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# Our Crowded Jails: A National Plight

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## **Introduction**

"What do you feel is the most pressing problem confronting your State's criminal justice system today?"

This question was asked of 2,400 criminal justice administrators across the country in a survey released by the National Institute of Justice (NIJ) in 1984. Jail and prison crowding was identified as the most pressing issue facing criminal justice institutions by 32% of the respondents, including--

- attorneys general
- district attorneys
- judges
- police chiefs
- heads of criminal justice agencies
- corrections officials.

Police officials identified jail and prison crowding twice as often as any other problem, and prosecutors identified it three times as often.<sup>1</sup>

Academic research and national media coverage have focused much attention on crowding in State prisons, but less attention has been given to the plight of our Nation's local jails; yet inadequate jail space is also a serious national problem.

In 1986 an estimated 8 million persons were admitted to jails. While the nationwide jail population increased by more than 73% between 1978 and 1986, the rated capacity of jails increased 16%.

<sup>1</sup>Stephen Gettinger, "Assessing Criminal Justice Needs," National Institute of Justice, Research in Brief, June 1984.

On average, in 1986 jails were operating at 96% of capacity, and those jails with an average daily population of 100 inmates or more reported operating at 108% of capacity--18% over the capacity recommended by the American Correctional Association.<sup>2</sup>

- Three-fourths of the U.S. jail population are held in such jurisdictions.
- 23% of the jails in these jurisdictions were under court order to reduce their inmate populations.
- 27% were under court order to improve one or more conditions of confinement (of this group, 86% were cited for crowded living units, 51% for inadequate recreational facilities, and 41% for deficient medical facilities and services).

### **Jails vs. prisons**

Many news stories about crowding in individual jails have surfaced throughout the country, but the public seems to be unaware of the nationwide implications. Less attention has been given to jail crowding partly because the terms "jail" and "prison" tend to be synonymous to the general public. Yet, they are two very different types of institutions. Among the basic differences in their overall missions and functions are--

- the types of inmates they house
- their locations
- their physical size
- their inmate housing capacities.

Most jails are administered by local governments and hold both convicted and unconvicted individuals. Convicted

<sup>2</sup>The 1983 Jail Census, Bureau of Justice Statistics Bulletin, NCJ-95536, November 1984; Jail Inmates 1986, Bureau of Justice Statistics Bulletin, NCJ-107123, October 1987.

offenders (about 47% of the jail population in 1986) serve relatively short sentences in jail, usually less than 1 year. Unconvicted persons are detained while awaiting trial or other court proceedings. Jails tend to be located within the community near trial courts and characteristically have few rehabilitation programs.

In contrast, prisons exist primarily as a sanction for criminal offenses, and they are operated by State and Federal governments. The same authority administers both prisons and jails in six States (Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont) and the District of Columbia.<sup>3</sup> Most State governments, however, do not administer jails.

Prisons hold convicted offenders sentenced to terms of confinement for generally more than 1 year. In 1986, 4% of the Nation's prison population were unconvicted or serving sentences of less than 1 year.<sup>4</sup> Prisons also tend to be located away from dense populations and are usually larger than jails.

Both prisons and jails need to reserve some confinement units for special purposes, such as providing medical services, separating certain inmates from the general inmate population, and replacing units that are under repair. However, fluctuations in populations are greater in jails than in prisons; thus, jails have a greater need for reserve space. This is because of the shorter periods of incarceration in jails, the variation between weekend and weekday population levels, and

<sup>3</sup>Report to the Nation on Crime and Justice: Second Edition, Bureau of Justice Statistics, NCJ-105505, March 1988, p. 106.

<sup>4</sup>Prisoners in 1986, Bureau of Justice Statistics Bulletin, NCJ-104864, May 1987.

arrest sweeps by law enforcement officers. In addition, pretrial detainees (53% of the jail population in 1986) present a special problem for jail administrators because such persons have not been convicted of the crime for which they are being held.<sup>5</sup>

According to a U.S. District Court decision--

As a matter of common sense and fundamental fairness, the criminal justice system must insure that pretrial detainees are not housed in more deprived circumstances than those accorded to convicted persons.

