

Making Prisons Safe: Strategies for Reducing Violence

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INTRODUCTION

Most people assume that prisons are dangerous because they house violent convicts. In California, for example, the union representing prison guards emphasizes the danger by calling the job “the toughest beat in the state.”¹ Yet, in the last twenty years in only one California prison guard has been killed by a prisoner, but hundreds of prisoners have died from medical neglect, suicide, or guard brutality. Prisons are dangerous, but they are far more dangerous than they need to be.

If prison administrators provide humane conditions and require strict adherence to commonly accepted and nationally recognized techniques for regulating the unnecessary use of force, prisons can be reasonably safe for both prisoners and staff. Although the threat posed by gangs presents special problems, the traditional approach to correctional safety—suppression and isolation—has not been successful. The experiences of some innovative programs around the country, as discussed below, suggests the success of a radically

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1. *See* California Correctional Peace Officers Association, <http://www.CCPOA.org> (last visited July 8, 2006).

different approach: closely monitored integration coupled with incentives and tools to help prisoners leave the gangs.

THE CAUSE AND CONTROL OF PRISON VIOLENCE

The Supreme Court recently stated that “[p]risons are dangerous places.”² The Court implied that prisons are dangerous because prisoners are violent.³ Some prisoners are violent and will be violent no matter what the circumstances, but the degree of institutional violence is not dependent on the prisoners. It is a direct product of prison conditions and how the state operates its prisons.

American prisons promote violence and abuse by their design and operation. The anti-social nature of the prisoners themselves is not solely responsible for violent and abusive behavior. In the Stanford Prison Experiment otherwise psychologically healthy, normal Stanford college students changed dramatically after spending six days as guards and prisoners in a mock prison.⁴ The “prisoners” began to perceive each other as the guards perceived them and progressively expressed more frequent intentions to harm others:

The guards, too—who also had been carefully chosen on the basis of their normal-average scores on a variety of personality

2. Johnson v. California, 543 U.S. 499, 515 (2005).

3. *Id.* Threats to the safety of prisoners also spring from other, less obvious sources. In our experience, the single biggest threat to prisoners’ lives is the absence of adequate and appropriate health care. Neglect and malpractice kills more prisoners than do guards or other prisoners. Although difficult to quantify, death and serious injury due to medical neglect, preventable suicides, and mental decompensation far exceeds the harm caused by the more overt uses of force. For example, in 2003 only fourteen California prisoners were killed by other prisoners or staff. CALIFORNIA DEPARTMENT OF CORRECTIONS, INMATE INCIDENTS IN INSTITUTIONS: CALENDAR YEAR 2003, at 15 (2004), available at <http://www.cdcr.ca.gov/ReportsResearch/OffenderInfoServices/Annual/Beh1Archive.html> (follow “December 2003” hyperlink).

In a recent independent review of 193 recent deaths in California’s prisons, court-appointed medical experts found eleven cases of terrible medical care in 2003. A review by a court-appointed special master of suicides within California’s prisons in 2003 found that out of thirty-five suicides, twenty-five (74%) received inadequate treatment and were foreseeable or preventable. *Coleman v. Wilson*, Special Master’s Report on Suicides Committed in the California Department of Corrections in Calendar Year 2003, at 8 (2004). Therefore, although it is beyond the scope of this presentation, any analysis of safety failures and abuse must consider the effects of ineffective prison health care systems.

4. Craig Haney & Philip Zimbardo, *The Past and Future of U.S. Prison Policy*, 53 AM. PSYCHOLOGIST 709 (1998).

measures—quickly internalized their randomly assigned role. Many of these seemingly gentle and caring young men, some of whom had described themselves as pacifists or Vietnam War “doves,” soon began mistreating their peers and were indifferent to the obvious suffering that their actions produced. Several of them devised sadistically inventive ways to harass and degrade the prisoners, and none of the less actively cruel mock-guards ever intervened or complained about the abuses they witnessed.⁵

The conclusions of this experiment have profound implications for the control of violence in our prisons:

The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather the result of an intrinsically pathological situation which could distort and rechannel the behaviour of essentially normal individuals. The abnormality here resided in the psychological nature of the situation and not in those who passed through it.⁶

