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Supreme Court Grants Jails Broad Power to Strip Search Arrestees

In a 5-4 decision, the Supreme Court ruled in *Florence v. Board of Chosen Freeholders of County of Burlington* (566 U. S. ____ [2012]) that jails have broad latitude to conduct strip searches of detainees. The majority opinion, written by Justice Anthony Kennedy, concluded that because arrestees often pose a danger to jail staff and other detainees, correctional officials must be allowed "substantial discretion" to search incoming arrestees in the interests of maintaining safety and order. Justice Kennedy cited the familiar precedents *Turner v. Safley*[1] and *Bell v. Wolfish*[2] in ruling that jail officials must be allowed to exercise their best professional judgment in such matters, without second guessing from the courts. On its own, Kennedy's opinion was remarkably far-reaching, suggesting that a general policy of strip searching every incoming detainee admitted to a jail's general population, regardless of offense, might be supported—a position so broad that Justices Roberts and Alito both felt it necessary to issue brief concurring opinions emphasizing

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New York's State Prisons 40 Years After Attica: What Has Changed and What Changes Lie Ahead

By Commissioner Brian Fischer

Editor's Note: *On September 9, 1971, inmates at Attica Correctional Facility in western New York seized control of much of the prison and took 42 hostages including both uniformed and civilian staff. After four days of unsuccessful negotiations, Commissioner Russell Oswald asked Governor Nelson Rockefeller to authorize the state police to retake the prison by force. During the 15-minute assault that took place on September 13, ten hostages and 29 inmates died—all, it was later determined, killed by state police gunfire. Both the conditions that led to the uprising and the state's response have left a lasting legacy that every succeeding New York corrections commissioner has had to come to terms with in one way or another. Forty years to the day after the Attica riots reached their deadly conclusion, Commissioner Brian Fischer addressed a symposium at the University of Buffalo Law School. In his keynote, the commissioner did not look back on the events of 1971, but rather on the current state of corrections in New York, on the progress the department has achieved, and on its prospects in an era of constrained resources. This article is adapted from the commissioner's remarks.*

I came to Corrections in 1975 when I was an Assistant Director of a Drug Treatment Facility in what was then called the Narcotic Addiction Control Commission, informally called the Rockefeller Drug Program. It was the forerunner of today's Office of Alcohol and Substance Abuse. At the time, I was assigned to a Bronx treatment and aftercare facility. A year later, I was asked to go to Attica as the Deputy Superintendent for Program Services. I argued against the move for personal reasons, but in truth, the idea of going to Attica concerned me. The only thing I really knew about it was what had taken place five years earlier,

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in September 1971—and I suspect that even today, when new offenders entering the prison system find they're headed for Attica, the idea unnerves them.

Whether fair or not, Attica became the symbol of everything society thought was wrong with prisons. The events of 1971 brought about an awareness of issues that had previously been ignored. Looking back on the tragedy now raises two fundamental questions: what have we learned since September 1971, and what have we done about it? If you've thought at all about the state of corrections today, you probably fall into one of four common attitudes: those who believe that the prison system is not much better than it was in 1971, those who think the system has come a long way, those who think we have not come far enough, and those who are willing to keep an open mind on the subject. Each point of view will find some support in what follows.

In terms of historical perspective, as recently as 2003 a report was submitted to then Governor Pataki entitled, "Attica Task Force, Report to the Governor." While the report specifically addressed issues brought forward by a group called "The Forgotten Victims of Attica," made up of family members of employees injured or killed in the riot, one of the report's summary conclusions is worth quoting now, as it establishes a baseline for understanding why Attica happened:

"The prison system at that time did not have any formal means for inmates to bring their grievances to the attention of prison administrators. There was a dearth of academic and vocational programming to prepare inmates for their return to society. There were little means available for inmates to maintain family ties. Certainly, such shortcomings played a major role in the heightened tensions at the facility.

"Warning signs of impending danger either went unnoticed or unheeded. When the riot did erupt, the state was completely unprepared to deal with an incident of such magnitude. The state lacked the skilled negotiators of the current Crisis Intervention Unit (CIU). There was no Correctional Emergency Response Teams (CERT), trained to use the least possible force to resolve incidents. These, among other factors, unquestionably escalated the final toll of dead and injured."

