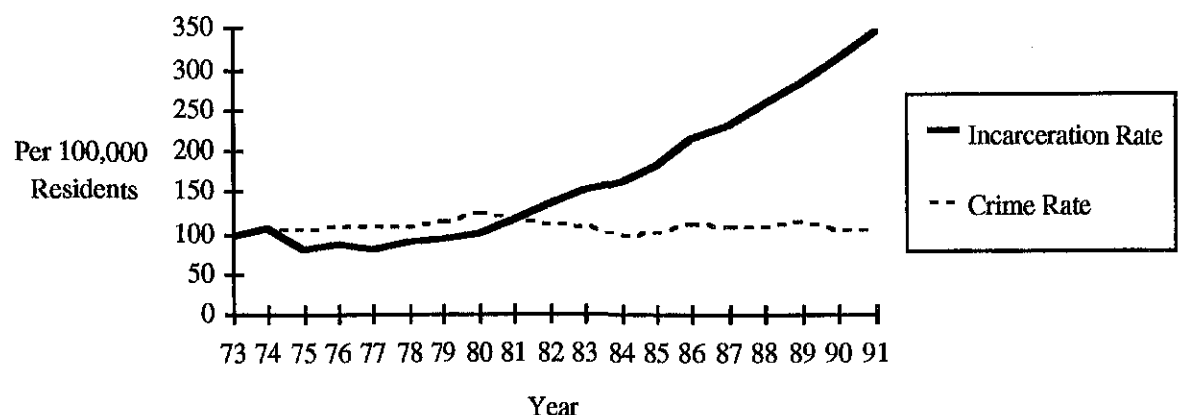
from Southern California. These costs combined with the too often humiliating conditions of visitation discourage family visits, a key factor in reducing the number of ex-prisoners returned to prison.

That most of these indirect costs cannot be precisely quantified does not make them any less real, with society having to make up the loss. By ignoring prison's impacts and failing to deal with root causes of crime in childhood, in the home, and in the ghettos of our cities, we simply perpetuate and aggravate the problems imprisonment does not and cannot resolve.

A dramatic illustration of the extent to which California's lock-em-up emphasis masks and diverts our attention from our real problems has led us to the point where one out of three young African-American men in their twenties in this state are now under some form of criminal justice control. This is four times as many African-American males of all age groups as are enrolled in four year college or graduate education programs in California.

A major cost of present legislative policies on crime is its diversion of attention from the race and class biased outcomes of those policies. Until we recognize that poverty, educational malfunctioning, unemployment, hopelessness and a racially biased drug enforcement policy have to be dealt with, our problems can only worsen.

Graph 8: California Crime & Incarceration Rates



*The present swing of California's pendulum to its extreme reliance on punitive imprisonment is without precedent in its intensity and duration.*

#### IV. FLAWED POLICY ASSUMPTIONS

The heavy emphasis on punitive imprisonment dates from the enactment in 1976 of the Determinate Sentencing law, which allowed every politician a quick and dirty means of assuring re-election by appearing to be tough on crime. Since its passage, over 1000 laws creating new offenses and lengthening sentences have been passed. The rationales behind this trend are:

##### 1. That Imprisonment Reduces Crime

The primary political rationale which has propelled current prison policy is the assertion that an increase in imprisonment rates has a significant effect in decreasing crime rates, both by incapacitation which keeps prisoners off the streets and by deterring potential criminals. While there is strong sentiment that criminals should be punished and seen to be punished, it is unlikely that there would be much support for spending so much money on prisons if its only result was symbolic satisfaction, especially while that money was being diverted from meeting the public's own needs.

Studies of the correlations between the rates of crime and imprisonment provide no credible statistical evidence to support this claim. (See Graph 8.) Given the nature of America's culture of crime and the realities of the criminal justice system, imprisonment rates could never have more than a marginal impact on crime. The vast majority of those who commit crimes never enter the prosecution system at all, either because their crimes were not reported to the police or, if they were, no suspect was ever arrested. The small remainder who are arrested enter a process which resembles a leaking water line which delivers to its destination only a tiny trickle from the flow which entered it.

