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Toward a Realistic Reorganization of the Penitentiaries

Stephen G. Seliger

Northwestern University School of Law

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CRIMINAL LAW COMMENTS AND CASE NOTES

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TOWARD A REALISTIC REORGANIZATION OF THE PENITENTIARIES

STEPHEN G. SELIGER

INTRODUCTION

It is a startling fact that the crime rate in the United States has been rising and is expected to soar within the next decade.¹ Every year our penitentiaries and local jails² house 2.5 million offenders³ found guilty of crimes ranging from violent murder and sexual assault to vagrancy and petty theft. The average inmate spends less than two years in the penitentiary, is released and permitted to participate⁴ again in society. Yet

¹ THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE TASK FORCE ON CORRECTIONS 7 (1967).

² This comment concerns itself with penitentiaries—those institutions that imprison felons—and not the local and county jails used for detention and incarceration of misdemeanants. Many of the ideas expressed here, however, may be applicable to jails.

³ 75% of all offenders are adults, although it is predicted that the number of juvenile crimes will rise sharply in the next decade. THE TASK FORCE ON CORRECTIONS, *supra* note 1, at 1-3, reports that most adult offenders are from lower class neighborhoods in large cities, have little education, lack vocational skills and have a history of ineffective relationships with family and friends.

See RUBIN, THE LAW OF CRIMINAL CORRECTION, ch. 18, §3, who suggests that most criminals come from what he terms "delinquency areas" in large cities. These are zones in transition from the older, pre-industrial society to present mechanized social organization. The physical and social deterioration in these areas, he claims, lead to mental stress and criminality.

⁴ In many jurisdictions, convicted offenders permanently lose certain rights, including the right to vote or hold office. See ILL. ANN. STAT., Ch. 38, §124-2 (1963), which disables a convicted defendant from

many released prisoners commit more crimes and return to prison for a longer period.⁵

By incarcerating the convicted defendant, society is attempting to protect itself from crime, both during his stay at the correctional institution and in the future, after his release. While imprisoned, the inmate cannot engage in criminal activity against the community at large since he is physically separated from it. Yet, in the overwhelming number of cases, society will someday allow the convicted defendant to return⁶ and it then may face a possible repetition of the offender's previous behavior. Temporary incarceration of the criminal alone is ineffective because it gives no assurance that he will shun future criminal activity. Thus, if society wishes to protect itself from crime it must understand and correct the motivations of criminal conduct.

holding office or voting "... unless he or she is again restored to such rights by the terms of a pardon for the offense or otherwise according to the law."

⁵ See Barbash, *A Study of Psychological Therapy and Post-Release Adjustment*, 25 AM. J. OF CORRECTIONS 26 (Jan.-Feb. 1963); Arnold, *A Functional Explanation of Recidivism*, 56 J. CRIM. L. C. & P.S. 212 (1965); Mandel *et al.*, *Recidivism Studied and Defined*, 56 J. CRIM. L. C. & P.S. 59 (1965). 91 TIME 40 (Mar. 29, 1968) estimates that 30% of released inmates return to prison within five years.

⁶ *Weems v. United States*, 217 U.S. 349 (1909), suggests that a prisoner cannot be incarcerated indefinitely. The Court held it unconstitutional to give a convicted defendant a sentence disproportionate to the crime committed.

Unfortunately, many of our penitentiaries devote little time or effort to the rehabilitation of inmates. While lack of rehabilitative therapy cannot alone account for high recidivism rates,⁷ the conditions in the penitentiaries do not alleviate the prisoner's propensity for future crime. The associations within the prison often encourage the younger and inexperienced to commit more crime after release.

That rehabilitation is not a prime goal for many prison administrators is no accident. It is the result of a tradition demanding that the prison exact retribution and punishment from convicts. Only within the last thirty or forty years has rehabilitation been considered an important part of the functions of prisons. When the American penal institutions were first built in the eighteenth and nineteenth centuries, the intention of their founders was that they serve as places for individual redemption through solitude.⁸ The purpose of incarceration was spiritual retribution:⁹ the prisoner was placed in a tiny, bare cell, and through strict enforcement of silence by the staff, the inmate reflected on his criminal past and did penance for his wrong.¹⁰ Later, in the middle of the nineteenth century, prisoners worked under adverse conditions for private industries. Most of this contract labor was eliminated by Congress when it enacted the Hawes-Cooper Act of 1929.¹¹

The attitude of American society, even in the early twentieth century, was that prisons serve as institutions to provide for punishment. Some attempts were made to instill rehabilitation in the 1870's, sometimes misleadingly called "The Golden Age of Penology." The penitentiary in Elmira, New York, besides establishing the first parole system in the United States, attempted mass therapeutic programs in the institution. These failed because nothing was known at that time of the psychological make-up of each individual inmate or his motivations for criminal behavior.¹²

The goal of rehabilitation in our penitentiaries

⁷ See *infra* note 72.

⁸ AMERICAN CORRECTIONAL ASSOCIATION, *MANUAL OF CORRECTIONAL STANDARDS* 3-10 (1959).

⁹ Some have recently advocated that prisons serve merely to ostracize the prisoner from society. The retributive aspect of this theory is expulsion.

¹⁰ During the late eighteenth century, there emerged two distinct approaches to imprisonment: (1) the Pennsylvania system, where the prisoners live and eat in separate cells (this was used in many European prisons), and (2) the Auburn system, where the prisoners lived in separate cells but worked together.

¹¹ 49 U.S.C.A. §60 (1951).

¹² AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 8, at 11, 12.

is a rather new idea, perhaps an outgrowth of the acceptance and usefulness of psychology, criminology, sociology, and vocational and educational therapy theories. Yet, a considerable number of prisons, reflective of the areas they serve, shun any program of therapy. The purpose of the prison for them continues to be punishment and retribution. In these places, nothing more than subsistence living conditions is provided.