The report's authors pointed out two critical elements. The first is that conditions inside the prison contributed to the riot—that is, the management of Attica and, by extension, the overall management of the whole prison system, suffered from deficiencies that were not being addressed. The second element concerned the decision to use force in the manner it was used—lethal force may well have been called for, but it was applied with inadequate planning by people with inadequate training. The question I want to address is not whether the changes in the New York prison system that have taken place are the result of Attica. The question is, have the changes in New York been the right ones? As you'll see, I think the changes we have made and are making in New York are the right one for many reasons.

Why does it take a court order, usually the result of some lawsuit, to get the funding needed to provide services that we should be providing anyway?

For Better or Worse, Prisons Reflect the Society They Serve

I believe in the corrections system, but I am acutely aware of its shortcomings. One problem corrections grapples with is that society really does not want to think too much about the inconvenient truths of imprisonment—the act of locking people away behind bars, depriving them of their freedom and their free will, confining them in an environment that can be hostile and violent, and simultaneously expecting prison to be a place of positive transformation.

I struggle with trying to understand what it is that society wants from the prison and parole systems. Why is it that when a person assaults another person in the community, society demands that the person be removed from their midst so he cannot hurt anyone else, yet when the same offender commits the same violent act while inside prison and is removed from general population and placed in segregated housing, some advocates accuse us of being unfair or even punitive? (Having said that, I will acknowledge that how long a person stays in Special Housing is an issue we need to review.)

Why does the system house individuals who suffer from mental illnesses or are developmentally disabled? Is prison really the best place we have? Currently 14.5 percent of the entire New York offender population is on the caseload of the Office of Mental Health—over 8,000 individuals, 2,500 of whom are considered seriously mentally ill.

Why does it take a court order, usually the result of some lawsuit, to get the funding needed to provide services that we should be providing anyway?

Why does it take a terrible incident or crime for society and the legislature to respond to problems while often ignoring requests for change by advocates and prison administrators?

Prisons do not exist in a vacuum. They are a reflection of society.

Stephen Shaw, the retired Prisons and Probation Ombudsman for England and Wales, wrote a book entitled, "Fifty Year Stretch: Prisons and Imprisonment 1980-2030." In it, he states,

"Prisons are 'elastic' institutions, stretching to meet the public, official and political demands made of them. You can make a reasonable case for saying that the Prison Service has become the backstop for every other public service. It provides healthcare for those who never register with a doctor or dentist. It provides education for those who have dropped out, or been excluded, from school. It provides kindness and support for those who have never known a loving family. It offers job training to those who have never had paid employment. If offers drug and alcohol detoxification for those whose lives are wrecked by addiction. The history of the prison system is a mirror image of the history of the welfare state."

My own experience suggests that prisons continue to receive the individual whose needs are ignored by families, communities and society, until the individual does something that gets him

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noticed. Unfortunately, society's response is to deal with the criminal act, leaving it up to the prison to assess the offender's needs and provide services to address those needs—services that were either denied or simply not provided by the society at large.

Prisons are like small communities, and prison life is made up of the good, the bad and the ugly.

The Good: Programs Getting Results

On the good side are the direct services provided to all offenders—health care, education, vocational training, and a myriad of specialized treatment for the mentally ill and sex offenders, and alcohol and substance abuse treatment. New York prisons provide for an Inmate Grievance Program, law libraries, religious freedom, family visiting programs, and many more components meant to assist offenders and make the prison setting as safe and rehabilitative as possible.

All of our programs are designed and evaluated in terms of how effectively they assist the offender in being better prepared to return home.

Last year 2,200 offenders earned their High School Equivalency Diplomas. Over 1,000 offenders participated in privately funded accredited college programs, many earning Associate and Bachelor degrees. The health and medical services provided in the New York system surpass those offered in almost every other prison system and are better than services many of us receive in our local communities.

We now use video surveillance as a standard policy practice in our special housing units, mental health units and other areas to address complaints about harassment, unreasonable searches, and unacceptable uses of force and to guard against sexual abuse incidents.