The exhaustive 1967 report of President Johnson's crime commission, *The Challenge of Crime in a Free Society*, included a spread sheet, graphically illustrating this process. Such leakage is inherent in the limitations of criminal justice

machinery in a free society which must afford due process rights to defendants and demand proof before conviction. Of the total number of crimes committed, a significant proportion are never known by the police; of those felonies of which the police had knowledge, only a small fraction result in an arrest; of those arrested, many are never charged because of insufficient evidence or through the exercise of police and prosecutorial discretion not to prosecute; of those charged, during the succession of pretrial stages through which they were processed, many are dismissed, or had their charges reduced, or were plea bargained to a lesser offense; of the relatively tiny number convicted of felonies, only a trickle remain to be delivered to prison.

Even if the size of that trickle could be doubled, it could not have more than a marginal effect upon the ocean of crime from which it came. Since that 1967 report was published, the development of the Census Bureau's National Crime Victimization Survey has given strong statistical support to the premise that much crime is never reported to the police. Thus imprisonment, while an essential element in an overall criminal justice policy, is only a part, and a relatively minor part, of what needs to be done to deal with the causes of crime. It is deceptive to justify the expense of a bloated prison system on grounds that it constitutes a rational front-line defense against crime. Inherent constraints of the criminal justice system make it impossible for it to serve that function.

##### 2. That the Criminal Justice "System" is Structurally Sound

Public and political memories are short-lived, but it is important to recall that the present prison policy represents a precipitous change in California's approach to the problem of crime. Only ten years before the 1976 watershed determinate sentencing legislation the state led the nation in pursuing the opposite policy of flexible, rehabilitation-oriented indeterminate sentencing. Administered by an agency known as the Adult Authority which had been created in 1944 by Governor Earl



Warren's administration, this state policy gave great weight to institutional treatment programs, to parole, and offered financial subsidies to counties to encourage their increased use of probation and other non-prison sanctions.

This policy had many flaws which were exploited by the political campaign which brought it to a crashing halt in 1976. It was the victim of attacks both from conservatives for the liberality of many of the Authority's release decisions and from liberal critics for the agency's secret and arbitrary procedures and alleged misuse of its sweeping discretionary power. Many of these problems could have been remedied by simple legislative adjustments, but the response instead was draconian surgery.

Fluctuations of this kind, juggling the relative priorities assigned to inflexible punishment of the crime on the one hand and flexible rehabilitative treatment of the criminal on the other, have been repeated time and time again in the history of American prisons since the Civil War. But the present swing of California's pendulum to its extreme reliance on punitive imprisonment is without precedent in its intensity and duration.

What is of current relevance in the Adult Authority's history is the way in which the agency addressed, with considerable success, two important techniques for prison population control: the conscious use of parole as a discretionary release mechanism to adjust prison population to prison capacity, and an aggressive attempt to influence intake, the flow of prisoners from the courts to the prison system.

The former showed that discretionary parole release policy could be used to impose informal but effective limits to prevent overcrowding. During Ronald Reagan's tenure as governor, his administration first ordered the Authority, as an economy measure, to reduce prison population by increasing parole release rates, a policy which enabled the state to close one prison and underpopulate San

Quentin and some other prisons. Then the Reagan administration, attacked from the southland for being soft on crime (what irony!), reversed course and ordered the Authority to tighten ship. The Authority, all of whose members had been appointed by Reagan from the ranks of law enforcement and corrections; dutifully obeyed both times.

Even more interesting was the state's vigorous attempt to affect the number of prisoners being sentenced to prison. Intake has always been a problem for corrections, which has little or no control over how many prisoners it must accept. Courts, moreover, are highly decentralized, separate entities spread all across the state and, except for counties in which prisons are located, have little contact with corrections and its policies and problems. During the periods in which the state was trying to reduce prison populations it used the financial incentives noted above to encourage more use of probation and organized judicial conferences to educate judges about prisons and their problems. Most important (because their role is the most important), corrections communicated actively with prosecuting attorneys, whose broad discretionary powers can affect intake through prosecuting decisions.

The incoherence which has resulted from today's lack of coordination is strikingly illustrated by a comparison of Marin and Kern counties, with Kern sending eight times as many cases to state prison per capita as Marin. In effect, counties which overload the state prison system are forcing taxpayers in the rest of the state to assume their costs.

