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## Book Review

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# BOOK REVIEW

## PRISONS AND AFTER PRISON

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JOHN H. LAUB & ROBERT J. SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70* (Harvard University Press, 2003). 338 pp.

LORNA A. RHODES, *TOTAL CONFINEMENT, MADNESS AND REASON IN THE MAXIMUM SECURITY PRISON* (University of California Press, 2004). 315 pp.

PRISONERS ONCE REMOVED: *THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES* (Jeremy Travis & Michael Waul, eds., 2003). 396 pp.

ALAN ELSNER, *GATES OF INJUSTICE: THE CRISIS OF AMERICA'S PRISONS* (Prentice Hall, 2004). 264 pp.

### INTRODUCTION

I was in court the other day, waiting for my client's case to be called, when a middle-aged man was brought out from the lock-up to face the judge. I took notice because of the fact that he was older than the usual pre-trial detainee in the Cook County Jail. His lawyer began to argue for a reduction in bail. During the course of the hearing before the judge, it was revealed that this man allegedly committed three armed robberies in 1990. After being released on bail in 1990, he failed to return to court, probably because he was facing a minimum six years in the penitentiary for his crimes (and probably longer because judges in Cook County do not always impose minimum sentences for crimes of violence). Instead, he lived in his

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neighborhood, got married, had children, had a series of good jobs, and was never again arrested. The warrant issued in 1990 “caught” him the day before his court appearance when he was picked up for speeding. I wondered to myself—and out loud to the student who was with me—what would this man’s life course have been had he been incarcerated at age nineteen, when the crimes that brought him to court were committed? If he had been imprisoned and released after spending six years in the penitentiary, would he have married? Would he have had children? Would he have been able to stay out of trouble? If incarcerated at age nineteen, how much would his incarceration in 1990, and his probable succeeding incarcerations have cost the taxpayer? Would this man have been peaceful or dangerous had he spent time in prison?

The books reviewed in this essay suggest that society and the middle aged man I saw in court are both better off because he avoided prison. This does not mean that I condone armed robbery or bail jumping—I do not. People who commit crimes deserve punishment commensurate with their culpability. But the conditions and effects of incarceration in our country’s prison system, presented clearly and forcefully in the books reviewed in this essay, demonstrates that a young man sent to a prison in the United States has a poor prognosis for becoming a productive member of society upon release. This is because prisons are overcrowded as a result of the war on drugs and increasingly lengthy sentences. They are brutal places where conditions of confinement and inmate on inmate violence inflict lasting and debilitating psychological damage. Finally, we ignore the fact that the vast majority of prisoners will eventually be released and that, instead of preparing them for release, we send them back impaired and to neighborhoods and communities ill-prepared or equipped to meet their needs.

These are not new or original observations. The evidence and the arguments against our nation’s policy of mass incarceration have been in the forefront of news and policy debates for years. Virtually no one argues that we should be satisfied with the conditions or the performance of our prison system or that the inhumane conditions described by prisoners, journalists, and researchers do not exist. Yet conditions within prisons that shock us all (overcrowding, unsanitary conditions, inmate on inmate violence and sexual assault, guard on inmate violence, inmate on guard violence) continue to exist, virtually unchallenged, leaving prisoners, prison administrators and staff, and parolees to sort it out with meager resources and with little support or commitment from the politicians or from the citizens who have led the charge for increasingly high rates of incarceration.

Legislators and courts have made it increasingly difficult to challenge the conditions that virtually all would agree are inhumane.<sup>1</sup> Those who seek to challenge conditions of confinement in court are thwarted by the interpretations of the Fourteenth and the Eighth amendments which make few practices or actions of prison officials actionable.<sup>2</sup> The courts' "hands off" policies regarding the "day-to-day" administration of prisons reflect judges' understandable unwillingness to become prison administrators. Only the most egregious incidents and practices—particularly those found in "supermax" institutions—are the subject of judicial review and constraint,<sup>3</sup> although there is growing legislative and judicial awareness and concern about sexual assault in prisons, particularly as this pervasive and pernicious phenomenon affects vulnerable young prisoners who face not only incarceration, but assault, and, very likely infection with AIDS.<sup>4</sup>

How do we move forward if there is little political will to seek and to impose solutions that will result in more rational and humane prison policy? A partial answer to this question is found in the books reviewed in this essay. Each of them makes a substantial contribution to the understanding of the challenges we face in designing a justice system that punishes and deters, but also reintegrates and protects in the long term.