The Bad: Loss of Freedom Can Mean Loss of Hope

On the bad side, prisons take away a person's right of privacy, and perhaps more fundamentally, the right of self-determination. Inmates are separated from family and friends, and the isolation is further compounded by the physical distances most prisons are from many communities. Adding a new category of serious offenders—those sentenced to life without the possibility of parole—has changed the relationship between the inmate and the institution in ways we are only beginning to understand.

We still place some offenders in double cells built for one offender, transfer offenders too often, delay programming due to a lack of staff, and fail to adequately explain denials and policy changes. We depend too heavily on disciplinary segregation for some rule violations, and not all offenders get into a treatment program they need.

Also bad is the number of family members who are arrested each week attempting to smuggle drugs and weapons into the prison through the visiting room or package room. Likewise, we ask staff to treat every offender equally and with a positive approach. Yet there are offenders in the system who have, by their own behavior, demonstrated that they are violent, abusive and a threat to staff and other offenders alike. Staff too can be insensitive, hostile and prone to overreact. Living and working in a prison environment is emotionally complicated.

The Ugly: Conflict and Its Consequences

The ugly, unfortunately, also exists in the everyday incidences of racism, drug use, and violence. Everyone who enters the system, offender and staff alike, brings with them the demons, anger, and self-destructive behavior they carried within themselves in the community. Added to this picture is the inherent conflict that exists between confinement and treatment, order and control.

Consider the agency's latest Mission Statement, one that I have helped change not once, but twice:

"To improve public safety by providing a continuity of appropriate treatment services in safe and secure facilities where offenders' needs are addressed and they are prepared for release, followed by supportive services under community supervision to facilitate a successful completion of their sentence."

How well do ideas like public safety, treatment, security, needs, release, and supervision go together? On paper they sound fine, but in the real world, it can be difficult to balance "security" with "release" or "needs" with "supervision." The concepts, while not incompatible, present problems when specific circumstances make it hard to agree on each concept's proper importance and emphasis.

While both sides seldom acknowledge it, prisons function through an informal social agreement that basically operates on the principal, "If you don't mess with me, I won't mess with you." Problems develop when the social order is disrupted by either side. When cynical staff are heard saying something like, "their job is to see how they can break the rules and our job is to catch them at it", or, "their job is to make our jobs miserable," the balance is threatened.

Likewise, offenders have their own way of dealing with prison life. When they come to prison, offenders bring with them their own experiences, attitudes, needs and hopes. Some become violent, rebelling against every rule. Others withdraw and become depressed. Some try to act as they did while in the community. Some harm themselves. Some commit suicide. Whatever behavior they demonstrate, there is a corresponding response from other offenders and from staff.

How the System Has Changed

Perhaps the old saying, "those who forget the past are doomed to repeat it," should be a prison system's mantra. Complicating attempts to introduce changes to the system, five different commissioners have led the department in the forty years since Attica, a remarkably low turnover rate, but each change in leadership inevitably brings different perspectives, objectives, and priorities. Moreover, no matter what your goals are when you begin the job, a commissioner soon discovers that operational, fiscal, legal, and political realities can have more to do with how and whether the system moves forward in the right direction. Looking at the history of the New York correctional system since 1971, some changes have come swiftly and others very slowly. I see the major changes occurring in four broad periods of time—and looking back on each period, one is reminded that we often learn best by examining our mistakes. In the 1970's and 1980's, in the immediate aftermath of Attica, came greater recognition of offender rights and the need to reassess the manner in which prisons were run. It was during these years that "prisons" became "correctional institutions" and

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"guards" became "correction officers." In many respects, this was a period of active reform, even optimism. Programs such as inmate liaison committees and the inmate grievance system were established.

In the late 1980's and into the 1990's, the offender population began to explode, due primarily to a perception that our communities were in the grip of a drug epidemic and that it was time to get tough on dealers. Drug convictions soared. Suddenly, finding bed space for new offenders became the prime focus of management, and everything else seemed to take a back seat to increasing "capacity." Gymnasiums were turned into dormitories. Monster size inflatable tents were erected to provide for recreation and other services. Dorms built for 50 offenders now held 90 offenders. Like many states, New York went on a prison building binge. Also like many states, New York located these new facilities in rural areas, upstate, far from New York City where the majority of inmates and their families came from. While a boon to local economies, this location strategy exacted a great cost to the families of inmates.