Many prison administrators in the United States today are not reluctant to take a fresh look at the purposes of imprisonment, but the prisons they serve are steeped in the institutional framework of the past. Most of the prisons are physically obsolete and inadaptable to the establishment of therapy programs. For example, prisons built in the nineteenth century were located far from the cities since the officials then believed that the criminal should be totally isolated from society. Because of this, it is often impossible today to recruit the trained and qualified personnel who often prefer to live in urban areas. Moreover, since the prisons were built around the silence system with an arrangement of extremely small cells, there are usually no rooms large enough to conduct planned group activities, such as group therapy and discussion.¹³

If rehabilitation is to be utilized within these prisons, it must do so against a framework designed for punishment. This is the internal inconsistency of the maximum security prison today. No program of therapy, many feel, can be totally successful if it must exist in an atmosphere which imposes, in fact invites, feelings of suffering from its inmates. These vestiges of punishment in the prison cannot be eradicated without a complete renovation costing more than governments probably wish to spend. Moreover, assuming the prisons could be made more receptive to therapy, there would probably be many Americans who would still be hostile to these policies and demand retribution as the primary goal of incarceration.

Many arguments suggest that the goal of retribution does not deserve to be followed today. For one thing, many believe that society has no right to subject its own citizens to subsistence living conditions and planned suffering. Norval Morris comments that the Swedish penal system is successful because its citizens respect the prisoner and attempt to see his rights safeguarded even while

¹³ *Id.* at 5.

institutionalized.¹⁴ For another, it is hard to measure the appropriate "dose" of retribution each prisoner deserves. Who is to say that X is more guilty and needs more punishment than Y? This legal slide rule is, at best, crude¹⁵ and can easily result in injustice.¹⁶ Further, if punishment is demanded, conviction should be enough to satiate most. Conviction, a formal condemnation by society with its attendant incarceration, supposedly produces shame in the criminal. Furthermore, the convict will permanently lose many rights once taken for granted, and will find the stigma of conviction deprives him of chances for a satisfying career.¹⁷ Beyond that, the institutionalization of retribution in the prison system damages the society that demands it. Suffering breeds contempt and hatred of society, not contrition. The released prisoner will have more motivation to commit crime once he has been purposely mis-handled by his community.¹⁸

Thus, humanitarianism aside, retribution, while still considered a viable and important goal by many, is inexact, unethical and impractical. Still it is hard to remove its influences on the penitentiaries and the attitudes of many Americans since it is the product of hundreds of years of stultification. Of course, we could abandon our present prison facilities and construct new penitentiaries; we could hire more trained personnel and offer them higher salaries; we could develop newer programs of rehabilitation. These actions, however, are expensive and require appropriations from state and local governments which either do not possess the funds or are not anxious to raise taxes. Thus, any realistic schemes to install workable schemes of rehabilitation in the existing penitentiaries—the only available facilities—must fit themselves into the pervasive influence of punishment.

I. PROBLEMS

A. *The Traditional Prison Setting:*

There are 358 prisons in the United States; of these, 55 are classified as maximum security and

¹⁴ N. Morris, *Lessons from the Adult Correctional System of Sweden*, 30 FED. PROB. 3 (Dec. 1966).

¹⁵ AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 8, at 7, 8.

¹⁶ Often two defendants convicted of the same crime are given two different sentences by different judges. Some commentators are attacking this on constitutional grounds. See Rubin, *Disparity and Equality of Sentences—A Constitutional Challenge*, 40 F.R.D. 55 (1966).

¹⁷ See *supra* note 4.

¹⁸ AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 8, at 9 10.

124 as medium security prisons.¹⁹ The overriding purpose of these penitentiaries is primarily to secure internal order and to prevent riots and escapes. Architecturally, they are designed to achieve these aims: the institutions are surrounded by large walls, the cells are small and visible from any angle. The largest proportion of personnel in the prisons is comprised of guards and custodial staff who constantly eye the every movement of the inmate.²⁰

The administrators of the prisons fear the public reaction to riots and escapes since most of them are political appointees and could lose their jobs. With so much time spent to prevent violence, there is little effort to install programs of rehabilitation. In order to minimize danger, the staff find they must maintain total control, both physical and social, to insure stability.²¹ The staff feels it must possess absolute power and must make very clear to the inmates what is or is not permitted. Regulations governing every possible activity or occurrence are provided:

Form by twos when passing through the Center. Keep your place in line unless you are ordered to step out.

Do not speak or make any gestures to persons who are visiting the institution.

When walking in line, maintain good posture. Face forward and keep your hands in your pockets.²²

Inmates, then, are deprived of many freedoms once taken for granted because the staff believes that any situation, not controlled and regimented, could lead to violence. Some suggest that this over-caution, besides stifling the inmate's activities in the prison, is at times unnecessary. Gresham Sykes gives examples of the degree to which the guards restrict activity in order to maintain security:

... [t]he most innocent-appearing activity may be a symptom of a major breach of the institution's defenses. Pepper stolen from the mess-hall may be used as a weapon to be thrown in the eyes of a guard during a bid for freedom. A prisoner growing a moustache may be acquiring a disguise to help him elude the police once he has gotten on

¹⁹ TASK FORCE ON CORRECTIONS, *supra* note 1, at 178-180.

²⁰ See G. SYKES, *THE SOCIETY OF CAPTIVES*, Chaps. 1-3 (1958).

²¹ See generally *THE PRISON—STUDIES IN INSTITUTIONAL ORGANIZATION AND CHANGE* (D. Cressy ed. 1961).

²² SYKES, *supra* note 20, at 23.

the other side of the wall. Extra electrical fixtures in a cell can cause a blown fuse in a moment of crisis. A fresh coat of paint in a cell may be used by an industrious prisoner to cover up his handiwork when he has cut the bars and replaced the fillings with putty.²³

Because of this exaggerated concern for maintaining internal security, there is little that the inmate can do and nowhere for him to go without being constantly watched by the staff. The prisoner's initiative and opportunity to act is curtailed extensively since more freedom for him might prove too burdensome for the guards to control. This means mass handling of the prisoners and a complete regimentation of the prison inmate-society.²⁴

The custodial staff who must bear this burden of preserving order does not usually possess any special aptitudes for dealing so intimately with the inmates.²⁵ Often these guards lose objectivity in their attempt to preserve order and become resentful when the prisoners present any obstacle to the security of the prison. Thus, the behavior of the guards may add to the creation of a volatile setting in the prison.²⁶

B. The Problems of the Therapist in the Traditional Prison Setting:

In the atmosphere created by the staff's attempts to control and regiment the prison, the therapist, be he a social worker, psychologist, teacher, or vocational therapist, will meet many difficulties, some of them insurmountable. In this section, the lot of the psychologist in the prison will be used to illustrate the problems which beset all trained personnel whose job is rehabilitation of prisoners in the maximum or medium security penitentiary.