### THE BOOKS

In their book, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70*, John Laub and Robert Sampson attempt to answer the question, "why some offenders stop committing crimes when they do, while others

<sup>1</sup> See Prison Reform Litigation Act, 18 U.S.C. § 3626 (1997).

<sup>2</sup> See *Rhodes v. Chapman*, 452 U.S. 337 (1981); *Bell v. Wolfish*, 441 U.S. 520 (1979).

<sup>3</sup> See, e.g., *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D. Tex. 2001); see also Mikel-Meredith Weidman, *The Culture of Judicial Deference and the Problem of Supermax Prisons*, 51 UCLA L. REV. 1505, 1534 (2004):

The courts' open criticism of supermax and sympathy for inmates suggest that they entertain some impulse to intervene in these situations. . . . But these expressions of courts' discomfort with supermax conditions are only half the story of these opinions; the pressure to defer exerts just as powerful a pull on courts as their shock at supermax conditions.

*Id.* at 1534 (footnote omitted).

<sup>4</sup> See Prison Rape Elimination Act of 2003, H.R. 44943, 107th Cong. (2002); see also *Johnson v. Johnson*, 2004 U.S. App. Lexis 18929 (5th Cir. Sept. 8, 2004) (holding that gay inmate subjected to repeated sexual assault by fellow prisoners stated valid Eighth Amendment and Equal Protection claims); James E. Robertson, *A Clean Heart And An Empty Head: The Supreme Court And Sexual Terrorism In Prison*, 81 N.C. L. REV. 433 (2003); Will A. Smith, *Civil Liability for Sexual Assault in Prison: A Challenge to the "Deliberate Indifference Standard"*, 34 CUMB. L. REV. 289 (2003-04).

continue over large proportions of the life course.”<sup>5</sup> Laub and Sampson note that, “[t]he limited literature focusing directly on desistance from crimes indicates that there are multiple pathways, including attachment to a conventional person such as a spouse, stable employment, transformation of personal identity, and the aging process,”<sup>6</sup> which contribute to desistance. Following up on the lives of the young men studied in the classic 1950 work on juvenile delinquency, *Unravelling Juvenile Delinquency* by Charles and Eleanor Glueck,<sup>7</sup> Laub and Sampson attempt to identify the factors that influenced the lives of these men. They conclude that “life-history narratives are especially valuable in uncovering issues overlooked in more traditional quantitative approaches in criminology,”<sup>8</sup> such as developmental accounts or rational choice accounts. Laub and Sampson argue for a “life-course perspective” based on analysis of the lives of individuals focusing on the context and developmental impact of events such as marriage, military service, institutionalization, and human agency.<sup>9</sup>

To the non-sociologist criminal defense lawyer, the conclusions Laub and Sampson reach regarding the factors that lead to desistance from crime are consistent with my accumulated anecdotal experience. Marriage and family make a difference. A person who is able to establish and maintain long-term relationships during and after incarceration has a better chance of staying out of trouble than someone who does not have these attachments. The nature of the offender’s interaction with the justice system is also a factor in predicting future life course. Despite the fact that the institutions in which the subjects of Laub and Sampson’s study were brutal, some of the interviewees credited their experience in corrections as putting them on the right path.<sup>10</sup> Military service was also identified as a turning point. Interestingly, however, the interviewees viewed the criminal justice system

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<sup>5</sup> JOHN H. LAUB & ROBERT J. SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES, DELINQUENT BOYS TO AGE 70*, 13 (2003).

<sup>6</sup> *Id.* at 17.

<sup>7</sup> SHELDON & ELEANOR GLUECK, *UNRAVELING JUVENILE DELINQUENCY* (1950).

<sup>8</sup> LAUB, *supra* note 5, at 9.

<sup>9</sup> *Id.* at 33.