In other words, the Stanford Prison Experiment teaches that prisons, as an institution, tend to promote aggressive and violent behavior by correctional personnel.⁷

The state is responsible for controlling that type of behavior. The elements necessary to control the use of force in prisons are well known. To prevent abuse, the use of force must be controlled through (1) clear policies; (2) meaningful and constant supervision of all uses of force; (3) timely and truthful reporting of all uses of force by the officer involved and anyone who witnessed the incident; (4) an accurate and unbiased investigation into allegations of excessive force; and (5) the consistent imposition of progressive and proportional discipline when excessive force is used or when it is not

5. *Id.* at 709.

6. *Id.* at 710 (citation omitted).

7. Craig Haney et al., *Interpersonal Dynamics in a Simulated Prison*, 1 INT’L J. CRIMINOLOGY & PENOLOGY 69, 93–94 (1973).

reported.⁸ A breakdown in any one of these components will inevitably lead to abuse.⁹

Unfortunately, it is not uncommon for correctional supervisors to lose control over the use of force, resulting in abuse. Abu Ghraib,¹⁰ Pelican Bay State Prison in California,¹¹ the entire prison system of Texas,¹² and Rikers Island in New York City¹³ are prime examples of prisons that became more dangerous not because of the prisoners, but because of management breakdowns that let guards mistreat and dehumanize their captives.

The abuse at Abu Ghraib is especially important to consider because two factors distinguish it from other situations. Like the Stanford Prison Experiment, and unlike maximum security prisons where prisoners are considered extremely dangerous, in Abu Ghraib there was no public suggestion that the prisoners were especially threatening or that their conduct caused the guards to act abusively. This is a clear demonstration that the situation, rather than the prisoners themselves, was responsible for the guards' misconduct.

The United States Army's investigation into the abuses at Abu Ghraib revealed another factor that can cause an institution to spiral

8. See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1199 (N.D. Cal. 1995), *rev'd and remanded* by 150 F.3d 1030 (9th Cir. 1998); U.S. ARMY SPECIAL REPORT, INVESTIGATION OF INTELLIGENCE ACTIVITIES AT ABU GHRAIB 2-5 (2004), available at <http://www4.army.mil/ocpa/reports/ar15-6/ar15-6.pdf> (citing lack of effective leadership, ambiguous policies, inadequate resources, and ineffective supervision and discipline as reasons for the abuses).

9. This was proven true in California by the special master appointed by the federal court to monitor the conditions at Pelican Bay who conducted an inquiry into the code of silence within the California Department of Corrections. *Madrid v. Gomez*, Special Master's Report Re Department of Corrections "Post Powers" Investigations and Employee Discipline (Jan. 15, 2004). The inquiry arose from the decision of the director of the Department of Corrections to terminate the investigation of perjury by several correctional officers in a federal civil rights trial for excessive force against prisoners. The special master concluded,

A minority of rogue officers can establish a code of silence, threaten the majority, damage cars, isolate uncooperative co-workers, and create an overall atmosphere of deceit and corruption. And if the minority are supported by a powerful labor organization, and the union as well as management condones the code of silence, the consequences are severe.

Id. at 99.

10. See, e.g., U.S. ARMY SPECIAL REPORT, *supra* note 8.

11. See *Madrid*, 889 F. Supp. 1146.

12. See *Ruiz v. Estelle*, 503 F. Supp. 1265, 1302 (S.D. Tex. 1980).

13. See *Fisher v. Koehler*, 692 F. Supp. 1519 (S.D.N.Y. 1988).

out of control: the injection of an external rationale for mistreatment.¹⁴ In addition to finding the usual management breakdowns in the control of force the Army investigators also recognized that the “war on terror” and the corresponding need to obtain intelligence were perceived by the soldiers at Abu Ghraib as a license to exceed the bounds of sanctioned conduct.¹⁵