Ignoring structural defects leads to other false assumptions. There is an apparently widespread belief that the number of prisoners entering the system and the length of time they are to be kept is the product of some natural phenomenon which cannot be controlled. One news report quotes a state official as saying that "it's a population-driven budget. There are just a certain number of people that state law says must go to prison." While it is true that state law has

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opened the door to this flood, the conclusion that there is nothing that can be done today to check it is false. There is enough discretion in the law's administration by police, prosecutors and parole board to significantly reduce the flow of prisoners even within existing law.

Second is the implicit justification advanced for keeping Corrections immune from the cuts to which all other programs financed by discretionary funds are subjected. It is simply taken for granted that as the number of persons sentenced to prison rises, the cost of housing them there must keep pace in lockstep. But this logic, of course, could be used to justify increases in any budget category of one's choice. In a growing population, caseloads for welfare, Medi-Cal, health problems of the poor and the elderly, homelessness and the size of the college age group are also all increasing. Choices have to be made.

### **3. That History and Research Can be Ignored**

The magnitude of the shift to determinate sentencing is illustrated by a 1973 crime commission report issued only three years before the 1976 Determinate Sentencing law. It sets out the policy goals which had dominated the preceding twenty years and still enjoyed widespread support but which the country's emerging new mood was beginning to dampen. The National Advisory Commission on Criminal Justice Standards and Goals was a \$1.75 million, two year study for the federal Law Enforcement Assistance Administration. The Commission members were described as federal, state and local "crime fighters", and their report recognized that "harsh punishment had failed to curb crime." Repeated throughout is the plea that police, judges and correction administrators employ the "least drastic" method in dealing with criminals, while "at the same time protecting the public." Summarizing the commission's unanimous recommendations, its director noted:

*These changes must not be made out of sympathy for the criminal or disregard of*

*the threat of crime to society. They must be made precisely because that threat is too serious to be countered by ineffective methods.*

The entire tenor of this report is that incarceration is not an effective answer for most criminal offenders. The failure of major institutions to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions do succeed in punishing, but they do not deter.

Among the recommendations of this commission of front-line professionals were:

courts should impose prison sentences only as a last resort after considering such other tactics as immediate release with or without conditions, probation, fines, and sentencing to a half-way house or work-release program;

states should build no major institutions for juveniles "under any circumstances" and none for adults except in rare cases;

no prison sentence should exceed five years except for those dealing with murderers, professional criminals and persistent, dangerous offenders.

There has been a long line of commissions such as this one dating back to President Hoover's appointment of the Wickersham Commission in 1929, when enforcement of Prohibition was corrupting the criminal justice system. Law enforcement and correctional personnel sometimes dominated and were always included in their membership, they were able to enlist research and professional assistance, and their recommendations have usually stressed the importance of alternative sanctions.

Indeed, California's Governor Deukmejian appointed a similar law enforcement-dominated Blue Ribbon Commission which, in 1990, reached like

conclusions. But often such commissions are appointed to cool a crisis which by the time they complete their work is ancient history, and the usual fate of such reports has been to gather dust on library shelves. California could well afford to dust them off.

## V. THE POLITICS OF CRIME

### 1. Legislation vs. Administration

Among many factors which partially explain the political climate which has produced the prison population explosion, irresponsible exploitation of the public's very real and justified fear of crime probably takes first place. Crime is a serious problem, especially for those who live in the ghettos of our big cities. Its importance is not to be minimized. But although reactions of outrage and fear are natural and understandable, they have been inflamed by a political structure which has deceived the public in order to exploit the political capital sought by tough-on-crime posturing and by powerful self-interested pressure groups. The public has been systematically misled to expect results from the criminal justice system which it cannot possibly deliver. The result is a prevailing public opinion that ever more punitive, draconian punishment offers the only solution to our crime problem.

Thus the root cause of California's grotesque overuse of prisons lies in the politicization of a problem which is not amenable to detailed legislative oversight. Rational planning in a criminal justice system is a complex process in which changes at one point in a policy continuum will affect the operation of other procedures all the way from an offender's intake into the criminal prosecution process to that offender's final release from criminal justice controls.

While setting general criminal justice policy is and should be a legislative function, detailed administration of that policy requires regulation and oversight skills which can adjust a specific change at one point in the system in the context of its impact on overall policy. Legislative detailing is not equipped to discharge this

function; it requires management by a specialized administrative agency.