<sup>10</sup> “One unexpected finding was the positive aspect of the reform-school experience for these former delinquents. The reform-school experience was especially salient for some men when coupled with serving in the military, a fact that suggests the need to examine the Lyman School-military connection.” *Id.* at 129. The authors go on to describe the sometimes brutal conditions at Lyman, which included beatings, other abuse by staff, and inadequate food and shelter. They wonder why “those who had adverse experiences in Lyman did not react negatively to those experiences by committing crime or displaying other forms of poor adaptation as an adult.” *Id.* at 131. One suggestion is that the negative experience encouraged some juvenile offenders not to go back into the correctional system. *Id.*

as a “game” in which “no one was concerned about justice, truth, helping offenders, or even exacting punishment for crimes committed. Everybody was out to get ‘the best deal,’ and the deal you got had little to do with what you did.”<sup>11</sup>

Laub and Sampson ask the question why some offenders desist and some offenders persist. Utilizing case studies of individuals who fall into both categories, the factors of attachment to others, stable employment, marriage and family, and military service emerge as factors that turn young men around. These influences motivate individuals to make life-altering decisions about how they want to lead their lives. Those who persisted in the commission of crime did not experience the stable, human influences which motivated desisters to change their ways. Persistent offenders viewed prison as a negative influence and cited inmate on inmate violence as especially pernicious. Those who did not desist from crime also cited negative experiences in juvenile corrections.<sup>12</sup>

What do the conclusions of Laub and Sampson tell us? Laub and Sampson are wary of relying upon traits of individuals viewed prospectively or retrospectively as predictors of human behavior:

In our view, more than being identified by a single trait like poor verbal intelligence or low self-control or even a series of static traits, the persistent offender, to the extent this term has meaning, seems devoid of linking structures at each phase of the life course, especially involving relationships that can provide nurturing, social support, and informal social control.<sup>13</sup>

What are the policy implications of this? One is that prisons interfere with the processes that Laub and Sampson identify as life changing. In particular, the opportunities to create meaningful personal and employment relationships are greatly diminished by even short term incarcerations. Mechanisms for reintegration of prisoners into society are sorely lacking, meaning that the kinds of relationships and development of personal agency identified as factors in desistance cannot be put into play, resulting in the revolving door between community and prison that so often characterizes the lives of ex-offenders.

The lives examined by Laub and Sampson—even those lives which are characterized by persistent offending and re-incarceration—are not nearly so tragic and disturbing as those described by Lorna A. Rhodes in her compelling book, *Total Confinement, Madness and Reason in the Maximum Security Prison*. In her book, Rhodes describes life inside institutions that are designed to control the “worst of the worst.” She

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<sup>11</sup> *Id.* at 53.

<sup>12</sup> *Id.* at 189-90.

<sup>13</sup> *Id.* at 280.

examines the perspectives of the prisoners, of the jail guards, and of those responsible for administering maximum security institutions. She skillfully navigates between the perceptions of prisoners and the custodians, acknowledging the difficulties involved in managing "difficult" prisoners but at the same time describing the process of dehumanization which inevitably leads to spiraling violence on the part of both inmates and staff which in turn forces focus on methods of control rather than rehabilitation. Without preaching, she concludes by examining the approach of one warden of a maximum security prison who takes steps to break through his leadership in establishing relationships with the prisoners subject to this harshest form of incarceration. This form of interaction is designed to move prisoners out of maximum security rather than to keep them there.

Rhodes's descriptions of maximum security units are stark. She focuses on the phenomenon of the throwing of feces and urine as a reflection of the prisoners' self-perception: "The prisoner who sees himself defined as a piece of shit hurls into the faces of his keepers the very aspect of himself that most intensely represents his contaminated status in their eyes."<sup>14</sup> She describes the effects of dealing with "throwing" on the guards as well as their overwhelming concern about the inmates' ability to perpetrate violence upon them. She includes in her book advertisements appearing in corrections magazines for items such as the "violent prisoner chair" and surveillance cameras which convey the idea of prison as a violent place in which prisoners are always trying to gain the upper hand. The correctional industry's perspective is balanced by drawings of inmates depicting the desolation and violence inflicted on them in the maximum security setting.

A central theme of Ms. Rhodes book is how the inmates of maximum security prisons are perceived by those responsible for their custody. Are these men "mentally ill" or do they make rational choices about their behavior? Common sense would suggest that "throwers" and those who smear themselves and their cells with feces are "mentally ill" and need treatment rather than further degradation. What mechanisms are in place to tell the difference between a prisoner who is "ill" and one whose behavior is merely "bad"? How should a prison's administration negotiate between the custodians concerned about security and the mental health workers who see the need for treatment in less restrictive environments? Rhodes asks: "Are treatment workers in possession of knowledge that reveals the true capacities of prisoners? Should—or must—custody workers punish those whose awareness of what they are doing seems limited, but not entirely

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<sup>14</sup> LORNA A. RHODES, *TOTAL CONFINEMENT: MADNESS AND REASON IN THE MAXIMUM SECURITY PRISON* 45 (2004).