One of the primary problems is that it is difficult to recruit trained personnel, even if there is a willingness on the part of the warden to initiate programs of therapy. The major obstacle is money: the average starting salary of the counsellor or therapist is between \$4000 and \$7000, considerably lower than would be available in private employment.²⁷ Second, as noted earlier, many prisons are

located far from urban areas, so the number of qualified personnel is reduced considerably. Further, the frustrations of the job itself—the hostility and belligerence of the prison administrators, the inadequate facilities, the vast number of inmates that need more aid than can be given—are unattractive to most therapists. Thus, the number of trained personnel is miniscule. The total personnel ratio is one staff member for 4.3 prisoners. The ratio of custodial staff to inmates is one to 6.5, while the professional staff/inmate ratio is one to 179.²⁸

Assuming a psychologist agrees to work in the penitentiary system, what are his major duties? First, he must assist with classification of prisoners immediately before or after sentencing and decide the best correctional program for the individual offender. Second, the psychologist must institute and manage therapy programs in the prison.

1. Classification:

During classification, the psychologist conducts an extensive examination of the criminal and diagnoses the psychological and social problems which motivated the commission of the crime. On the basis of this information, the officials decide to what type of correctional institution he should be sent and with which type of cellmates he should live. The problems in rendering an adequate diagnosis and classification are manifold.²⁹

Since it is the task of the judge to sentence the defendant, his prior decision may render the diagnosis of the psychologist moot. The judge should at least be furnished with a pre-sentence report, although these reports are usually shallow and inadequate because of the paucity of facilities and personnel. Moreover, much of the decision will still rest with the judge's impressions of the defendant during the trial, a less than adequate forum in which to make so important an evaluation.

The psychologist, then, will face frustration if he is to assist in classification: even if he is able to render an effective diagnosis, the choices open to him in classification will be small indeed. Since our prisons do not have the facilities, or often the interest to give specialized treatment or place offenders in cells based on psychological and social histories, the prisoner, even after intensive analysis

²³ *Id.* at 21.

²⁴ THE PRISON—STUDIES IN INSTITUTIONAL ORGANIZATION AND CHANGE, *supra* note 21, at 158-168.

²⁵ See generally Toomey, *Analysis of Certain Personnel Problems in Correctional Administration*, 26 AM. J. OF CORRECTIONS, (Jan.-Feb. 1964).

²⁶ SYKES, *supra* note 20, at 40.

²⁷ TASK FORCE ON CORRECTIONS, *supra* note 1, 180-181.

²⁸ *Id.* at 80.

²⁹ See generally TASK FORCE ON CORRECTIONS, *supra* note 1, chap. 2.

by the psychologist, will end up in the same place as he would if no diagnosis were made.

Moreover, the psychologist's diagnosis during classification may not control the handling of the prisoner at any time during the correctional program. Correction occurs not only in the penitentiary, but is a continuing process which lasts after release during the parole and probation periods. The findings of the psychologist before committing the prisoner to the penitentiary can be ignored by the parole board. This is exacerbated by the fact that the granting and regulation of parole is sometimes under local jurisdiction, while the prisons are controlled by the state.³⁰ The parole board could make a contradictory diagnosis which would disrupt the progress made in the penitentiary. Perhaps the answer to this problem is the establishment of a state Department of Corrections which would oversee the work of diagnosis from detention to release.³¹

2. *Therapy Programs in the Prison:*

The other major task of the psychologist is handling the therapy programs within the prison. The first difficulty he generally encounters is the hostility of the rest of the staff who fear the presence of such a program.³² The task of the administrative staff had been, until the installation of a rehabilitation department, the preservation of security in the prison by establishing an impersonal, totalitarian regime. The staff had been trained to distrust and suspect the inmate. Therapy programs suggest a more permissive relationship with the prisoner that the custodial staff fears will break down the monolithic social system they are attempting to enforce. This conflict is increased when the therapist must rely on the warden for funds and for the organization of therapeutic activities within the prison. For example, the warden will be hesitant, prejudice aside, to allow group therapy sessions since there is a greater chance that the prisoners will riot when many are congregated in a relatively small room. But the warden is most fearful that the psychologist will demand greater freedoms for the prisoners,

³⁰ The federal penitentiary, probation and parole system is handled by one agency under the authority of Congress.

³¹ AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 8, 28-37.

³² Overholser, *The Psychiatrist's Role in the Treatment of the Offender*, 25 FED. PROB. 22 (June 1961).

such as permission for them to move more freely within the prison, as part of a program of therapy.³³

The psychologist will also find that the inmate, who probably has a background of psychological difficulties, will be harder to deal with during his stay in prison.³⁴ The inmate will have reacted to a social climate with intensive deprivation of positive stimuli once available to him on the outside. From the moment the prisoner is admitted, he is stripped of all his possessions, both physical and mental, upon which he had relied before incarceration:

The full meaning for the inmate of being "in" or "on the inside" does not exist apart from the special meaning to him of "getting out" or "getting on the outside". . . [Prisons] create and sustain a particular kind of tension between the home world and use this persistent tension as strategic leverage in the management of men.

The recruit, then, comes into the establishment with a conception of himself made possible by certain stable social arrangements in his home world. Upon entrance, he is immediately stripped of the support provided by these arrangements. . . [H]e begins a series of abasements, degradations, humiliations, and profanations of self. His self is systematically, if often unintentionally, mortified.³⁵

The inmate loses all reactive face-saving devices to uncomfortable experiences since he has nowhere to escape from the conditions and the personalities in the prison. He is denied the protective distance and self-action he had in his associations with other people. He must get permission to do even the simplest of things, and is often teased and tormented by his cellmates. What was once taken for granted, such as smoking a cigarette or having a certain amount of privacy, is now extinct or the subject of special privilege. The penitentiary experience, then, creates unbearable stress on an

³³ Interview with Dr. Kurt Konietzko, April 1968. Dr. Konietzko has served on the Eastern Correctional Diagnostic Center (1954-1956); Senior Psychologist at the State Correctional Institution at Philadelphia (1956-1958); Director of Psychology at the New Jersey State Prison at Trenton (1958-1960); Psychologist in charge of the Philadelphia Parole Narcotic Project (1960-1963); Psychological Consultant for the Bureau of Vocational Rehabilitation and the Home Industry for Discharged Offenders (since 1966).

³⁴ Maher, *Changes in Attitudes Toward Law Concomitant with Imprisonment*, 50 J. CRIM. L. C. & P. S. 245 (1959).