The failure to recognize the need for such a division of responsibilities between policy-setting and administration has had disastrous consequences. The expansion in coverage and penalty severity of a bloated substantive criminal law has resulted in a mushrooming prison population. Further, the malfunctioning of the system has aggravated our society's structural racial and class bias. Observation and several broad-based studies have documented this racial and class bias in some detail.

The emphasis in decision-making on the need for new prisons is no longer so much a function of criminal justice policy factors as of the creation of jobs programs for economically depressed rural counties. Even as an attempt to stimulate the economy this is questionable, for university education and research will result in far more economic stimulation than dead end building/jobs programs with no potential for future growth or productivity. From the perspective of criminal justice policy, such expenditures represent an appalling waste of funds. Thus to insulate criminal justice decisions from political posturing and special interest pressures, which the legislature is ill-equipped to resist, is a first priority of a rational approach to policy management.

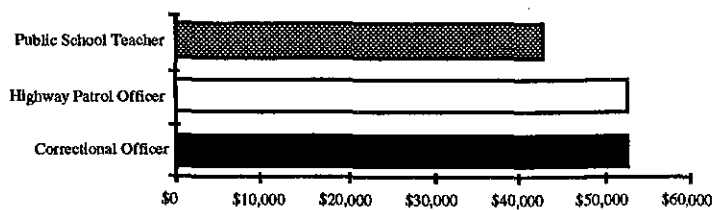
Our political malfunctioning in its pursuit of massive imprisonment conceals our current policy's exorbitant costs, its failure to affect crime rates, and its rejection of the overwhelming weight of expert knowledge about how to deal with crime. Some of the political causes which have produced this result are traced in the following paragraphs.

### 2. Criminal law legislative process

While research seeking to explain the explosion of prison populations has been dominated by studies of the practices of judges and the discretionary charging and plea-bargaining practices of prosecutors, a more important variable contributing to runaway growth is the way in which

*Crime bills are not only the phoniest, but also the cheapest shots in the political arsenal.*

Graph 9: Average Annual Salaries



*"You've got to put your money where your mouth is!" CCPOA's President Don Novey stated.... The union boasts that of 44 bills it has pushed in the legislature under the last three governors, 38 were enacted.*

legislation on criminal justice is enacted. Typically the legislative process fails to consider the true costs of imprisonment or to recognize the discriminatory distribution of those costs.

Any legislation which creates new crimes or enacts increases in existing criminal penalties involves potentially substantial expense. At the most obvious, quantifiable level, facilities must be provided to accommodate the expanded population which the new legislation will generate. These include the annual maintenance costs for each additional prisoner; any capital and financing costs required for needed additional facilities; and, at some point, the inevitable need for more judges, court personnel, prosecutors and defense attorneys.

Even this kind of obvious evaluation required by any concept of fiscal accountability is virtually never made when proposed criminal legislation is being considered. Instead, these bills are enacted without the constraints of having either to fit their cost within a budget or to enact tax increases to pay for them.

It is no wonder that legislators often respond like rogue elephants. Crime bills are not only the phoniest, but also the cheapest shots in the political arsenal. Thus in recent decades hardly a federal or state legislative session goes by without the enactment of another package imposing new criminal penalties or increasing the severity of existing ones. Responsible legislators could, of course, control this increase by repealing or reducing enough other criminal penalties to balance the cost of their new legislation. Such a check would be routine in a

budgetary system where money to finance new programs would have to be found somewhere, but it is absent when proposed crime legislation is on the floor.

This legislative irresponsibility has other serious consequences. The "justice" component of "criminal justice" embodies the social importance of fairness and equity. Given limited available administrative facilities, the mass of presently existing criminal legislation cannot possibly be enforced equitably. Selective enforcement and detention to induce plea bargaining are the norm. Much of our legislation, fueled solely by political expediency, is not even intended to be enforced at all unless in a particular case it suits some prosecutor's political, idiosyncratic or moralistic whim. The result is that any possibility of achieving a regime seeking fair and equal justice is a casualty of our legislators' political gamesmanship. Extensive and uncontrolled discretionary power is the direct product of legislative irresponsibility, and has produced the race-biased, class-biased distortions of the system's output.

### 3. Pressure groups

We have now created a huge correctional/industrial/professional complex with vested interests in the status quo, e.g., construction and labor trades, local economies in depressed areas profiting from the building and operation of more and bigger prisons, a growing non-academic research industry, and bureaucrats extending or at least protecting their turf. Then add the cynical exploitation of crime by politicians seeking votes on the cheap and judges and prosecutors with varying allegiances.