Early Reforms Focused on Capacity, Not Criminogenic Need

By 1999, at its peak, the New York prison population stood at 71,000 inmates. It was becoming clear that the state could no longer afford to keep on building its way out of its capacity problem. New treatment programs were created, but although well intentioned, these programs were designed primarily to address overcrowding, not criminogenic needs. Sentencing options were introduced, such as Merit Time, Shock Incarceration, and Earned Eligibility. The emphasis was on programs that would get offenders released more quickly. These programs were applied mostly to the first-time, non-violent offender sentenced for crimes related to drugs. In retrospect, too little emphasis was placed on the kind of deep engagement with treatment that most offenders really needed.

With the state's prisons filled to capacity, a consensus was emerging that it was time to reform New York's so-called "Rockefeller" drug laws, which had been among the first of the "zero tolerance" mandatory sentencing schemes that had swept the country in the 1960s and 1970s and led to the prison boom. As early as 2004, changes in the Rockefeller Drug Laws meant that more offenders were leaving prison and fewer were entering.

Beginning in 2007, with the direct intervention of the courts and legislature, major changes came. Most of the Rockefeller Drug sentencing provisions were repealed. Just as significantly, New York enacted new statutes designed specifically to assist in the rehabilitation of specific groups of offenders—not just drug offenders, but offenders with serious mental health problems, too. At the same time, the state established the Sex Offender Management Treatment Act (SOMTA). Today, New York has several significant training, treatment, assessment, and assistance programs, for both staff and offenders alike. To ignore staff needs while providing for offender needs is no better than ignoring offender needs while providing for staff needs. Perhaps this single concept helps explain why overall the system has remained relatively safe. Our experiences with serious disturbances since Attica suggest that the attention we have provided to all parties has allowed us to respond appropriately without violence.

To ignore staff needs while providing for offender needs is no better than ignoring offender needs while providing for staff needs.

On the staff side, we have invested time and money in training and equipping our **Correctional Emergency Response Teams** (CERT) to deal with any disturbance in a highly structured and controlled manner, in conjunction with our **Crisis Intervention Unit** (CIU) teams. Both teams are trained to contain situations, gather intelligence, and negotiate, rather than attempt to control and override the situation.

Staff is also supported by **Critical Incident Stress Management** teams, who assist with a wide range of emotional traumas experienced in correctional settings. Likewise, we have **Blood Exposure Response Teams** (BERT), staff members trained to talk to other staff following any exposure to possible blood-borne pathogens. We also provide employee assistance programs for staff requesting personal help in coping with work or family problems.

On the offender side, we have a **Limited Credit Time Allowance** program, something I take special pride in, as I was instrumental in getting it introduced in the legislature. It provides a way for violent offenders, who are statutorily denied programs like Merit and Earned Eligibility, to cut six months off their earliest release date or see the Parole Board six months earlier than scheduled, after achieving significant positive ratings in programs such as being a health care worker, getting a college degree, working as a hospice care provider, serving as an HIV peer educator, or working with a unique program called Puppies Behind Bars where dogs are trained to be service animals for wounded military veterans.

Perhaps equally important is the availability of special medical units for offenders who need nursing care. Skilled nursing is provided either in our Regional Medical Units or, for the truly serious cases, our Walsh Medical Center, which takes in offenders who require constant medical attention directly from hospitals. Even beyond those services, New York has the only special unit devoted to offenders suffering from cognitive impairments such as Alzheimer's or AIDS dementia. **Medical Parole** has been expanded to allow offenders with terminal illness, or are otherwise so incapacitated as not to be a danger to society, to seek early Compassionate Release. At the other end of the spectrum, our nursery program at Bedford Hills allows mothers to personally care for their newborn children up to 12 months (18 months, if the offender is scheduled for release within that time).

Working with the Department of Health, we now have a **Medicaid Suspension Program** that calls for an offender who enters the system with an approved Medicaid status to be automatically reinstated into the Medicaid program upon

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release from prison instead of having to re-apply and wait for assistance.