absent? What about the dangers of responding empathically in the prison context?"<sup>15</sup>

There is no perfect solution to the problem of how to manage maximum security institutions. However, Rhodes does examine a strategy adopted by one warden and his staff that seems to have eliminated many of the tensions that exist in unbending and immutably rigid maximum security prisons. That strategy is interaction with prisoners—even the “worst of the worst”—on a human level. Rhodes refers to this process as a series of reforms that have been “struggled out” by administrators and guards,<sup>16</sup> and that involves establishing relationships with prisoners. Under this regime, the maximum security facility is not a “warehouse.” The question asked is “how to rehabilitate rehabilitation in an environment of punitive individualism.”<sup>17</sup> The strategy described is “tier walking” by guards and administrators during which prisoners are asked how they are doing and are encouraged to think about what can be done to get them out of maximum security.

Rhodes sees this example of a reform initiative based upon human interaction as a hopeful sign but does not predict that it will solve the problems she so compellingly describes. She notes that the problems are complex, that the actors have multiple perspectives about the nature of the problems and the solutions to them. She urges understanding of these various perspectives as a means of forging the constructive relationships and initiatives.

*Prisoners Once Removed*, edited by Jeremy Travis and Michelle Waul, contains a series of studies of the effects of incarceration on the families of those incarcerated. Travis and Waul point out that the number of affected children was estimated to be 3.2 million in 2001,<sup>18</sup> and that with prisoners serving longer prison terms the negative effects of incarceration are increasing. Add to this the fact that programs designed to prepare prisoners for re-entry into their communities are few and far between. In addition, many prisoners emerge from prison with untreated mental illnesses and find no resources within their communities to address their problems. The consequences are predictable. Children experience the trauma of early separation from a parent, diverting attention from necessary developmental tasks. The uncertainty caused by a parent’s incarceration increases stress on children. There is loss of financial support. It is difficult for the prisoner

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<sup>15</sup> *Id.* at 133.

<sup>16</sup> *Id.* at 193.

<sup>17</sup> *Id.* at 200.

<sup>18</sup> JEREMY TRAVIS & MICHELLE WAUL, *PRISONERS ONCE REMOVED* I (2003).

and his family to maintain the ties that are so necessary to stable relationships.

In a chapter entitled, "The Psychological Impact of Incarceration," Craig Haney documents the devastating effects of prison overcrowding and violence upon those who return from prison to their families. He effectively summarizes the points made by the other authors in this collection of essays. He notes that:

in the first decade of the 21st century, more people have been subjected to the pains of imprisonment for longer periods and under conditions that threaten greater psychological distress and potential long-term dysfunction. They will be returned to communities already disadvantaged by a badly frayed 'safety net,' and they will sorely need social services and supportive resources that their neighborhoods unfortunately will be too often unable to provide.<sup>19</sup>

These former prisoners will be dependant on institutional structures, they will be hyper-vigilant because of their frightful experiences in prison. They may suffer from post-traumatic stress disorder. These risk factors will be especially pronounced in prisoners who have experienced incarceration in maximum security or "super-max" institutions. The policy recommendations that flow from this state of affairs are straightforward and sensible—more emphasis on rehabilitation and reinforcement of positive behavior while in prison, encouraging contact with families, and moving away from the reliance on "super-max" institutions to control problem inmates.

The chapters which follow Haney's focus more narrowly on the problems faced by woman after incarceration, the skill sets and health care needs of released prisoners, the impact of incarceration on children and on family structures, and the effect of a parent's incarceration on adolescents. The latter study, entitled, "The Adolescent Children of Incarcerated Parents, A Developmental Perspective," by J. Mark Eddy and John B. Reid, confirms what many who represent young children already know anecdotally—children of prisoners seem likely to have their own conflicts with the law.<sup>20</sup> Several strategies exist to address the problems of these children including home visits by trained nurses, parent management training, and multi-systemic treatment.<sup>21</sup> The challenge, according to Eddy and Reid, is to create an "integrated prevention effort"<sup>22</sup> that delivers

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<sup>19</sup> *Id.* at 37.

<sup>20</sup> "[A]dolescent children of parents with the most involvement in the criminal justice system are three to six times more likely to exhibit violent or serious delinquency than peers with parents who have little or no criminal justice interaction." *Id.* at 238.

<sup>21</sup> *Id.* at 248-51.