By far the most powerful pressure group is the California Correctional Peace Officers Association (CCPOA). The CCPOA has grown in a decade from 4,000 to 23,000 correctional officers, parole agents and prison counselors and has lobbied aggressively for its members, achieving an extraordinary pay and benefit schedule under which the average correctional officer's salary and fringe benefits total \$55,000 a year. (See Graph 9) This equals

the compensation of Highway Patrol Officers, traditionally among the highest paid in the nation, and is far above the average of \$43,000 for public school teachers.

But the union goes far beyond lobbying for better pay and working conditions for its members. Collecting about \$8 million a year in dues, it spent \$1.8 million to support candidates for governor and the legislature in 1990. The union boasts that the \$941,000 it contributed to Governor Wilson gave him the margin of victory, has consistently supported legislative candidates who promote the prison building and its resulting enormous increase in the number of prison guards employed, and has opposed candidates whom it deemed "soft on crime".

The CCPOA has continued this policy of buying the legislature; its total political contributions in 1991 and the 1992 elections were closed to a million dollars. Its contributions are twice as great as those of the California Teachers Association which has 10 times as many members. It has been a powerful force behind the legislature's enactment of more than a thousand new laws between 1984 and 1991 which increase sentence length, imposed mandatory prison sentences, or changed misdemeanors to felonies. As CCPOA's President stated, "You've got to put your money where your mouth is!" This irresponsible record, enacted without regard for its costs, was a major cause of the prison population explosion.

The CCPOA's effective tail-wagging-the-dog phenomenon is sadly far from unique in American politics. That it is successful—the union boasts that of 44 bills it has pushed in the legislature under the last three governors, 38 were enacted—powerfully reinforces this legislative irresponsibility. The union's political lobbying is also profoundly inimical to any possibility of developing a rational and balanced criminal justice policy.

## VI. THE BUDGET: HARD CHOICES, AN EASY CHOICE

It is in the light of the foregoing analysis that we turn our attention back to the budget, for it is the waste in the prison policy that ought to be easiest choice in a scenario of hard choices.

The 1993-94 budget gap is over \$8 billion. This includes a carry-over deficit of nearly \$3 billion from 1992-93, when that year's budget battle stripped many programs to the bone. There are no quick fixes in such a crisis. It has been festering for a long time as the result of Proposition 13 and the tax policies of the eighties, accelerated by the recession. The result is that hard choices have become harder still. But in a scenario of hard choices it is inexplicable that the one easy choice is not being considered by the Governor: immediate cut-backs and the initiation of long range planning for the reduction of the state's bloated, ineffective, money-wasting prison program. Of course the immediate budget gap cannot be closed or even significantly mitigated by prison budget savings in the next few years. But a start has to be made. That other budget programs are to be expected to endure further financial maiming while the prison budget continues its upward climb is unpardonable.

But the Governor's budget proposal ignores this in his attempt to postpone the day of reckoning for yet another year. Instead he indulges in wishful thinking and, forgetting that he is governor of all the people of California, uses tactics that attempt to transfer the state government's problems onto other governmental entities.

The major items for closing the gap in his budget proposal are, first, reliance upon the receipt of a total of \$1.45 billion from the federal government to reimburse the state for the cost of dealing with immigrants in its health, welfare and corrections programs; and second, extending an emergency measure initiated for 1992-93, the already-noted transfer of \$2.6 billion (increased from last year's \$1.4 billion) of city and county property tax revenue to the state.

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*Just as the budget arbitrarily limits the number of students who can get a college education, there must be a cap on the number of convicts the state can afford to imprison.*

How much of the \$1.45 billion in reimbursements the Governor claims the federal government owes the state will ever in fact be appropriated by Congress is questionable at best. Whether any of it will be received in time to affect the state's impending budget decision-making is unlikely. If it is not received, health, welfare and higher education will face further major reductions.

These claimed but improbable reimbursements include \$250 million listed in the revenue base for Corrections to cover the keep of prisoners who are not U.S. citizens. Incredibly, the Corrections budget will not suffer when the money does not materialize; instead, the loss will be recouped by drawing additional funds from health, welfare and higher education. Corrections is apparently to remain on its pedestal come hell or high water. But in the context of unavoidable hard choices, starting to get control of correctional waste should be an easy choice.