To properly treat mentally ill offenders, we have created Residential Mental Health Units and **Behavioral Health Units**, designed to provide special services to offenders who, in part because of their condition, have violated serious prison rules and would otherwise be housed in a disciplinary Special Housing Unit. Key to this program is the central monitoring of the behavioral health units by a joint task force comprised of corrections and mental health executives who hold monthly Comstat-like meetings, by video conference, with the custody staff at the facilities that house such programs.

Beyond the seriously mentally ill offenders in such programs, we have **Intermediate Care Units** for those who cannot function in general population settings but do well in controlled and supportive environments. We have Special Needs Units for the developmentally disabled, and units for the **Hearing Impaired and Visually Impaired**.

We have moved into the area of providing **Gender Specific Treatment** training to staff who deal with female populations. All our counseling staff is being trained in motivational interviewing, to foster more relevant and effective interaction between offender and counselor. Partnering with Parole, we have established **Re-Entry Units** designed to better assist offenders about to return home from prison.

We have improved how parole officers supervise offenders with a **Graduated Sanctions** protocol that provides assistance and a "second chance" to parolees who would otherwise have been revoked under old regulations. The New York City-based Edgecombe prison allows a parolee to enter a short term drug treatment program rather than be returned upstate on a violation.

Engaging the Public—And Listening to What They Tell Us

We have opened our prisons to the community and welcomed the input of civilian volunteers, non-profit organizations, religious groups, and outside service providers. Though I was opposed at first to outside oversight programs, I have come around to the idea. The state, federal, and community oversight regulations, laws, and advocacy groups that review, audit, and criticize are agents of positive change. No one likes to have someone looking over his shoulder, but once we started working with outside groups, a funny thing happened: more often than not, the audits and oversights have revealed the system's strengths, not just its weaknesses. By addressing weaknesses, oversight has made the system function better; by recognizing strengths, oversight has given the system more credibility and authority to carry out its mission.

The State's Mental Health Legal Services and Commission on Quality Care review our treatment of mentally ill offenders. Likewise, the Department of Health oversees our procedures regarding HIV and Hepatitis C treatment. Our drug treatment programs are reviewed by the Office of Alcohol and Substance Abuse. Every prison in the New York State system, as well as the DOCCS Training Academy, has been audited by the American Correctional Association, and ACA auditors have the freedom to visit any prison, comment on the conditions they find, and recommend improvements. We have welcomed the Department of Justice to review PREA and ADA compliance. They all help us improve the system.

Prison Can Be a Place Where Positive Things Happen. But Only If . . .

I know that a prison can be a place where positive things can happen. I am convinced, however, that three factors need to come together for effective change to take hold: 1) the willingness of the offender to better himself, to self-identify; 2) staff that is available and willing to provide whatever assistance the offender may need; and 3) a prison environment open enough to provide for opportunities for change. All three elements need to exist in conjunction with one another. If any element is missing, change does not happen.

I am not so naïve or defensive as to claim that everything we do is done well, or that all our policies are designed to make life inside easy. We have many policies that seem arbitrary and unfair. They are often more restrictive than we would like, but necessary under the circumstances. Like the world outside, our rules are meant to provide a safe environment for staff and offenders alike.

Still, I believe we have in fact come a long way since Attica, most dramatically in four vital areas. The first is in the level of care we provide for the mentally ill, the treatment options offered to sex offenders, and the high quality medical care available to every inmate.

The second area where we've made important progress is in how we collect, analyze, and apply internal data. We use computers to track data in every possible area of prison operations: we track by age, gender, and race, by mental health levels, and by program needs; we measure population trends, rates of assault, suicides, and a range of other factors that help us manage the system better. Having this detailed data permits us to routinely review which inmates are in what programs, who is living in which unit, and what job offenders have—by race or any other quantifiable demographic. Using data lets us guard against discriminatory practices in job assignments and housing placements The DOCCS Central Office monitors violence, suicides, and self-harm incidents by the mental health level of the offender. Data is also used to monitor placement, as well as stays in Special Housing Units. Computerization has made the Department run smarter.

We now use computers to track data in every possible area of prison operations.