³⁵ THE PRISON—STUDIES IN INSTITUTIONAL ORGANIZATION AND CHANGE, *supra* note 24, at 23.

individual already proven incapable to deal effectively with strain.³⁶

Most of the inmate's time is spent in idleness. In a majority of prisons, there is only a half-hearted effort to provide constructive work for the prisoner. There is no incentive in the prison.³⁷ The basic work-payment structure of society, which motivated individual action, is gone.³⁸ The staff fears that vocational activities might threaten the security of the prison since more jobs might produce greater inmate mobility within the prison, and much of the control over the inmates might be lost. Even when available, the work tends to be monotonous. With nothing meaningful to do, the prisoner finds that time takes on grotesque proportions to him.

There are other ways the prisoner is deprived of his self-assertiveness and a normal ventilation of inner tension. If the prisoner cannot express himself, and consequently relieve himself of inner pressure, he grows hostile, anxious and frustrated. The problem of homosexuality in the prison, for example, can be explained as a reaction to the deprivation of normal heterosexual relationships once possessed before imprisonment. Since there is no other way to release his sexual impulses, the inmate resorts to deviant sexual activity, the only interacting sexual outlet available in the prison.³⁹

Thus, the psychologist encounters a criminal who is the distorted portrait and exaggeration of his true self. If this is so, the most the psychologist could hope to accomplish is to ensure that prison does not further debilitate the prisoner. Most of the time, this meager task is difficult to complete. But if this can be done, the psychologist can then attempt to correct the causes of the original crime if the prisoner has not, at that point, already served out his sentence.⁴⁰

The most effective form of psychotherapy is individual analysis and treatment. But the installation of this kind of program presents a number of problems. First, most prisoners believe they are

³⁶ *Id.* at 158-159.

³⁷ SYKES, *supra* note 20, at 28, n. 10; *See also, Prisoner Incentive Systems*, 47 THE PRISON JOURNAL 2 (Spring-Summer 1967).

³⁸ THE PRISON—STUDIES IN INSTITUTIONAL ORGANIZATION AND CHANGE, *supra* note 21, at 21.

³⁹ THURRELL *et al.*, *Psychosis in Prison*, 56 J. CRIM. J. C. & P. S. 271 (1965).

⁴⁰ The psychologist will be further handicapped by the trend toward shorter sentences. The average term today is 21 months; the prisoner sentenced for life is released in twenty years. 91 TIME, *supra* note 5, at 40. *See* note 64, *infra*.

normal and their only complaint is that they were unjustly convicted; they see no reason to explore their motivations for criminality. Any attempts by the psychologist to convince the prisoner otherwise would be resisted.⁴¹ The prisoner who resents his imprisonment and is hostile to therapy could successfully inhibit the progress of the program. Further, the therapist would not have much time to devote to all the inmates since he would be responsible for too many; the most he could spend with each would be a few minutes a week. Even if the psychologist could produce positive responses from the inmate, the advances would frequently be worthless since the prisoner would still live in the abnormal, destructive atmosphere of the prison.

The only hope for the psychologist is to work within the existing framework of the prison, and, in fact, make use of it for his programs. He must attempt to make the atmosphere of the prison more receptive to rehabilitation. He will need to enlist the aid of the other staff and coordinate his program with the other activities in the prison. The ultimate goals of therapy may have to be compromised, but at this time, it may be the only way any therapy could be of significant worth in the traditional prison. The next section explores the possibilities open to the therapist in the monolithic regime of the traditional prison.

One important problem for all therapists who initiate and effect policies of rehabilitation in the prisons is the differing, and often contradictory, approach each discipline takes to the solution of problems of criminality. The psychologist views the causes of crime in terms of a breakdown of certain behavioral defense mechanisms. The sociologist believes the source of criminality lies in the inmate's inadequate relationship with organized society and ineffective social relationships. Others consider the lack of vocational and educational skill as the important take-off point in analyzing criminal behavior. Each approach may be valid as far as it goes, but none will aid treatment if it is contradictory to the other, especially if more than one program of rehabilitation is utilized in the prison. Each program of therapy must supplement the others available.

What is needed, of course, is a synthesized, consistent approach to criminality. If the goal of therapy in the prison is to reduce recidivism, each discipline should adapt its programs to the solution

⁴¹ *Id.* at 125.

of this problem. Criminal activity is a form of behavior, and is a result, all can agree, of some breakdown in the relationship of the offender with society and with other individuals in society.⁴² Thus the aims of correctional programs should be the elimination of criminal behavior, rather than the creation of a perfect specimen of manhood. For some prisoners, psychoanalysis may be needed; for others, simply learning vocational skills which will enable them to get better paying jobs after release will suffice.

Each discipline involved in rehabilitation should view the correctional process as a discipline *sui generis* with the clearly delineated goal the elimination of future criminal activity. The nature of each discipline's participation in the correctional process should be the extent each can contribute its approach to the goal. An attempt to bring about this integration of disciplines has already been made.⁴³

II. SOLUTIONS

A. *The Proper Approach:*

Improvement of the conditions in the penitentiaries can be initiated by both the private and public sectors of society. Many private organizations have been raising funds for, and researching better methods of, rehabilitation. While these programs have been successful as far as they have gone, private groups do not have the resources or the power to effect substantial change.

Government⁴⁴ must commit itself to the task of

⁴² Some prisoners have readily identifiable mental diseases which caused their criminal activity. These prisoners should be given separate treatment and are not considered in the group discussed in the text.

⁴³ See Prigmore, *The Arden House Conference, 1964*, AM. J. OF CORRECTIONS 29 (Mar.-Apr. 1964), which is a summary of the problems of the approaches of the related disciplines. See also the outcome of a convention of the different fields in *Decisions of the Arden House Conference for Corrections*, 26 AM. J. OF CORRECTIONS 34 (Sept.-Oct. 1964).

⁴⁴ Prisoners can bring court actions for substandard and unreasonable treatment in the prisons. See generally Comment, *Federal Comity, Official Immunity and the Dilemma of Section 1983*, 1967 DUKE L. J. 741; Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L. J. 506 (1963); Note, *Constitutional Rights of Prisoners: The Developing Law*, 110 U. PA. L. REV. 985 (1962). While state courts generally refuse to hear inmates' claims because of local sovereign immunity to civil actions, the federal courts are being used more extensively. The federal remedies available to the prisoner are:

(1) A petition for writ of habeas corpus. See *Harris v. Settle*, 322 F.2d 908 (8th Cir. 1963); *Roberts v.*

prison reform. The legislatures of each state should appropriate more funds which would be utilized by trained prison personnel; more research would reveal the most efficient and worthwhile therapy programs. Today, the legislatures have involved themselves with the penitentiary system, but the effects of their involvement are far from significant.