While Governor Wilson has not yet disclosed how he would apportion these additional burdens to be imposed upon cities and counties and other local entities for 1993-94, it is clear that anything approaching an equitable allocation of the transfer of \$2.6 billion of property tax revenue to ease Sacramento's educational obligations will leave most of them with no alternatives short of drastic surgery.

As if the Oakland fire had been forgotten in barely two years, this impact of the state budget will require closing many fire stations and leaving those which remain with reduced staffing. To a public concerned about protection from crime, the budget's message is, "get along with far fewer police officers in the cities and fewer sheriff's deputies in the counties." Road and park maintenance, public libraries, the availability of paramedics, programs for the homeless, the mentally ill, and the elderly—all these face the prospect of reduction or elimination. Routine public services of local government which have been taken for granted may be gutted; thus

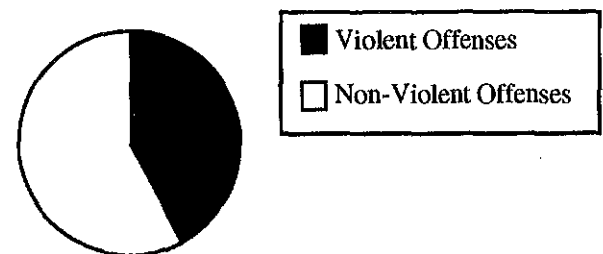
in planning and building permit agencies existing backlogs will be aggravated, delaying construction and increasing its costs.

Often the effect of these property tax revenue transfers hits basic social needs which most need strengthening. The City of Pasadena, for example, where the ages of over half the library users are 18 or under and the libraries have had services ranging from children's story hours to adult literacy programs, has been forced to slash hours and the book budget. One option the City Council is being forced to consider is to close all eight branch libraries and sell them as residential property to provide funds for the central library (funds which, of course, the state can seize next year.) Libraries all over the state face similar problems as we destroy our social and cultural infrastructure.

Besides cities and counties, California also has uncounted hundreds (or probably thousands) of local special tax districts where citizens within limited geographical or service areas have voted to impose additional taxes upon themselves for purposes specified on the ballots they cast. The funds thus accumulated are earmarked for wide range of projects in districts dedicated to flood control, sanitation, water, open space acquisition, road improvements, public utilities, supplemental fire and paramedic protection, parks, and other community services.

Thumbing its nose at these citizens who have thus sought to meet their urgent needs or shape their lives for the better, Sacramento last year decided that these

**Graph 10: California Adult Prisoner Population By Offense (1992)**



special district revenues were also fair game for the state and under the 1993-94 proposals the amount seized will be doubled. The only light at the end of this tunnel is the possibility that as the impact of these confiscations begins to sink in it may trigger a new kind of Boston tea party, a citizen's tax revolt for the right of local communities to tax themselves without being at the mercy of the state. It may even cause the public to begin to reconsider the validity of priorities which assign a higher preference to wasteful overuse of imprisonment than to their own pressing needs.

## VII. ALTERNATIVES

This report has examined the basic flaws in California criminal justice policy which have led to run-away prison population growth. We are not alone, of course, in facing this problem. A report issued last fall by the Texas State Comptroller on that state's "criminal justice quagmire" applies equally to California. He referred to taxpayers being "mugged" by a justice system which "will cost us more than \$3 billion this year, yet no one feels the safer for it." as Texas policies "are leading the state to a costly dead end."

### 1. Policy Changes

#### Prisons as a last resort

The state should immediately adopt a policy which sets a limit on the maximum size of the state prison population and a moratorium on new prison construction. The underlying philosophy which the state needs to affirm is the use of state prison only as a last resort when no other less expensive and more effective alternative sanction can be implemented. Just as the budget arbitrarily puts limits on the number of students who can get a college education or the amounts of the welfare benefits it funds, there must be a cap on the number of convicts the state can afford to imprison.