A similar license was granted to guards in California that led to even more serious abuse, often causing permanent injury and death. At Pelican Bay, guards were led to believe that extreme force was justified by the need to punish and control the “worst of the worst.”¹⁶ As soon as the prison opened, officials let the guards know that the standard rules of conduct would not apply at Pelican Bay. What followed were not only individual instances of brutality, but a deliberate practice of using violence and pain to control prisoners’ behavior.¹⁷ Ruling on a constitutional challenge to the excessive use of force at Pelican Bay, the Federal District Court for the Northern District of California catalogued unnecessary and excessively violent cell-extractions, hog-tying of prisoners, caging of naked prisoners outside for long periods of time in cold and rainy weather, and staff beatings of prisoners.¹⁸ It concluded that violence was used by staff “not only in good faith efforts to restore and maintain order, but also for the very purpose of inflicting punishment and pain.”¹⁹

This attitude pervaded other California maximum security prisons as well. In the mid-1990s California was confronted with the gruesome spectacle of guards in the Security Housing Unit at Corcoran State Prison purposefully releasing rival gang members in small exercise yards and betting on which of the “gladiators” would

14. U.S. ARMY SPECIAL REPORT, *supra* note 9, at 5.

15. The army acknowledged this problem in typical bureaucratic and understated fashion: “Demands on the Human Intelligence (HUMINT) capabilities in a counterinsurgency and in the future joint operational environment will continue to tax tactical and strategic assets.” *Id.* at 6.

16. *Madrid*, 889 F. Supp. at 1155.

17. In one instance, guards placed an African American mentally ill prisoner in a bathtub so hot that it caused third-degree burns and made his skin peel off parts of his body and hang in large clumps around his legs, which had turned white. *Id.* at 1166–67. This was in retaliation for the man biting a guard one week earlier. *Id.* at 1166. A prison nurse overheard a guard remark, “[L]ooks like we’re going to have a white boy before this is through . . .” *Id.* at 1167.

18. *Id.* at 1162–78.

19. *Id.* at 1200.

be victorious.²⁰ And in 2004 a videotape showed “counselors” at the California Youth Authority’s maximum security prison mercilessly beating wards as they lay passively on the day room floor.²¹

These and other scandals that have plagued California’s prison system for the last fifteen years were not hidden, nor were they accidents. They were known and tolerated by high-level correctional administrators who showed complete indifference to the lives and well-being of prisoners. Their utter failure to strictly and appropriately regulate the use of force in a manner consistent with nationally recognized principles of correctional administration was responsible for untold suffering.

The regulation of force is, by itself, insufficient to prevent abuse. Prison conditions can and do breed violence. Many prisoners have committed violent crimes, and many suffer from mental illnesses that inhibit their ability to control their own behavior.²² When such inmates are placed together in overcrowded, antiquated facilities with inadequate mental health services and nothing constructive to do violence is inevitable.²³

The California Inspector General made clear the connection between conditions and violence when he found that deplorable conditions and poor management practices contributed to the murder of a correctional officer at the California Institution for Men.²⁴ The

20. AMNESTY INT’L, CALIFORNIAN PRISONS: FAILURE TO PROTECT PRISONERS FROM ABUSE (2000), available at <http://origin2.amnesty.org/library/Index/ENGAMR510792000?open&of=ENG-USA>.

21. See S.F. Gate: Multimedia, <http://www.sfgate.com/cgi-bin/object/article?o=0&f=/chronicle/archive/2004/04/02/BAGLV5VDLL1.DTL> (last visited Oct. 15, 2006).

22. A recent survey by the United States Department of Justice found that more than half of the nation’s state prisoners had a mental health problem. DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 213600, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 tbl.1 (2006). An older survey found that 16% of prisoners were mentally ill. PAULA M. DITTON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 174463, MENTAL HEALTH AND TREATMENT OF INMATES AND PROBATIONERS (1999).

23. For the connection between overcrowding and violence see, for example, KATHERINE BECKETT & THEODORE SASSON, THE POLITICS OF INJUSTICE 177 (2004); ALEXIS M. DURHAM, CRISIS AND REFORM: CURRENT ISSUES IN AMERICAN PUNISHMENT 48–49 (1994); CRAIG HANEY, REFORMING PUNISHMENT: PSYCHOLOGICAL LIMITS TO THE PAINS OF IMPRISONMENT 202, 205 (2005).

