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REMARKS OF

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at the

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More Warehouses, or Factories with Fences?

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During my tenure in the Federal Judiciary I have spoken often on the subject of penal and correctional institutions and the policies and practices which ought to be changed. People go to prisons only by way of the judicial process and every judge has a concern as to the effectiveness of the correctional process even though we have no responsibility for the management. Based on observations as a judge, and visiting prisons in the United States and most countries of Europe for 25 years, including the Soviet Union and recently the People's Republic of China, I have long been satisfied we have not gone about the matter in the correct way.

Today I want to discuss with you and propose a change in our approach to the problem, but before doing so let me suggest why the subject has special relevance—even urgency.

Our country is about to embark on a multi-billion dollar prison construction program. The question I raise is this: are we going to build more "warehouses" or should we change our thinking and build factories with fences around them, where we will first train inmates and then have them engage in useful production?

One thoughtful scholar of criminal justice described the state of affairs in harsher terms than I have used. He wrote:

> Criminal justice in the United States is in a state of spreading decay . . . the direct costs of crime include loss of life and limb, loss of earning[s] . . . physical and mental suffering by the victims and their families . . .[1]

Direct losses, he said, run into many billions of dollars annually; indirect losses, vastly more, approximate the astonishing figure of 90 billion dollars a year! In the immediate future this can be reduced only by more effective law enforcement which in turn will produce a demand for more correctional facilities.

Whether more prisons is the solution is open to question, but I leave to another occasion to discuss the merits of more mandatory minimum sentences or more use of probation and

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[1] Gorecki, *A Theory of Criminal Justice*, Columbia University Press, 1979.

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parole. Both of those courses fail to treat the fundamental issues. Today I want to emphasize that over the next decade it is likely we will spend from five to ten billion dollars in new prison construction. Plainly, if we can divert more people from lives of crime we would benefit both those who are diverted and the potential victims. Yet all that has been done in the correctional systems up to now has not prevented the appalling increase in reported crime rates.

For many years I shared the optimism and hopes of rehabilitation programs with such distinguished penologists as the late James V. Bennett, long the Director of the Federal Bureau of Prisons, and the late Torsten Eriksson, his counterpart in Sweden. Those hopes now seem to have been based more on optimism than reality. We now see that even with the enlightened correctional practices of Sweden and other North European countries, the results in terms of rehabilitation have fallen short of expectations. And we know that those countries have long done much more than we do in the education and training of prison inmates. But the fact that the problem is far more difficult than we had thought is the very reason we must consider changes and enlarge our efforts.

On several occasions I have laid down one proposition to which I adhere today, and it is this: when society places a person behind walls and bars it has an obligation—a moral obligation—to do whatever can reasonably be done to change that person before he or she goes back into the stream of society. This is more emphatically so with respect to the repeat or recidivist prisoner. If we had begun 25, 35 or 50 years ago to develop the kinds of programs in correctional institutions that are appropriate for an enlightened and civilized society, the word "recidivist" might not have as much currency as it does today. This is not simply a matter of human compassion. It is a hard matter of our own protection.

In the annual report to the ABA in February this year I urged, as I had many times before, that prisons be made places for basic education and vocational training—as only a few prison systems now are.

Later on, in May this year, I made a specific proposal

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which I had first advanced in 1972: that a national academy of corrections be created to focus on the training of prison personnel beginning with the guards and security level. Soon after that, Attorney General William French Smith announced the creation of the National Corrections Academy at Boulder, Colorado, under the auspices of the National Institute of Corrections and the Federal Bureau of Prisons. That is a very important step forward.[2]

It is none too soon, for during the past ten years prison population in the United States increased from less than 200,000 to approximately 350,000. In part this reflects the increase in crime and probably in part longer sentences. It probably also means that a larger proportion of criminal acts are being detected and result in convictions of those who are guilty.

All this aside, the reality is that if we are to fulfill one of the most fundamental obligations of government—the protection of people and homes—there must be both more effective law enforcement and drastic changes in our prison systems. Just more stone, mortar and steel for walls and bars will not solve or even improve these dismal conditions. If we are to make progress and protect the persons and property of people and make streets and homes safe from predators we must consider changes in our approach to dealing with the people in prisons that offer some hope of changing at least some of those who are confined.

It is often said that our prisons are just human "warehouses" and although there is a measure of truth in this, the connotations of the bare term "warehouse" overstates the case. Many prisons deserve that name but not all. Enlightened administrators, with funds available, have demonstrated some success in vocational training of prisoners to give them a marketable skill to sell when they are released. But these are all too few.