<sup>22</sup> *Id.* at 251.

comprehensive services to both children and parents. In addition, more research is needed to examine the characteristics and needs of the children of incarcerated parents.

*Gates of Injustice: The Crisis In America's Prisons*, by Alan Elsner, is comprehensive and compelling indictment of criminal justice policy in the United States. Elsner, a journalist, cites the familiar statistics regarding incarceration rates (over two million people in prison in 2002, a total of 6.6 million under the supervision of the U.S. justice system, African Americans disproportionately confined—one in three black men can expect to spend time in prison during their lifetime).<sup>23</sup> The incarceration rate in the United States now surpasses that of Russia.<sup>24</sup> In addition to citing statistics and trends, however, Elsner uses the journalist's flourish to organize information and stories which are deeply troubling. Prisons are tough, violent places, controlled by gangs, infested with drugs, and infected by predatory and dangerous sexual behavior. Elsner notes that "[n]obody knows how many men are raped in prison" and that our governments, state and local have routinely (and willfully) failed to collect the statistics.<sup>25</sup> This failure to protect inmates from this routine, de-humanizing, and medically dangerous culture represents an astounding abdication of responsibility for the lives of those, particularly the young, who are committed to penal institutions. Most prisons contain high numbers of prisoners who are mentally ill. The needs of these prisoners are ignored despite the fact that prisons have been transformed into "de facto insane asylums"<sup>26</sup> with the emptying of our mental hospitals. Medical needs are also ignored, particularly the devastating impact of HIV/AIDS on prison populations.

Elsner also attacks the concept and operation of "super-max" facilities. He cites abuses within these prisons, particularly the cruel effects of sterile isolation, that often result in prisoners losing their minds and mutilating themselves. He notes that while "super-max" facilities are said to be designed to house "the worst of the worst," they are often holding facilities for prisoners with severe and difficult to control mental illnesses. If prisoners are not mentally ill when they are sent to a "super-max" facility, there is a great likelihood that they will become so after experiencing the depths of deprivation inflicted in these "state of the art" facilities. Within these institutions, suicide attempts are common. Elsner spoke to one young man (who I have also met) who is a poster child for the misuse of "super-max" facilities. This young man, originally incarcerated with a routine

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<sup>23</sup> ALAN ELSNER, *GATES OF INJUSTICE: THE CRISIS IN AMERICA'S PRISONS* 12-13 (2004).

<sup>24</sup> *Id.* at 17.

<sup>25</sup> *Id.* at 61.

<sup>26</sup> *Id.* at 84.

sentence for burglary now finds himself in the “belly of the beast” where he will serve additional sentences for misconduct arguably caused by his chronic mental illness.

Elsner’s book is replete with interviews, with descriptions of events, and with statistics regarding the over-use of incarceration in the United States. He notes the difficulty of maintaining a staff of custodians who are able to manage large groups of prisoners humanely. This is because the population of prisoners is difficult to manage<sup>27</sup> and because we have created a culture of security that can sometimes turn abusive.<sup>28</sup>

The question is where we go from here. Elsner cites Justice Kennedy’s call for the elimination of mandatory minimum sentences and “three strikes” laws. For those serving long sentences, Elsner suggests that the parole and pardon process should be re-invigorated to identify the many prisoners suitable for release prior to expiration of their sentences. The American Bar Association should take the lead in examining our criminal justice system’s sentencing policies. Programs should be put in place that promote positive relationships between inmates and families; there should be mental health follow-up for those released from prison. The phenomenon of sexual assault in prison should be investigated and controlled. The goal is to put the “brakes on” a system that has spiraled out of control.<sup>29</sup>

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<sup>27</sup> *Id.* at 177:

We expect a lot from our jail system. In the absence of other social safety nets to care for the physically and mentally sick and those addicted to drugs and alcohol, a modern jail is supposed to operate almost like an emergency room triage. . . . Clearly, many guards and wardens are not psychologically prepared or properly trained for these tasks.