Overcrowding in a local jail cannot be quantitatively equated with overcrowding in a state penal institution.<sup>6</sup>

### **The impact of the courts on managing jails**

Jail crowding magnifies the problems of managing and operating a jail. Prisoner and staff tensions increase along with wear and tear on the facility. Budgetary problems stem from the growing need for overtime staffing, and there occasionally exists an inability to meet standards for inmate programs and services (such as treatment programs and food and medical services).

In the past decade courts have become more active in determining the conditions of confinement in jails and prisons. During the 1970's, the courts faced a proliferation of cases dealing with the constitutionality of--

#### **• double-bunking**

<sup>5</sup>Jail Inmates 1986.

<sup>6</sup>Gross v. Tazewell County Jail, 533 F. Supp. 413, 419 (1982).

- operating a correctional facility beyond its rated capacity
- whether the Constitution mandates a minimum amount of physical space per inmate.

The courts have often found conditions of confinement unconstitutional and have required government officials to take remedial--and often expensive--courses of action.

In two landmark decisions, Bell v. Wolfish (1979) and Rhodes v. Chapman (1981), the U.S. Supreme Court abruptly deviated from the interventionist approach of the lower courts. In both cases, the Supreme Court overturned Federal District Court findings of unconstitutional confinement conditions. Both cases held that executive and legislative officials must have discretion in the administration of prisons and jails.

- In Wolfish, the Court concluded that there is ". . . no 'one man, one cell' principle lurking in the Due Process Clause of the Fifth Amendment."<sup>7</sup>

- In Chapman, the Court found that the conditions at Southern Ohio Correctional Facility did not constitute cruel and unusual punishment, ". . . for there is no evidence that double-celling under these circumstances either inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of the crimes warranting imprisonment."<sup>8</sup>

<sup>7</sup>Bell v. Wolfish, 441 U.S. 520, 542 (1979).

<sup>8</sup>Rhodes v. Chapman, 452 U.S. 337, 348 (1981).

Despite these decisions, many lower courts continue to find existing conditions of confinement to be unconstitutional. As one commentator has noted--

A careful reading of Wolfish and Chapman would suggest to such officials that they can constitutionally operate penal institutions with populations greater than the institutional design capacity so long as they continue to meet adequately the inmates' basic necessities of life. However, the lower court decisions since Wolfish and Chapman suggest that at least some courts are still appalled by the conditions of confinement brought to their attention and are disposed to distinguish or even ignore those decisions. As a result, the likelihood of a lawsuit still must be considered substantial and the court's resolution of the dispute cannot be predicted with confidence.<sup>9</sup>

The courts are requiring many jail administrators to meet population ceilings--even though the administrators lack the resources or political support to do so. For example, to comply with a State Superior Court order to alleviate jail crowding and improve detention facilities, officials in Marin County, California, sought a \$10 million bond issue to build a 225-bed facility that would have doubled the county's housing capacity. The voters of Marin County rejected the bond issue on June 2, 1987. This is forcing county officials to seek other ways to meet the court's order.<sup>10</sup>

<sup>9</sup>Jack E. Call, "Recent Case Law on Overcrowded Conditions of Confinement," Federal Probation, September 1983, p. 32.

<sup>10</sup>"Marin Voters To New Jail--No!," The Pretrial Reporter, vol. XI, no. 3 (June 1987), p. 5.



In southern Florida, Dade County's correctional facilities had an influx of Cubans from the Mariel boatlift in 1980. In less than 1 year the county found itself in contempt of a Federal court order to reduce inmate population. It was required to pay a fine of \$1,000 per day if it could not reach the court-ordered limit within 60 days. Through an agreement with the Federal Government the county reduced its jail population to the court-ordered limit by the 60th day. However, the very next day its jail population exceeded the limit and continued to do so for the next 4 years.<sup>11</sup>

### **Local jails and Federal inmates**

Jail crowding adversely affects the functioning of the entire criminal justice system. Judges, prosecutors, probation and parole officers, and other officials often must detain offenders for public safety, but jail space is unavailable. Jail crowding also impairs Federal and local court functions when it interferes with the transfer of inmates to and from scheduled court appearances.<sup>12</sup>

Because of jail crowding, the U.S. Marshals Service (USMS), in particular, is facing critical problems in finding housing for Federal pretrial detainees. Traditionally, the Federal Government has relied upon State and local governments to house Federal offenders awaiting legal disposition and material witnesses in Federal prosecutions. In fiscal 1987, 69% of the 85,348 prisoners in USMS custody were housed in State

<sup>11</sup>The *Pentacle*, U.S. Marshals Service, vol. 7, no. 1 (January 1987), p. 17.