The Federal Bureau of Prisons under excellent leadership

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[2] The National Institute of Corrections under the leadership of Norman Carlson and Allen Breed has made significant improvements in personnel training.

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from James V. Bennett to Norman Carlson—the present Director[3]—has performed very well given statutory restraints on production of goods in prisons—and archaic public attitudes.

Much credit for the improvements we have made in the federal corrections system should be given to your former U. S. Senator, Roman Hruska, who for many years was the Ranking Member of the Senate Judiciary Committee. Many improvements in the federal corrections system that have come about are due in part to his strong support and his efforts include: programs for work release, expansion in prison industries, furloughs, and community treatment facilities, to help released prisoners reenter society.

It is predictable that a person confined in a penal institution for two, three, five, or more years, who is then released without being able to read, write, spell or do simple arithmetic, and not trained with any marketable skill, will be vulnerable to returning to a life of crime. And very often the recidivism commences within weeks after release. What job opportunities are there for unskilled illiterates with criminal records? What business enterprise could conceivably continue with the rate of "recall" of its "products" that we see with respect to the "products" of our prisons?

The best programs in the world will not cure all of this dismal problem, a problem that the human race has struggled with almost since the beginning of organized societies. But improvements in our prison systems can be made, and the improvements will cost less in the long run than the failure to make them.

Today almost one billion dollars of new prison facilities are actually under construction. More than 20 states have authorized construction programs approaching another billion dollars. Proposals of yet another billion and a half dollars in 33 states are being debated.

Senator Robert Dole has recognized the dimensions of this

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[3] See Federal Prison Bureau Task Force Report on Training and Selection, November 12, 1981.

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problem by introducing legislation[4] to provide grants of six and a half billion dollars to the states for improved prison facilities over the next seven years. If federal grant legislation is enacted it is important that the new standards include:

(a) conversion of prisons into places of education and training and into factories and shops for production;

(b) a repeal of statutes which limit prison industry production;

(c) an affirmative limitation against any form of discrimination against prison made goods;

(d) a change in attitudes of organized labor and in the leaders of business toward the use of prison inmates to produce goods or machine parts.[5]

These new standards are crucial and they should be developed with the participation of representatives of the state and federal prison administrators who deal face-to-face and day-to-day with the problems and with representatives of labor and management. In the closing decades of the twentieth century I am confident the enlightened leaders of labor and business will not support restraints on production of goods in prisons and the movement of such products in commerce.

Of course, prison production programs will compete to some extent with the private sector. But this is not a real problem. With optimum progress, it will be three to five years before programs of this kind have a market impact, even then only a small impact. I cannot believe that this great country of ours—the most voracious consumer society in the world—will not be able to absorb the production of even as many as 100,000 prisoners without injury to private employment. That production would be hardly a "drop in the bucket" in terms of the Gross National Product. But the

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[4] The Criminal Justice Construction Reform Act, S. 186.

[5] There are prisons in the United States today with modest production facilities that lie idle because the products can be sold only to the cities, counties and state governments. That limited market is not enough to meet this problem.

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benefit to the inmates—and to society—would be incalculable in the long run.

Most prison inmates, by definition, are maladjusted people. From whatever cause—whether too little discipline or too much, too little security or too much, broken homes, or whatever—they lack self-esteem, they are insecure, they are at war with themselves as well as with society. They do not share the work ethic concepts that made this country great. They were not taught at home—or in the schools—the moral values that lead people to have respect and concern for the rights of others. Place that person in a factory, whether it makes ball-point pens, hosiery, cases for watches, parts of automobiles, lawn mowers, computers or parts of other machinery, pay that person reasonable compensation, and charge something for "room and board and keep," and we will have a better chance to release from prison a person able to secure gainful employment. Added to that it will be a person whose self-esteem will at least have been improved so there is a better chance he or she can live a normal life.

There are exceptions, of course—the destructive arrogance of the psychopath with no concern for rights of other people may well be beyond reach of any programs that prisons or treatment can provide. Our prison programs must aim chiefly at the others.

There is nothing really new in this concept. In my native state of Minnesota and in your neighboring Kansas there are important beginnings. Special legislation authorized pilot programs involving contracts with private companies to fabricate machinery parts. In Minnesota on my first visit to the Stillwater Prison, guiding boys from a summer camp, nearly 60 years ago, prisoners were producing parts of farm machinery for nearby factories. Minnesota's current pilot program involves only a fraction of the inmates however—less than 50 out of more than 2,000. The Kansas program is of similar dimensions. These are small beginnings but they represent a new start.