Our penal system is the product of a long tradition which has placed therapy programs at the bottom of the priority lists. Attitudes today, while changed somewhat,⁴⁵ are not receptive to total reorganization in the prison. American society, while concerned with "law and order," does not wish to commit itself to rehabilitation within the prisons, especially with regard to increased appropriations and independence for therapy programs. As expressed by Sykes:

The existence of the totalitarian regime in the traditional prison . . . expresses in part our own lack of knowledge about how to better proceed; and, in part, it reflects the fact that when all is said and done, society is still apt to attach the greatest importance to the prevention of escapes and disorders. . . .⁴⁶

Thus, the change in the penitentiaries must be

Pegelow, 313 F.2d 548 (4th Cir. 1963); *United States v. Social Service Department*, 263 F. Supp. 971 (E. D. Pa. 1967); *Johnson v. Avery*, 252 F. Supp. 783 (M. D. Tenn. 1966); *In re Baptista's Petition*, 206 F. Supp. 288 (W. D. Mo. 1962); *Gibbs v. Gladden*, 369 P.2d 722 (Ore. Sup. Ct. 1962); *In re Riddle*, 372 P.2d 304 (Calif. Sup. Ct. 1962); *Smith v. Turner*, 362 P.2d 581 (Utah Sup. Ct. 1961).

(2) An action for damages or injunction under § 1983 of the Federal Rights Act, 28 U.S.C.A. § 1983, for deprivation of constitutional rights. *Monroe v. Pape*, 365 U.S. 167 (1960); *Stiltner v. Rhay*, 371 F.2d 420 (9th Cir. 1967); *Wright v. McMann*, 387 F.2d 519 (2nd Cir. 1967); *Redding v. Pate*, 220 F. Supp. 124 (N. D. Ill. 1963). Also see *Rouse v. Cameron*, 373 F.2d 451 (D. C. Cir. 1966). But see *Pennsylvania v. Hendrick*, 368 F.2d 179 (3d Cir. 1966); *Cole v. Smith*, 344 F.2d 721 (8th Cir. 1965); *Snow v. Gladden*, 338 F.2d 999 (9th Cir. 1964); *United States v. Ragen*, 337 F.2d 425 (7th Cir. 1964); *Cullum v. California Department of Corrections*, 267 F. Supp. 524 (N. D. Calif. 1967); *United States v. Pate*, 229 F. Supp. 818 (N. D. Ill. 1964); *Blythe v. Ellis*, 194 F. Supp. 139 (S. D. Texas 1961).

(3) An action for damages under the Federal Tort Claims Act, 28 U.S.C.A. §§ 1346 (b), 2671-2680, for negligence of the staff in the federal penitentiaries. *United States v. Muniz*, 374 U.S. 150 (1963); *Winston v. United States*, 305 F.2d 253 (2d Cir. 1962); *Fleishour v. United States*, 244 F. Supp. 762 (N. D. Ill. 1965).

⁴⁵ 77% of a sample taken in the United States responded that the function of prisons is therapy. 91 *TIME*, *supra* note 5, at 40. This does not mean, however, that the public is willing to commit itself to an expensive or revolutionary program to improve the prisons.

⁴⁶ SYKES, *supra* note 20, at 39.

slow. The problem then is: Without total reorganization, how can rehabilitation succeed in an atmosphere of totalitarianism and individual deprivation? Also, how can programs of therapy be adequately constructed with the minimum of expense? Further, even if inexpensive programs could be found, how can they be initiated if the prison administrators fear any loosening of the grip they have on prison security?⁴⁷

As seen before, individual treatment of prisoners by therapists is impossible because of the therapist-inmate ratio. Thus, the next best program would be some sort of group therapy or discussion sessions. Yet, assuming that this could be accomplished with a minimum of cost and disruption to the traditional prison, there still remains the stifling social structure of the traditional prison.

Somehow, this social structure in the prison should be utilized as a foundation for the therapist. If it is generally agreed that most criminals have had serious problems with relationships and with society, then the inmate society in the prison should be used as a microcosm, a laboratory of social organization which would prove beneficial to the inmate. Thus, everyday life and accompanying problems could be used as the source of group discussion.

This therapeutic program was instituted and tested in a California prison by Reimer and Smith.⁴⁸ These therapists used a section of the institution consisting of 150 inmates and some members of the staff, including the guards. The purpose of the project was twofold: (1) to develop a therapeutic climate which conforms with the norms of society, and (2) to instill some rapport between the inmates and the staff. The group met for less than an hour a day, five days a week.

There were some initial problems. First, the prisoners had to realize that the group was engaged in discussion only and could not attempt change in the penitentiary. They were told that the staff still controlled the prison. Once this was explained, the prisoners understood the nature and the limitations of the group. Second, many prisoners were not willing to participate. Thus, the group was made voluntary. But even with this there was still a major problem. Some of the inmates were classified as those with low social maturity levels

who tend to project blame on others, hide their true feelings and look for external causes of problems rather than examine themselves. These people would be an impediment to the honesty and self-examination essential to the group project. Out of the prisoners who volunteered, there were more with lower maturity levels although many of the prisoners could function on both levels. Therefore, some lower level inmates were included in the group, which started with a reduced number of 75 inmates. It was hoped that the fewer inmates with a lower maturity would be absorbed into the group. As that happened, more lower level inmates could be added.

The project lasted for five months. At the beginning, the inmates tested the limits of the discussion, not sure how frank they should be. After some sessions, the nature and the structure of the discussions became more apparent to the members. Then the higher level maturity inmates became more introspective, but were impeded by low level inmates who still wanted the discussion to be superficial. The staff tried to indicate to the group what their underlying motivations were, and the entire group began to react on a deeper emotional level. Some of the low level inmates began to exhibit behavior of the higher level inmates; others could not keep up with the tenor of the discussions and lost interest or quit.

When the group leaders added more inmates, a split in the group developed. The higher level inmates continued to be introspective, but the old low level inmates and the newer additions attempted to restore the discussion to a superficial level. The only way to cope with this problem was to add a few new members at a time. When initiating a new group discussion, some of the experienced higher level inmates from the first group were used—as “culture carriers”—in the second group. When this was tried, the new group developed much faster than the original group. The staff also brought together the new groups once a week for joint sessions.