<sup>12</sup>Andy Hall, "Systemwide Strategy To Alleviate Jail Crowding," National Institute of Justice, Research in Brief, January 1987.

and local jails through 825 intergovernmental agreements between the USMS and State and local governments.

Nevertheless, the USMS has continually encountered problems in obtaining adequate detention space. From 1980 to 1987, the number of jails that severely restricted or terminated space for Federal prisoners increased by 198% (from 90 to 268). These restrictions resulted from--

- severe crowding
- an ever-increasing amount of prisoner litigation
- court orders concerning substandard conditions of confinement.

Thirty percent of the 94 Federal judicial districts currently face critical shortages of detention space. This has spurred significant growth in the number of unsentenced Federal prisoners detained in already overcrowded Federal institutions or in jails in outlying rural areas.<sup>13</sup>

Detaining Federal prisoners in outlying rural jails is problematic because such jails are small, and the detainees must be divided among several jails, often in diverse directions and at greater distances from the court. More Deputy U.S. Marshals and equipment are needed to transport prisoners to and from multiple locations, which incurs higher costs and greater risks. For example, during a single month in fiscal 1986, one district used 22 different jails to house its prisoners. This resulted

<sup>13</sup>The Director's Report: A Review of the U.S. Marshals Service in FY 1987 (U.S. Marshals Service, Resource Analysis Division, 1987) and unpublished data from the U.S. Marshals Service. See also, The Pentacle, p. 3, and Report on the Jail Crisis, prepared for the Honorable Dale Bumpers, Committee on Appropriations, U.S. Senate (U.S. Marshals Service, 1987), p. 4.

from an abrogation of a detention agreement with a major facility. Termination of the agreement was caused by jail crowding.<sup>14</sup>

The USMS needs short-term detention space near Federal court cities.<sup>15</sup> This is also very important to probation and pretrial officers, defense and prosecuting attorneys, and case agents who need access to pretrial detainees during court proceedings.

The Bureau of Prisons (BOP) provides detention space for 31% of Federal pretrial detainees; however, the 26 BOP facilities used by the USMS are 64% over their rated capacities. New BOP facilities are being built, but they are of little help to the USMS because of their remote locations from Federal trial courts.

As available jail space continues to decrease, the number of Federal prisoners continues to grow. The daily average number of prisoners in USMS custody rose 35% from fiscal 1984 to 1987. The average length of prisoner detention in contract facilities increased 17% over the same 3-year period.<sup>16</sup>

The crowding of Federal detainees is particularly critical in such areas as the Northern District of California. On a typical Friday evening the USMS may have as many as 12 prisoners because of late afternoon arrests, with no space to house them. Local jails have exceeded their capacity and will not accept more prisoners. Prisoners may have to be transported 480 miles round-trip for detention over the weekend.

<sup>14</sup>The Director's Report.

<sup>15</sup>U.S. Marshals Service, unpublished data.

<sup>16</sup>U.S. Marshals Service, unpublished data.

To compound the problem, the county jail in San Francisco is under court order to reduce its population. The county sheriff has been forced to reduce the number of Federal prisoners housed in the San Francisco facility from 60 to 30, and by December 1987 more than 60 prisoners from San Francisco were being housed in Los Angeles. This action seriously impedes the USMS' ability to operate effectively in that judicial district.<sup>17</sup>

### **Jail crowding and public safety**

Jail crowding also adversely affects the community at large. Many jail administrators are using early and emergency release of offenders to cope with the crowding and comply with court-ordered reductions. Early release of offenders solely because of the shortage of space calls into question the integrity of the administration of justice and could pose a threat to public safety.