On my first visit to Sweden's prisons 25 years ago, I watched inmates constructing fishing dories and other prod-

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ucts. On my most recent visit, four years ago, prisoners were making components for prefabricated houses, under the supervision of skilled carpenters. Those components could be assembled at a building site by semi-skilled workers under trained supervision. In the People's Republic of China, 1,000 inmates in one prison I visited, made up a complete factory unit, producing hosiery and what we would call casual or sport shoes. That was truly a factory with a fence around it.

But it is not necessary to have prisons be self-contained factories capable of producing complete finished products. In terms of production equipment and the probable skills of most prison inmates, it makes more sense—and involves far less capital investment—to have prisoners produce machine parts rather than completed products. This can be done under contracts with private industry, as the Minnesota Prison produced parts for farm machinery 60 years ago and today produces parts of computer units for Control Data Corporation. We need not try in one leap to copy the Scandinavian model of producing prefabricated houses.

Nor do we need to go to the extent of some of the Scandinavian models and pay the regular union scale of wages, with a deduction for "room, board and keep." We should however, consider paying some wages for the hours worked, with bonuses based on quality and volume of production, and then, of course, deduct some reasonable amount for "room and board."

We do not need the help of behavioral scientists to understand that human beings who are producing useful goods for the market place—who are being productive—are more likely to develop the self-esteem essential to a normal, integrated personality. In place of the sense of hopelessness that is the common lot of prison inmates, this kind of program could provide training in skills and work habits that could make many prisoners better able to cope with life on their return to freedom.

In one prison in Europe—one for recidivist juveniles age 14–18 who had committed serious felonies involving violence—the wall at the entry had four statements in large,

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bold script with letters a foot high. Translated they read about like this:

> You are here because you need help.
> We are here to help you.
> We cannot help you unless you cooperate.
> If you don't cooperate we will make you.

Here was an offer of a compassionate helping hand, coupled with the kind of discipline that, if missed early in life in homes and in schools that ignored moral values, produces maladjusted, incorrigible people.

My references to this prison for juveniles may have inspired one witness who testified a few weeks ago before the committee considering Senator Dole's prison industries bill,[6] to disagree. He said either that prisoners could not or should not be "coerced" into taking training. Depending on what that witness meant by "coerced" I might be able to agree. I would say every prisoner should be *induced* to cooperate by the same methods that are employed in many areas. Life is filled with rewards for cooperation and penalties for non-cooperation. Prison sentences are shortened and privileges are given to prisoners who cooperate in prison programs.

Rewards and punishments permeate the lives of all free people and they should not be denied to prison inmates. Central to the American system is the idea that good performance is rewarded and poor performance is not. We can *induce* inmates to cooperate and I suggest only that they should not be made to study more, or work more or longer hours than, for example, the cadets at West Point and the Air Force Academy or midshipmen at Annapolis. I can hardly believe that anyone would seriously suggest that prisoners incarcerated for crimes should be treated with less discipline than those young men and women.

To maintain a prisoner in American prisons costs the taxpayers—in the form of a subsidy—from $10,000 to more than

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[6]S. 1597; introduced in the House as H.R. 4850, by Congressman Lujan of New Mexico.

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$25,000 per year without taking into account the large capital investment in the physical facilities. That load should be lightened, if not taken off the backs of overburdened American taxpayers. We will help both the inmates and all of society if we make it feasible for prisoners to help support themselves.

Creating prison industries, with incentives for good performance, would accomplish the dual objective of training inmates in gainful occupations and lightening the enormous load of maintaining the prison systems of this country.

We are at a crossroad on what kind of prisons we are to have as we get ready for the tax collector to reach into our pockets over the next few years for as much as ten or more billion dollars for new prisons. We can continue to have largely human "warehouses," with little or no education and training, or we can have prisons that are factories with fences around them. That is what I propose today.

This almost intractable problem of criminal justice has baffled the human race since the beginning of the recorded history of organized societies. It is plainly in our own interest to try to make every prisoner a better human being who can cope with life when the prison term is over. If we do that more intelligently, there is some chance that we can, in the long run, reduce the tax burden and improve the chance that released prisoners will not renew their warfare with society.

There are no guarantees of success in dealing with prisons and prisoners but the course we have been following has not worked out. On the contrary the situation grows worse.

What I propose is, that as we embark on this massive prison construction program, we try a new approach—convert our "warehouses" into factories with fences around them. To do that we must change our thinking and change the reactionary statutes that stand in the way. I believe the American people are ready to do that.

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