#### Short range efforts

The immediate objective is to stop population growth in its tracks now and

rapidly thereafter begin to roll populations back towards more reasonable levels. The fact that currently violators of non-violent property offenses and non-violent drug offenses together account for 60% of all state prison inmates illustrates how such a population reversal can be implemented. (See Graph 10)

This year, several choices can be made to start California on the road to a saner policy. The state could substantially reduce the number of prisoners who are non-violent offenders by eliminating ineffective and costly parole supervision of such offenders. Also, the prison population could be reduced by adjusting the way in which inmates who participate in education and work programs earn time off their sentences. Most prisoners are eligible for and willing to participate in such programs, but many (15,000 - 20,000) cannot earn credits because of the prison system's inability to provide programs for them. Aside for subjecting prisoners to forced idleness, this policy costs taxpayers millions each year in lost savings from loss of work time credits. Extending credits to those prisoners who are forced to be idle would both be fair and would help stop population growth.

Third, the legislature must reexamine the penalty structure which has propelled population growth. Targets for change are statutes which require mandatory minimum sentences and the reduction of many non-violent offenses from felonies to misdemeanors. Consideration should also be given to legislation authorizing early release for certain categories of less serious offenders which would be automatically implemented if the prison capacity were to be exceeded.

#### Longer range solutions: a sentencing commission and a community corrections act.

The aforementioned policies could be implemented in the current fiscal year, and could easily save the \$250 million the governor had hoped to obtain from the federal government this year in prison bail-out money, thereby preventing another gubernatorial raid on the health, education,

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*In neither California nor Minnesota was there any significant impact on crime rates attributable to their very different sentencing and imprisoning policies. The biggest difference was that Minnesota saved a lot of money, and California splurged.*

and welfare budgets. In the long run, the legislative/administrative solutions to California's prison crisis lie in a sentencing commission tied to a cap in the prison population, and a realignment of the corrections budget to help support community correctional alternatives for many of the low level offenders now in prison.

The sentencing commission's task would be to force honesty in sentencing, and assure that our resources to imprison are utilized within their means just like any other state department. The commission would be charged with reforming the present fragmented, incoherent state criminal justice policy and with projecting long range targets for prison population. Our prisons are now bulging at 180 percent of capacity. A first step for longer range planning would be to cure the overcrowding problem by reducing the population cap to a figure no higher than the present bed capacity of 63,000. This would still leave us with an unacceptably high incarceration rate of 200 per 100,000, more than double the 1977 rate and far higher than necessary under an integrated criminal justice plan. But it would be a start in the right direction.

As the prison population is being brought down, tremendous funds would be freed up. Unlike California's disastrous experience with the deinstitutionalization of mental patients, where patients were essentially dumped into communities with no support services, California should require that all or nearly all of the funds currently spent on corrections follow the former prisoners back into their communities. A community corrections act, now in existence in one form or another in 18 states, is an excellent vehicle for this. By establishing a formula for the equitable county by county use of the state prison system, the state could help fund a range of safe and effective programs for those caught up in the criminal justice system to address their needs for drug treatment, housing, employment, and supervision. Such an act would also address the inequitable use of prisons illustrated above in the case of Kern and Marin

Counties by utilizing a standard statewide incarceration rate target as the formula for county reimbursement.

## 2. Political Obstacles

There are formidable political obstacles in California to such a "last resort" utilization of prisons with an integrated criminal justice policy which limits the size of the prison population. Yet the California history in the sixties and early seventies, discussed above, shows that it is possible. A more recent example of its political feasibility was Minnesota's experience during the eighties when California's prison population and building frenzy were exploding. In Minnesota, the legislature delegated to a non-legislative commission the task of establishing and administering sentencing guidelines, but with the proviso that the result must not require any increase in prison capacity. They also developed a community corrections act (ironically modelled after California's now defunct Probation Subsidy Program) to help counties fund local correctional alternatives.

The Minnesota Commission prioritized criminals according to the gravity of their crimes and prior records, ranked crimes by seriousness, projected anticipated commitment rates for each, and adjusted which classes of criminals warranted prison and for how long. Then, they came up with guidelines which, given the projected commitments, would not overcrowd their institutional capacity. The criminals who were bad enough to earn a prison bed were thus identified and the remainder were directed to jail or probation alternatives. Far from being soft on crime, Minnesota during this period had one of the country's longest average length of stays for violent offenders.

This system worked for most of the decade to prevent any state prison growth. In neither California nor Minnesota was there any significant impact on crime rates attributable to their very different sentencing and imprisoning policies. The biggest difference was that Minnesota saved a lot of money, and California splurged.