In 1985, 19 States reported nearly 19,000 early prison releases.<sup>18</sup> The Cook County Jail in Illinois alone released 1,200 low-bail defendants between November and December 1986 to avoid violating a Federal court order limiting its inmate population.<sup>19</sup>

Why has jail crowding become a nationwide problem? In the 1960's, crime rates skyrocketed while the prison population declined. In the 1970's, however, public opinion shifted to a tougher attitude toward criminal

<sup>17</sup>The Pentacle, pp. 7-8.

<sup>18</sup>Report to the Nation on Crime and Justice, 2nd ed., p. 109.

<sup>19</sup>"John Howard Pushes Reform in Cook County," The Pretrial Reporter, vol. XI, no. 2 (April 1987), p. 5.

offenders. The incarceration rate--  
● increased dramatically by 39% from 1970 to 1979, constituting the largest increase within a decade since the 1920's  
● climbed 36% from 1980 to 1985, indicating that this decade may experience the highest increase on record.

These statistics represent populations of prisons rather than jails, but they are indicative of the increased use of incarceration for dealing with serious offenders.<sup>20</sup>

The growth in prison populations in recent years directly affects local jail population because local jails often house inmates who cannot be transferred to overcrowded State prisons. In 1986, 26% of jails in jurisdictions with large inmate populations (100 inmates or more) held additional inmates due to crowding in State or Federal prisons or in other jails. More recently, at yearend 1985, 18 States reported a total of more than 10,000 State-sentenced inmates held in local jails due to prison crowding.<sup>21</sup>

Deinstitutionalization of the mentally ill in recent years and the lack of community-based support to care for them has contributed to jail crowding. Many mentally ill patients were left to the streets with a high probability of becoming local jail inhabitants. A study funded by the National Institute of Corrections estimates that 6% of the population in State prisons is classified as mentally ill.<sup>22</sup>

<sup>20</sup>The Prevalence of Imprisonment, Bureau of Justice Statistics Special Report, NCJ-93657, July 1985.

<sup>21</sup>Jail Inmates 1986; Report to the Nation, 2nd ed.

<sup>22</sup>Sourcebook on the Mentally Disordered Prisoner, New York State Department of Corrections, National Institute of Corrections, March 1985, p. 15.

Data on the percentage of jail inmates who are mentally ill are vague and inconclusive, and the numbers vary widely. It is estimated, however, that the percentage of mentally ill inmates in jails is higher than the estimated 6% in prisons. In addition to housing mentally ill offenders who have committed crimes, jails often house mentally ill individuals who have been removed from the streets to protect them from themselves and others until they can be referred to a treatment program.

### **The public and jail construction**

Despite public sentiment in favor of incarceration, jails are not often given a high priority in the outlay of tax dollars, nor are they a popular political issue. The field of corrections lacks a political constituency and is often portrayed as draining scarce resources from more popular government programs. Recognizing this, the National Conference on Correctional Policy in June 1986 ranked educating the public about community corrections to be one of the top priorities for judges and lawmakers.<sup>23</sup>

Even when funds are allocated to jail construction, many citizens are reluctant to have jails built in their communities. In response to the critical shortage of jail beds in their county, the voters of Dade County, Florida, approved a \$200 million bond issue for criminal justice facilities. Numerous sites were considered, but each site raised controversy among citizens who did not want jails in their communities.

<sup>23</sup>The National Conference on Correctional Policy held in June of 1986 in Washington, D.C., was sponsored by the American Correctional Association, the National Institute of Corrections, and the National Institute of Justice; Bobbie L. Huskey, "Public Relations Beyond Marketing," Corrections Today, February 1987, p. 40.

To mitigate opposition, the county decided to build the new jails on sites where correctional facilities already existed; however, the opposition would not subside. Community residents adjacent to the facilities have filed a lawsuit to block the construction.<sup>24</sup>

### **Effects of Federal legislation on jails**

Various new Federal laws have been passed that will profoundly affect the size of inmate populations. These laws prescribe mandatory sentences and increased sentence lengths for specified offenders. These laws include the--

- Anti-Drug Abuse Act of 1986
- Comprehensive Crime Control Act of 1984 (CCCA), in which Congress abolished parole for Federal offenders and required the U.S. Sentencing Commission to develop new guidelines for sentencing Federal offenders. The guidelines were implemented on November 1, 1987.