24. OFFICE OF THE INSPECTOR GEN., SPECIAL REVIEW INTO THE DEATH OF CORRECTIONAL OFFICER MANUEL A. GONZALEZ, JR. ON JANUARY 10, 2005 AT THE

Inspector General found that the prison violated basic classification procedures by permitting the prisoner, who was incarcerated for attempting to kill a police officer and had a history of recent and serious assaultive behavior, to remain in the general population.²⁵ Poor maintenance and tool control procedures permitted prisoners to obtain and conceal weapons.²⁶ The victim failed to follow specific security directives initiated after a race riot, the stabbing of a prisoner, and the discovery of weapons in the same unit.²⁷ Additionally, the warden and her subordinate supervisory staff failed to ensure compliance with those directives.²⁸ Finally, nobody addressed the prisoner's clearly identified need for immediate mental health treatment.²⁹

The Inspector General's findings express in detail what is common sense to most correctional administrators: well-run prisons are relatively safe, while those that are poorly managed are not. The control of violence, therefore, depends not only on executing accepted policies for regulating the use and supervision of force, but also on the overall management of the facility. All of the prison's operations, including mental health care, must be integrated and functioning properly if prisons are to perform their primary purpose of incarceration and not subject their inhabitants—both prisoners and officers—to an unacceptable risk of injury or death.

CALIFORNIA INSTITUTION FOR MEN 3–4 (2005), *available at* www.oig.ca.gov/reports/pdf/Review_03-17-05.pdf. The California Institution for Men is a large, overcrowded intake center located near Los Angeles. *See* California Institute for Men (CIM), http://www.cdcr.ca.gov/Visitors/fac_prison_CIM.html (last visited July 8, 2006).

25. *Id.* at 16–17.

26. *Id.* at 37.

27. *Id.* at 5.

28. *Id.* at 19–24.

29. *Id.* at 79. The independent panel of experts appointed by the California State Board of Corrections also noted the “deplorable” conditions at the prison and the fact that the reception center was overcrowded and serving more prisoners than it could safely process. CAL. STATE BD. OF CORRS., INDEPENDENT OPERATIONS AND INCIDENT REVIEW PANEL ON THE CALIFORNIA INSTITUTIONS FOR MEN 12 (2005), *available at* http://www.bdcrr.ca.gov/special_reports/operational_incident_review_cim/final%20report.pdf.

GANG PREVENTION

The problem of gang-related violence in America's prisons is both well known and well documented. Both prison and street gangs are reportedly responsible for drugs, violence, and intimidation within prison walls.³⁰ The traditional prison response to gang behavior is suppression and isolation. Gang members are forced to spend long, indefinite terms in segregated housing units in maximum or super-maximum (supermax) security prisons and their misconduct is often targeted for administrative or criminal prosecution.

While the success of these strategies in reducing violence is uncertain, it is clear that they have not succeeded in eliminating gangs or their influence. It is commonly understood that, while locked in segregation, gang leaders continue to control the illegal activities of their members both within the prison and in the outside community. Perhaps the most graphic example of this is the fact that several California prison gang leaders are now facing the death penalty for federal criminal charges arising from their activities while imprisoned in the Security Housing Unit (SHU) at Pelican Bay, a supermax facility.³¹

Prisoners in restricted units such as Pelican Bay's SHU are not provided any form of meaningful recreation, education, vocational training, or rehabilitative services.³² They are left in their cells every day for up to twenty-three hours, with the remaining hour being spent either alone or with their cellmate in a small enclosed space that approximates a dog run.³³ In this environment normal social relationships are impossible and these inmates are left to associate with other gang members. It is not surprising, therefore, that they will continue to perpetuate the gang and its activities; they have nothing else to do.

30. See, e.g., GEORGE F. COLE & CHRISTOPHER E. SMITH, *CRIMINAL JUSTICE IN AMERICA* (2005).

31. Press Release, Thom Mrozek, Pub. Affairs Officer, U.S. Attorney's Office, Cent. Dist. of Cal., Racketeering Indictment Targets Aryan Brotherhood (Oct. 17, 2002), available at <http://www.usdoj.gov/usao/cac/pr2002/152.html>.