The results showed fewer incidents of misbehavior in the prison; many of the prisoners became more cooperative. Some of the prisoners who were serious disciplinary problems were encouraged to join and their behavior improved over the period. At the same time, the staff who participated became more sensitive to the inmates' problems.

Another study tends to indicate that therapy with an emotional interaction between the

⁴⁷ Interview with Kurt Konietzko, *supra* note 33.

⁴⁸ Reimer & Smith, *A Treatment Experience in Prison Community Living*, 26 AM. J. OF CORRECTIONS 4 (Jan.-Feb. 1964). See also, Dennet and York, *Group Therapy in One Women's Correctional Institution*, 28 AM. J. OF CORRECTIONS 21 (Jan.-Feb. 1966).

therapist and the inmate decreases recidivism.⁴⁹ It was found that 43% of those who had participated in a therapy program were labeled post-release "successes," *i.e.*, that proportion did not commit further crime after return to society. Only 25% of the non-therapy group were successes. But, 74% of those who were found to have had emotional interaction with the therapist were successes; only 26% of those without emotional interaction were considered successful. This suggests that the group therapy sessions, discussed above, could decrease the recidivism rate. Douglas, Fike and Wierzbinski, in their study of the effect of group therapy on a group of juvenile delinquents, concluded: "... group counseling is an effective means of meeting the needs of carefully selected delinquents."⁵⁰

Perhaps the recidivism rate could be decreased even more if the staff in the prison could better communicate with the inmate. This might alleviate the totalitarian atmosphere in the prison, making the society there more bearable and less destructive. The answer, as indicated above, would be staff participation in group discussions. Not only would the staff develop a more viable, constructive relationship with the inmates, but the use of the staff in these projects would alleviate the shortage of trained personnel available for rehabilitation programs. Moreover, the prison system would then seem to the guard an institution enabling promotion; the staff member's efficacy would be increased considerably.⁵¹ A. M. Kirkpatrick, a Canadian penologist, comments: "When these men, in the past called guards and turnkeys, become dedicated to new goals and equipped with different methods, there can truly

be a new program which will advance our correctional procedures."⁵²

Note that the use of lay counsellors chosen from the general staff would be a gradual process. Some training in the basics of psychology and the technique of non-directive counselling would be necessary. The staff member could sit in on a few groups with the therapist; later he would participate in the discussion. Eventually, the staff member would be ready to lead a group by himself.

Even though the group counselling and discussion might achieve some degree of success with the higher level maturity inmates, the lower level groups will not be helped at all by this process. These inmates need more individualized treatment. With most of the burden of therapy resting on the group discussions, the specialist, whether psychologist or social worker, could devote more time to these inmates. Moreover, failure in the group project would be an adequate screening device for the more disturbed inmates.⁵³

Besides individual insight therapy with these lower level groups, other techniques should be used. Tranquilizers and other drugs could supplement therapy programs and be used to channel and ease the tension created by the prison.⁵⁴ The use of drugs might be effective for some undergoing the group discussion. Moreover, other forms of group therapy could be utilized with the lower level inmates; psychodrama and group psychoanalysis have been used with small groups in different prisons.⁵⁵

Some investment of money might be needed to start a program such as outlined above. Many of the maximum security prisons do not have a room large enough to hold group discussions without fear of possible violence. Perhaps this means some refurbishing. But this solution is at least presently

⁴⁹ Barbash, *supra* note 5. *But see* Martin and Quesnell, *Psychiatric Service in a Small Air Force Confinement Facility*, 27 AM. J. OF CORRECTIONS 18 (Jan.-Feb. 1965), which indicates that treatment of individuals with short-term sentences (ninety days) did not reduce recidivism. *See also* Shoham, *supra* note 71, at 55.

⁵⁰ Douglas, Fike & Wierzbinski, *Effects of Group Therapy—An Experiment Evaluated by Objective Tests*, 11 CRIME AND DELINQ. 360 (Oct. 1965). For an extensive listing of available sources on group therapy projects, including articles on the effect of group rehabilitation on post-release recidivism rates, *see*, Akman, Normandeau & Wolfgang, *The Group Treatment Literature in Correctional Institutions: An International Bibliography, 1945-1967*, 59 J. CRIM. L. C. & P. S. 41 (1968).

⁵¹ *See*, Grand, *Lay Group Counseling*, 27 AM. J. OF CORRECTIONS 14 (Mar.-Apr. 1965); Bluestone & Perkins, *Community Psychiatry in a Correctional System*, 27 AM. J. OF CORRECTIONS 10 (Mar.-Apr. 1965); Overholser, *supra* note 32.

⁵² Kirkpatrick, *The Why and How of Discussion Groups*, 25 AM. J. OF CORRECTIONS 18, 22 (May-June 1963).

⁵³ Sternberg, *Legal Frontiers in Prison Groups Psychotherapy*, 56 J. CRIM. L. C. & P. S. 446 (1965), believes that group therapy may be unconstitutional. He claims that each individual has a right to psychic privacy and that therapy might be cruel and unusual punishment.

⁵⁴ Bluestone, *supra* note 51; Thurrell, *supra* note 39. Eglash, *Creative Restitution: Some Suggestions for Prison Rehabilitation Programs*, 20 AM. J. OF CORRECTIONS 20 (Nov.-Dec. 1958), suggests that the inmate attempt to restore the loss he caused by his crime. This might be meaningful to some inmates since it can direct the thoughts and conflicts which motivated the offense to more constructive ends.

⁵⁵ Overholser, *supra* note 32.

more feasible than the erection of entirely new prisons.

Hopefully, the group counselling project will not only improve the inmates but will have an effect on the prison system itself. As the staff participates more and more in the groups, it will achieve a better relationship with the prisoner. The strict regimentation and the imposition of total control might be eased.⁵⁶ In turn, the staff might be even more receptive to change in the prison.

B. Other Programs:

As the staff and inmates begin to understand one another, attempts could be made for some effective inmate government.⁵⁷ In some prisons today, representatives of inmates serve on the prison advisory board. While they cannot effect any major change in prison policy, they do come to understand the organization and problems of the staff in the administration of the prison. Using some form of government for the inmates will teach them about society and their relationship to it.