*Id.*

<sup>28</sup> Elsner cites practices of the Cook County Jail’s Special Operations Response Team (S.O.R.T.) as being particularly abusive and having participated in the organized beating of inmates. Elsner’s observations have been recently bolstered by a report of a special Cook County Grand Jury which accuses the administration of the Cook County Jail and the Cook County Sheriff of having covered up abuse of inmates by members of the S.O.R.T. team. See Jeff Coen & Todd Lighty, *Cook Jail Incident Now U.S. Inquiry; Prosecutors Study Criminal Charges*, CHI. TRIB., Sept. 29, 2004, at 3; see also REPORT OF THE EXTENDED MARCH 2003 COOK COUNTY, ILLINOIS, GRAND JURY (Aug. 30, 2004), available at [http://macarthur.uchicago.edu/pdf/treatment\\_grandjuryreport.pdf](http://macarthur.uchicago.edu/pdf/treatment_grandjuryreport.pdf) (the MacArthur Justice Center website) (finding, *inter alia*, that “the extraordinary proof required for a finding . . . of excessive force provides a convenient way to ignore the truth and protect unfit individuals, allowing them further interaction with detainees”).

<sup>29</sup> ELSNER, *supra* note 23, at 224.

## DISCUSSION

Each of these books make important contributions to our understanding of prison policy and practice. Although Laub and Sampson's book does not focus on the effects of imprisonment, its finding that examination of the "life courses" of offenders who desist reveal that marriage, military service, employment, and self-awareness promote rehabilitation should send a clear message to legislators and prison officials. That message is that steps must be taken to ensure that prisoners retain and strengthen contact with family members and that they be permitted to develop relationships "on the outside" that will guide and preoccupy them. Laub's and Sampson's research demonstrates, more compellingly than a mere negative assessment of prison conditions and policy, that lengthy periods of confinement under conditions that make it impossible or difficult for a prisoner to make relationships in society are a recipe for failure and are therefore counter-productive.

The "poster child" for an approach that destroys human capacity is the "super-max" phenomenon whose indiscriminate use and de-humanizing effect is condemned by all of the authors whose work is discussed in this essay. The problem with mere criticism of these institutions, as Rhodes notes, is that there is a perceived, and perhaps a real (but more limited) need for such institutions for those inmates whose conduct simply can't be managed in the general population. The challenge, therefore, is to take steps to reduce reliance on such facilities while at the same time maintaining adequate security for guards and inmates. How is this to be done? Rhodes does not suggest an answer to this question other than ceasing to dehumanize. That is certainly one answer. But another answer has to lie in the conditions in the general population which lead to inmates being placed in super-max institutions. Are the prisoners who are moved from general population to super-max facilities "the worst of the worst"? Should there be transparent procedures that allow advocates for inmates to challenge their confinement in institutions which seem almost guaranteed to inflict physical and psychological harm not envisioned by the legislators who created sentencing schemes or by the judges who imposed the sentences? Is the quality of life in super-max facilities so different from life in general population that due process concerns should kick in to regulate the discretion of the prison administrators who make what are the equivalent of life and death decisions?

If the devastating impact of imprisonment on prisoners, as it is practiced in the United States, is not enough, existing practices regarding prisoner contact with the outside world ensure that the tragedy of incarceration will have ripple effects on families and on communities.

Little or no effort is made to prepare prisoners for release. Few resources are devoted to minimizing the effects of imprisonment on children and families. The work that is needed will be costly and labor intensive and difficult for government and private child welfare agencies to administer. However, the consequences of failure to intervene include de-stabilized families and children at risk of following parents into the correctional system.

Although intervention in the lives of children and families with parents in prison is certainly called for, the root cause of the problem discussed in *Prisoners Once Remembered* is the frequency and severity of sentences which create the conditions of confinement that cripple the ability of those released to function in society. Sensible sentencing policy, together with prison regulations that permit interaction between children and their families, would be important elements of a strategy designed to minimize the impact of prison sentences.

The blanket indictment of the U.S.'s prison system that is Mr. Elsner's book effectively pulls together the points made by the other books reviewed in this essay. Both journalists and researchers have a role to play in making the public aware of the chronic problems that plague criminal justice policy and institutions within our criminal justice system. Mr. Elsner's book is accessible and hard hitting and hints of balance in the last few pages. The challenges of running a penal institution of even modest size cannot be over-estimated.

What are the conclusions common to the books reviewed in this essay? All of these authors agree that addressing the human needs of prisoners is crucial to stability and security within institutions and to the future of prisoners after they are released. All agree that the human needs of prisoners cannot be addressed under current conditions—ever expanding prison populations and under-funding of staff. All agree that the prison population should be reduced. This reduction can be achieved through revision of sentencing laws and a parole system that identifies prisoners who have demonstrated that they are no threat to society. All agree that mental health and other rehabilitative services should be available given the fact that the vast majority of prisoners will be released. Finally, maintaining relationships with family is essential. Prison policy (including planning the location of prisons)<sup>30</sup> should be formulated with this objective in mind.