A Supplementary Report on the Initial Sentencing Guidelines and Policy Statements was issued in June 1987. In the report the Sentencing Commission estimated that the Anti-Drug Abuse Act, along with the new sentencing guidelines and the career-offender provision of the CCCA, will cause the Federal prison population to--

- be 26% higher in 1992 and 50% higher in 1997 than it would have been without the new laws
- more than double in the next decade, from 42,000 in 1987 to 92,000 in 1997.<sup>25</sup>

<sup>24</sup>The Pentacle, p. 17.

<sup>25</sup>Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, U.S. Sentencing Commission, June 1987, pp. 63 and 71.

The burgeoning Federal prison population affects jail conditions because jails are sometimes used to house the overflow of prison inmates. In addition, the number of arrests will increase as a result of the Anti-Drug Abuse Act. This translates into more offenders being processed through the system and detained in jails while awaiting trial. The USMS Detention Study projects that its average daily Federal prisoner population will increase by 108% between fiscal 1986 and 1992.<sup>26</sup>

The CCCA of 1984 also includes the Bail Reform Act, which enables judicial officers to hold Federal suspects in preventive detention before trial if they are considered a threat to the public. In the recent Supreme Court decision, U.S. v. Salerno (1987), the Court upheld the constitutionality of this provision.<sup>27</sup> According to the Administrative Office of the U.S. Courts--

- Federal judges reported a total of 9,440 hearings on requests for preventive detention between July 1, 1985, and June 30, 1986.
- Since the Bail Reform Act was passed, the number of Federal pretrial detainees has increased by 36%, from a daily average of 5,383 in 1984 to 7,378 in 1986.

In addition, as of 1984 an estimated 32 States plus the District of Columbia permit judges to use the criterion of danger to the community when considering bail or other pretrial release options.<sup>28</sup>

<sup>26</sup>U.S. Marshals Service FY 1987 to 1992 Detention Study, U.S. Marshals Service.

<sup>27</sup>U.S. v. Salerno, 107 S. Ct. 2095 (1987).

<sup>28</sup>"Court Upholds Preventive Detention," Washington Post, May 27, 1987; The Director's Report, p. 14; Report to the Nation, 2nd ed., p. 77.



New laws pertaining to offenses such as drunk driving have proliferated and will also affect jail inmate populations. By May 1985 more than 30 States had enacted laws that designate drunk driving as a criminal offense subject to severe penalties, such as mandatory confinement. Sentences for driving while intoxicated are frequently served in jails.<sup>29</sup>

Delays in processing cases through State and local courts also have contributed to jail crowding because jails often detain defendants awaiting court proceedings. Many counties throughout the Nation, however, are taking steps to expedite cases through the system to increase efficiency and reduce the number of individuals unduly detained in jail.

Fairfax County, Virginia, for example, has instituted a number of procedures to expedite its handling of its steadily increasing caseload (the heaviest in Virginia) resulting from surges in the county's population. The court, which handles 15,000 cases a year, disposes of felony cases in 8-12 weeks; this is below the 6- to 8-month time period in other large jurisdictions.<sup>30</sup> Key aspects of the Fairfax program are--

- automation of case-processing data
- timely scheduling of trial dates
- expeditious jury selection
- a cooperative effort among judges and between attorneys and judges to minimize case-processing delays.

<sup>29</sup>Jailing Drunk Drivers: Impact on the Criminal Justice System, National Institute of Justice, Executive Summary, May 1985, p. 2.

<sup>30</sup>"Case Jam Causes Jail Jam," The Pretrial Reporter, vol. XI, no. 2 (April 1987), p. 4; "Fairfax Reduces Delay, Confirms National Findings," The Pretrial Reporter, vol. X, no. 2 (April 1986), p. 5.

## Conclusion

It is evident that jail crowding is a pervasive problem nationwide, having an impact at all levels of government. The causes of this problem are multiple and the ramifications, serious. To combat jail crowding, criminal justice professionals and public officials have begun to foster relationships to better share information and technical expertise and to meet the unique conditions of their communities. The scope and magnitude of the problem, however, points to the need for Federal and State as well as local efforts to find real and lasting solutions.



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