Recreational and vocational activities should be made more available. In recreation, there is an outlet for the release of pent-up energy which the staff feels is a cause of violence and misbehavior in the prison.⁵⁸ A prisoner should also participate in constructive employment, not only to train him for a career after release, but also to give him incentive and therapeutic experience in an occupational setting.⁵⁹ Both of these programs are relatively inexpensive and require only the cooperation of the prison staff, plus some slight remodeling of the maximum security prison. It is believed that, at this point in the process, the staff would be more willing to allow greater freedom of movement by the inmates in the prison.

The necessity of classification should be recognized. Since many of the programs of rehabilitation require homogeneity of prisoners for their success, classification is important. Changes in classification

procedures do not necessarily require large expenditures of money, but rather a synthesis of the different agencies now undertaking separate diagnoses. A more integrated approach should be taken to the categories established for classification of the offender. As noted earlier, a "correctional" approach should be taken rather than a narrow sociological or psychological approach.⁶⁰ Further, the inmate, when first admitted to the prison, should be segregated for a month or more for orientation and intensive diagnosis. The court, after conviction, should send the offender to the custody of the Director of Corrections who would decide to which prison and to which part of the prison he best belongs.⁶¹

Sentencing procedures should also be improved. Today, state criminal statutes have a fixed, or nearly fixed, term for each crime. Little variation is allowed to suit the needs of the individual defendant.⁶² In Sweden and Denmark, the judge and the prison administrators have substantial discretion to set a term between the minimum and maximum. This allows for a better planned therapy program which is not cut short by the prisoner's release or does not have to be continued for a period longer than is needed.

The American Bar Association has suggested changes for sentencing. One of its plans suggests that the legislatures of the states "... provide a wide enough range of alternatives to permit a sentence which is appropriate for the individual case." It recommends that crimes continue to be classified according to their gravity, but that there be as few categories as possible. For a few crimes, however, a minimum sentence of five to ten years should be set; this group would include the dangerous offender and the professional criminal. The Association also recommends "... programs which minimize the dislocation of the offender from the community and which make a maximum effort to readjust him to it." Therefore, it is suggested that a minimum amount of custody or confinement

⁵⁶ TASK FORCE ON CORRECTIONS, *supra* note 1, at 11.

⁵⁷ Baker, *Inmate Self-Government*, 55 J. CRIM. L. C. & P. S. 39 (1964); TASK FORCE ON CORRECTIONS, *supra* note 1, at 49, 50.

⁵⁸ Siminski, *Recreational Activities as a Stimulus to Behavior*, 21 AM. J. OF CORRECTIONS 12 (Mar.-Apr. 1959).

⁵⁹ In Sweden and Denmark, each prison makes sure all inmates work while incarcerated. The expression in Sweden is: "First we build the factory, then we add the prison." Both state and contract work is permitted. See generally Bixby, *Penology in Sweden and Denmark*, 24 AM. J. OF CORRECTIONS 18 (May-June 1962).

⁶⁰ Long, *A Symbolic Taxonomy for Corrections*, 27 AM. J. OF CORRECTIONS 4 (Nov.-Dec. 1959). In several European countries, more extensive use is made of research facilities and experts from different fields in classification. In Sweden, the friends and relatives of the inmate, and often the inmate himself, assist in the selection of the correctional program. Those who are mentally defective, but not so disturbed as to be classified as mentally ill, and recidivists are put in a special institution.

⁶¹ AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 8, at 285-290.

⁶² Wechsler, *Sentencing, Correction and the Model Penal Code*, 109 U. PA. L. REV. 465, 472 (1961).

be imposed.⁶³ By these suggestions, sentencing will be meaningfully integrated with the programs of correction in the penitentiary or associated with parole and probation.⁶⁴

More correctional programs within the community should also be developed. The federal government has made important strides in this area in recent years. Pre-release guidance centers, called Halfway Houses, are operating in many large cities.⁶⁵ The inmate, released from the maximum or medium security institution, would gradually be permitted to leave the house, look for employment or visit friends. Therapists reside in the houses and help the inmate with the problems of re-adjusting to society. This program would eliminate many of the problems of re-integration the ex-convict now faces with parole. Federal studies indicate a decrease of 20% in parole violations for those who began parole in Halfway Houses.⁶⁶

Prisoners should also be allowed furloughs for either occasional visits or daily employment.⁶⁷ This was made part of The Prisoner Rehabilitation Act of 1965, passed by Congress.⁶⁸ California, among other states, has established this program. The inmate, while spending all his free time in the prison, is able to keep the job he had before conviction and provide his family with support even while in prison. The inmates selected for this

⁶³ In Sweden and Belgium, more use is made of the short term sentence and the minimum security or open prison than in the United States. Further, the maximum security in Sweden is markedly different from that in the United States. In a typical Swedish maximum security prison, there are 54 staff members for ninety inmates, and only thirty of them are custodial. An attempt is made to reduce the custodial work of all the staff so that they will have more time to spend assisting rehabilitation programs. For example, mechanical equipment is used for maintaining security: there is a two-way communication system between each cell and the central headquarters which picks up the slightest noise. This eliminates the need for a large number of guards for the night hours. The guard, free from so many custodial chores, is used as an assistant to the therapist-advisor assigned to a housing unit of inmates.

⁶⁴ AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES 4, 5, 48 (1967).

⁶⁵ TASK FORCE ON CORRECTIONS, *supra* note 1, at 40-41.

⁶⁶ Long, *The Prisoner Rehabilitation Act of 1965*, 29 FED. PROB. 3 (Dec. 1965).

⁶⁷ Many feel that furloughs and conjugal visits in the prison will reduce the incidence of homosexuality and improve discipline. See Hopper, *Conjugal Visiting at the Mississippi State Penitentiary*, 29 FED. PROB. 39 (June 1965).

⁶⁸ 18 U.S.C.A. § 4001 et. seq (1951).

program first undergo an intensive screening process. California reports only few violations of the rules of the furloughs; only one prisoner out of 325 escaped. With less prisoners in the prison during the day, the operating costs for the prison would be lower, and less supervision would be needed.⁶⁹

The federal government could play a special role in attempting to promote statewide rehabilitation programs. It could provide financial assistance to the states for the initiation of more programs. It could also develop more precise research methods and train those who would be administrators of state penitentiaries.⁷⁰ Most important, as evidenced by the passage of The Prisoner Rehabilitation Act of 1965, it could attempt new experiments and innovate⁷¹ programs in the federal penitentiaries which might stimulate state and local change.