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<sup>30</sup> This is particularly true in Illinois where the closest prison to Chicago is in Pontiac, Illinois, a two hour drive from Chicago. Many Chicago-area prisoners are housed in Menard, eight hours south of Chicago and virtually inaccessible to families in Chicago. It does not appear that in Illinois any effort is made to locate prisoners near their homes.

What emerges from these books is that reformulation of sentencing and prison policy should be based upon the sensible and straightforward findings of professionals who know about recidivism and sensible management of human beings. However, it does not appear that these voices have been heard. Perhaps, however, a new approach to sentencing and to administration of prisons is beginning to develop a constituency. Mr. Elsner's reference to Justice Kennedy's views on sentencing suggests that this is true. Recent newspaper articles suggest that politicians have finally recognized that we cannot build our way to a secure environment.<sup>31</sup> As Rhodes suggests, the process of reform is long, complicated, and requires the mobilization of individuals with opposing views and interests. However, when one considers the damage that is done every day in prisons—especially in “super-max” and maximum security prisons—the urgency of finding a resolution becomes readily apparent. Consider how many rapes occur in prisons each day. Consider how many guards are injured by prisoners each day. Consider how many inmates are injured by other inmates and guards each day. Think about the impact of these phenomena—both short term and long-term—on the more than 1 million prisoners who presently reside in our prisons.

### CONCLUSION

As a lawyer interested in seeing that persons subjected to our criminal justice system are treated fairly and humanely and that the “outcomes” of imprisonment benefit both society and the prisoner, what strategies for accomplishing these goals are suggested by the books discussed in this essay? A lawyer representing a prisoner who is subject to inhumane and harsh conditions in prison cannot respond effectively if the response is that we must wait until legislators and prison administrators decide to adopt policies that will promote humane treatment. Legal action on behalf of prisoners subject to inhumane, but not cruel and unusual treatment, will not succeed. So where does that leave lawyers who want to see that prison conditions are improved? Where does that leave families whose fathers, mothers, sons, or daughters are imprisoned under conditions that are destructive of future good citizenship?

As I noted above, I have met one of the “super-max” prisoners mentioned in Mr. Elsner's book. I was asked to intervene on this prisoner's behalf to see if I could get him moved to another institution and to see if I could obtain the necessary mental health services for him. As I begin this

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<sup>31</sup> See Fox Butterfield, *Repaving the Long Road Out of Prison*, N.Y. TIMES, May 14, 2004, at A25.

task, I recognize that there are prison rules and regulations to master, and personnel within the prison to get to know. I also recognize that it is difficult, if not impossible, to get to know a client who is a day's drive away. I have also recognized that there are no legal services agencies or programs that attempt to address the day-to-day issues that arise between staff and inmates. I also know that a strategy that entangles lawyers, inmates, and staff in the hundreds of disputes/conflicts that arise every day in prison would be impossible to implement and most likely counter-productive.

I have a modest proposal. The legal community, perhaps led by the American Bar Association, should create a few demonstration legal services offices designed to provide legal services and counseling. The offices should be located in states with large prison populations. They should make it known that they will take requests for assistance from prisoners, although not every request can be acted upon. These offices, or "projects" will identify and prioritize needs of inmates based upon the nature of the complaints received. The lawyers staffing these offices will also reach out to prison administrators to find ways in which services can be provided to inmates that support the objectives of prison administrators.<sup>32</sup> The latter task will demand diplomacy and skill, but my sense is that prison administrators, as lawyers for inmates, recognize the need to develop solutions that will improve security and the chances for rehabilitation.

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<sup>32</sup> A model for such a program is sponsored by the international prison reform organization, Penal Reform International, in Malawi, Africa. Although the problems of African and American prisons are quite distinct, the model of cooperation between an advocacy group (Penal Reform International) and a prison system is instructive. Malawi prison officials had no firm information concerning the status of prisoners' cases within the justice system. Penal Reform International agreed to interview prisoners, to educate them about their rights, enabling them to inform the justice system of their status. Prison officials in Malawi view this program as constructive, permitting the prison population to be reduced. Similar collaborations between outside agencies and prisons in the U.S. can be imagined. See Web Page of Penal Reform International, at <http://www.penalreform.org/>.