32. *Madrid v. Gomez*, 889 F. Supp. 1146, 1229 (N.D. Cal. 1995), *rev'd and remanded by* 150 F.3d 1030 (9th Cir. 1998).

33. *Id.*

Recently, some correctional systems have developed successful programs that use the opposite approach. Instead of using extreme forms of isolation these programs actively promote integration. Their aim is to reintegrate the gang member into the general prison population. In the few programs that take this approach, the strategy has proven surprisingly successful.

These programs—utilized in Connecticut,³⁴ Missouri’s Division of Youth Services,³⁵ and the Pelican Bay Transitional Housing Unit³⁶—have several things in common. First, they create housing units that are relatively small, consisting of between fifteen and twenty prisoners. Second, the adult programs allow the prisoner to choose to participate, although one program conditions that choice on the decision to inform against his former gang. Third, they create a set of expectations that include mandatory integration with prisoners of other races and gangs, and a very low tolerance of misbehavior. Fourth, prisoners are given extensive orientation about these expectations. Fifth, prisoners are provided with counseling services to help them control anger and violence and foster healthy relationships. These services come in the form of formal group sessions, but also informally through guidance provided by specially selected staff in the units. Finally, prisoners are provided with real and substantial incentives to complete the program. This may include contact visits with their family, jobs and a safe environment when they return to the general population.

The success rate in each of these three programs is reportedly very high. Connecticut and Missouri report that the recidivism rate of gang members is under 10%.³⁷ In California, prison officials report that only 5% of prisoners fail to complete the program, the recidivism rate

34. See Connecticut Department of Correction, <http://www.ct.gov/doc/> (follow “Recidivism” hyperlink) (describing Connecticut’s Gang Management Program).

35. See Missouri Division of Youth Services, <http://www.dss.mo.gov/dys/> (last visited Oct. 15, 2006).

36. See Pelican Bay State Prison, http://www.cdcr.ca.gov/Visitors/fac_prison_PBSP.html (last visited Oct. 15, 2006).

37. Department of Correction, *supra* note 34. Recidivism in these states is measured differently. In Connecticut, the test is whether the prisoner is redesignated as a gang member. *Id.* Missouri uses the more traditional measure of whether the person reoffends. Telephone interview with Mark Steward, former Dir. of Mo. Div. of Youth Servs., Mo. Dept. of Soc. Servs. (2004).

after parole is one-third of the norm, and that less than a handful are sent back to segregation for gang-related activities.³⁸

These successful programs place the prisoner or ward in a culture where violence is not “business as usual” and provide them with the tools they need to succeed. They prove to prisoners who have never had a meaningful conversation with a rival gang member or a prisoner of another race that they can live a different, less violent, and more meaningful life. Instead of creating a culture of suppression and isolation, they provide a transition to a more normal way of life, even if it is limited to the confines of the prison. Given time and help, the prisoners adapt to this culture and recognize its value.

These promising programs should be studied, evaluated, and replicated. They offer positive alternatives to the traditional reaction to prison gangs. It is an approach that uses the institution of a prison to create positive change rather than to promote further violence.

CONCLUSION

It is easy to blame prisoners for prison violence. But, the lessons of the last few decades of court intervention and academic research have demonstrated that the amount of violence in a prison is a function of its culture, the effectiveness of its management, and, at times, the political reality that excuses the mistreatment of prisoners. No prison illustrated this better than Pelican Bay in the early 1990s. It suffered from an administration that condoned and perpetuated violence, it opened at a time when being tough on crime meant brutalizing prisoners and there was no effective management of the prison. The violence in that institution has largely subsided through better management required by intensive court intervention, and promising inroads have been made into gang membership through the Transitional Housing Unit program, demonstrating clearly that it is not the prisoners but the prison as an institution that is the key to safety in correctional facilities.

38. Telephone interview with Ted Roberts & Chris Hizer, Mgmt. Staff, Transitional Hous. Unit, Pelican Bay State Prison (Apr. 8, 2005).