III. CONCLUSION

It is believed that the programs outlined above will decrease the recidivism rate. While the studies on recidivism indicate that there is a relationship between the existence of therapy programs within the prison and the reduction of post-release recidivism, more research must be conducted to determine what types of programs will accomplish the best results. What is now known is that therapy does affect the recidivism rate.⁷² What will have

⁶⁹ McMillan, *Work Furlough for the Jailed Prisoner*, 29 FED. PROB. 33 (Jan.-Feb. 1965).

⁷⁰ TASK FORCE ON CORRECTIONS, *supra* note 1, at 105.

⁷¹ Truman Capote, author of *In Cold Blood*, proposed a plan for the federal government in 15 *PLAYBOY* 69 (Jan. 1968): "...all homicide cases...should be made a Federal crime, not a state crime, and every killer should be sent to a special maximum security Federal prison....The key to this system would be that whenever a man is convicted of first-degree homicide, he would receive no precise sentence but an indeterminate sentence from one day to life, and the actual length of his sentence would determined not by a parole board but by an expert psychiatric staff attached to the Federal prison. The prison itself would be as much a hospital as a jail and, unlike most of our prisons, whose so-called psychiatric staffs are merely a joke, a true effort would be made to cure the inmates....I think it's a feasible idea and it would remove as much of the element of unfairness from the system as possible. The biggest stumbling block is that shifting homicide from state to Federal jurisdiction would require amending the Constitution. But, sooner or later, it will have to happen."

⁷² See generally Andenaes, *The General Preventive Effects of Punishment*, 114 U. PA. L. REV. 949 (1966). The author discusses the relationship between rehabilitation programs and deterrence. He concludes that much more research must be conducted before

to be determined is how these programs can most significantly reduce recidivism. Even though rehabilitation today might not be a *direct* function of reduced recidivism rates, this does not mean that such programs should be discontinued. Rather, more experimentation and research is needed.

penologists understand the true nature of recidivism. See also Shohan, Kaufman & Menaker, *The Tel-Mond Follow-Up Research Project*, 5 HOUSTON L. REV. 36 (1967). A. West in *Cultural Background and Treatment of the Persistent Offender*, 28 FED. PROB. 17 (June 1964), explains that the prisons must develop more sophisticated approaches to therapy programs, since most of the programs today are aimed at middle-class—not low-class—psychosis and neurosis. More research must be directed to determine the background and response of the prisoners.

While a limited program of therapy is developed in the prisons, efforts should be made to arouse public support so more money can be made available from the state legislatures for more effective and expensive programs.⁷⁸ Private organizations—The American Bar Association for one—should conduct an extensive public relations campaign. Groups should also lobby in attempts to persuade the legislators themselves that improved conditions in the prisons will in the long run benefit society with a reduction in the recidivism rate. A positive approach to rehabilitation—while certainly ineffective by itself—is essential to the establishment of a therapeutic regime in the American prisons.

⁷⁸ Interview with Kurt Konietzko.

INADMISSIBLE CONFESSIONS AND THEIR FRUITS: A COMMENT ON HARRISON V. UNITED STATES

STANLEY HIRTLE

Eddie Harrison and two co-defendants were tried and convicted of felony murder, but the conviction was set aside.¹ In his opening remarks at the second trial defense counsel announced that Harrison would not testify,² but after the prosecution introduced three confessions in which Harrison admitted having shot the victim during a robbery attempt,³ Harrison took the stand. He admitted an accidental shooting but denied that there had been a robbery attempt.⁴ The resulting conviction was overturned⁵ because the confessions had been obtained in violation of *Mallory v. United States*⁶

and *Harling v. United States*.⁷ At the third trial the testimony Harrison had given at the second trial was introduced into evidence over counsel's objection, but Harrison did not testify.⁸ He was again convicted.⁹ In affirming, the Court of Appeals held that since Harrison's decision to testify in the earlier trial was a volitional exercise of an individual human personality, the testimony was sufficiently attenuated from the original illegality and hence admissible at the subsequent trial.¹⁰ The Supreme Court reversed the conviction, holding that testimony impelled by the admission of a wrongfully obtained confession was inadmissible.¹¹

¹ *Harrison v. United States*, 359 F.2d 214,216 (D.C. Cir. 1965). At the first trial, defendants had been represented by an impostor posing as an attorney.

² *Harrison v. United States*, 392 U.S. 219,225 (1968).

³ *Id.* at 220.

⁴ *Id.* at 221. Harrison claimed that the trio had gone to the victim's house to pawn the gun, which had discharged by accident. If believed, this would have entitled him to acquittal on the felony murder charge. 359 F.2d 214, 220, n.17.

⁵ *Harrison v. United States*, 359 F.2d 214, 222, 224 (D.C. Cir. 1968).

⁶ 354 U.S. 449 (1957). The case rendered inadmissible statements made during a detention where there was an "unnecessary delay" in bringing defendant before a magistrate, in violation of Rule 5(a) of the FEDERAL RULES OF CRIMINAL PROCEDURE, 18 U.S.C. See also *Killough v. United States*, 336 F.2d 929 (D.C. Cir. 1964). The Court of Appeals found that Harrison had confessed while being detained several hours after police had enough information to take him before the commissioner. 359 F.2d 214, 222.

⁷ 295 F.2d 161 (D.C. Cir. 1961) This case rendered inadmissible at a criminal trial statements made by a juvenile before juvenile court waived jurisdiction over him. In the District of Columbia, juvenile court has original jurisdiction in cases where a person under twenty one is accused of having violated a law at the time he was under eighteen. D.C. CODE §11-1551 (1967), formerly Act of June 1, 1938, ch. 309 §6(b), 52 Stat. 596. Juvenile court may waive jurisdiction in cases where the offense would be punishable by death if committed by an adult. D.C. CODE §11-1553 (1967), formerly Act of June 1, 1938, ch. 309 §13, 52 Stat. 599. Harrison was under eighteen at the time of the shooting, but was eighteen at the time of his arrest. The confessions were made a week before juvenile court waived jurisdiction over the case. 359 F.2d at 223.

⁸ 392 U.S. 219, 221.

⁹ *Harrison v. United States*, 387 F.2d 203,206 (D.C. Cir. 1967).

¹⁰ *Id.* at 210.

¹¹ 392 U.S. 219, 224-26.