Of course, California is a much larger and more complex state than Minnesota, but the two key principles to be learned from this experiment are equally applicable.

First, there must be a cap on the total prison population. When an interest group appeared before the Minnesota Commission to press a particular proposal, such as a substantial increase in the length of imprisonment for drug dealers, the response was, in effect: "Fine, but we have to keep within our prison capacity. Whose prison terms do you suggest we reduce in order to free up the necessary bed space?" In other words, ordinary accounting practice: live within your means. But most other determinate sentencing schemes in the United States, including California's, not being constrained by a cap, have engendered large population increases.

The second key principle, at least equally important but far harder to envision, was that sentencing was taken out of politics. Fairness, rationality and economy in criminal punishment has to consider the sanction for any particular crime only in the context of an overall sanctions policy. This is the job of a specialized administrative agency, for which the legislative process is ill-adapted. It was when, in the last few years, Minnesota legislators could no longer resist seeking political advantage by going behind the Commission and pushing for tougher mandatory minimum penalties that the guidelines developed serious flaws.

### 3. Public Opinion

The whole thrust of this report points up the urgent necessity for public education about the realities of our current crisis. The myth that Americans are harshly punitive is pervasive and is partially the result of limits on public opinion polling. When answering a question like "are sentences too harsh, about right, or not harsh enough," most people think of the worst sorts of violent incidents. This worst case scenario is endlessly repeated in the press and on TV, particularly in local news broadcasts, where murder and other violence are the staple diet and which almost never reveal that the

majority of offenders are non-violent property, drug or technical parole violators; or how much their imprisonment costs taxpayers; or about the availability of alternative, effective and far cheaper sanctions.

When politicians are quoted saying that they are sure Californians would not want to see criminals released early because prison space is unavailable, by lumping all criminals together they are intoning the same worst case scenario. If elected officials were leading and educating about crime and criminal justice instead of playing cheap politics, we can be sure that most Californians would not be enthusiastic about taking \$25,000 of their money away from education and fire and police protection in order to house each one of tens of thousands of current non-violent state prison offenders.

Reviews of more sophisticated public opinion research — in states like Alabama, Delaware, Pennsylvania, and yes, even California — have repeatedly documented how uninformed the public is, tending to think of imprisonment as the exclusive punishment for crime. When public opinion surveys have presented a range of cases and given information about alternative sanctions which can be used, they have shown that support for imprisonment declines significantly.

This corroborates a picture of a public which is not nearly as punitive and vengeful as our media and our politicians assume it to be. There is plenty of evidence in the personal relations of our daily living that there is widespread concern for fairness and justice in society without distinctions of race, gender, or class; of respect for the integrity and rights of persons who differ from us; and of compassion for the suffering of others and forgiveness for their sins. But these qualities disappear in our present calculus of how to deal with crime. Yet they are inextricably intertwined with it.

### VIII. CONCLUSION

The alternative policy, political, and public education choices presented in this section are the kind of long range thinking which is urgently needed in the state today. Once the myth that imprisonment can be our primary resource in dealing with the crime problem has been dissipated, we can turn our attention and our resources to face the inequity, poverty, and racism that permeates so much of our culture and breeds our crime problem.

In 1990, Chief Judge Donald P. Lay of the federal Eighth Circuit Court of Appeals wrote that:

*The criminal justice system is a disgrace to a civilized nation that prides itself on decency and the intrinsic worth of every individual. The system is a complete failure. The financial waste incurred by communities, cities, states and the Government is unbelievable....The human waste caused by the warehousing of prisoners is unconscionable....Present policies breed further crime, dehumanize individuals and require gross expenditures of tax dollars needed for other purposes.*

In many third world countries, limited resources are lavished on the military while all other government services are impoverished. California now displays disturbing parallels with such misguided priorities, with the funding of California's prisons as the centerpiece of the state's "war on crime" impoverishing government's ability to respond to our other needs. Is this really the choice we want to make?

*Edited by Elliot Currie, author and professor at the Center for the Study of Social Change at UC Berkeley; Naneen Karraker, Criminal Justice Consortium; and Vincent Schiraldi, Center on Juvenile & Criminal Justice. Graphics, layout, and design by Naneen Karraker, Criminal Justice Consortium.*

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