The third area where we've changed for the better is in creating programs that make life better and offer hope for offenders. Access to legal research is always a concern for offenders and advocates. We now have a secure, computerized law library where every inmate can get access to the latest legal materials sitting at a computer station, much like lawyers do everyday in the community. Access is managed through what we call the **Secure Offender Network**, which links correctional facilities with providers of legal research material. Not only will this innovation save

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the state approximately $2 million annually, it allows for multiple offenders to do research simultaneously rather than waiting for a book or file to become available from another user.

At the same time we have created Digital Literacy Programs that teaches offenders what the Internet is and how to use it—important for everyone but critically so for those who entered the system before the Internet became as vital as it is today. This program is an extension of our developing Business Office Skills classes, where we've made a commitment that every offender will, at a minimum, leave prison able to use Microsoft Word and Excel. The goal is clear: offenders need to be better prepared before returning home.

By learning how we can use technology better, we have been able to connect with major community-based programs like the Doe Fund and the Fortune Society. Currently, offenders at nine test sites can go to the facility's general library and access the web sites of the Doe and Fortune programs. While the computer access is not yet interactive, offenders can see what services are offered by these groups along with other important information found on their websites. Inmates can also access the Department of Labor's job search website.

Partnering with the community-based Osborne Society, mothers incarcerated at the Albion state correctional facility can have "video visits" with their children. Early success with this program is leading us to partner with other providers who can offer video visiting and email communication between offenders and their families and friends. It's simply a matter of time before these systems are in place and fully functional.

In April 2011, the State of New York merged the Department of Correctional Services with the state's Parole function to create a unified Department of Corrections and Community Supervision. Even before Corrections and Parole were merged, both agencies were engaged with re-entry services. Not only do both divisions work directly with thirteen county Re-Entry Task Forces, but both have contracts with several community-based providers across the state to assist parolees with housing, employment, drug and outpatient mental health treatment, and a whole range of services geared to help the returning offender.

Programming for Offenders . . . by Offenders

The fourth special area consists of programs designed and managed by offenders themselves inside the prisons. Programs like the Long Termer organization at Bedford Hills, and a Lifers organization at Clinton were developed to meet needs identified by inmates with the solutions coming from the inmates. Auburn has a veterans group and Attica has its own Vietnam Veterans of America chapter. These and many offender organizations that reflect religious and ethnic interests are common throughout the system. Perhaps the most important offender-operated programs are two that grew directly out of the Attica riot: the Inmate Grievance Program (which was granted full certification in 1992 by the U.S. DOJ) and the Inmate Liaison Committee Program. They are valuable tools for both the offenders and prison management, highlighting issues that need addressing and encouraging better communication between the offender population and the superintendents. Programs like these are clear examples that offenders and administrators can work together to make the entire system more meaningful and less adversarial.

Our initiatives in mental health treatment, data-based decision-making, health care quality assurance, and inmate programming are evidence that regardless of its shortcomings, the system continues to do what is right within a very difficult environment.

With limited resources, one has to ask what kind of treatment programs—if any—should we offer inmates serving sentences of 50 years-to-life?

Looking to the Future

The State of New York Department of Corrections and Community Supervision is committed to putting resources into care for the mentally and medically ill, and ensuring that sex offenders get effective treatment, above and beyond constitutionally mandated levels. With the resources available, we would also like to provide a greater number of offenders with access to higher education and re-entry services. Further integration of Parole and Corrections will foster better treatment plans both inside and outside the prison walls, with the goal of reducing recidivism even further.

But there are problems that lie ahead. Since 1999, the number of inmates aged 65 and older in the system has doubled, from about 400 to over 800 today. By 2019, estimates are that the elderly population in New York's prisons will grow to over 1,100. Aging prisoners are far more expensive to maintain than younger ones because the elderly need greater levels of expensive health care services. "Compassionate" release can't simply be a matter of unlocking the cell doors and putting these inmates on a bus back home; the longer an inmate has been in prison, the less able he is to function independently in the free world, and age makes the adjustment even harder. This is an issue that will require the best thinking of professionals within DOCCS as well as the Legislature, oversight agencies, and advocacy groups.

In addition to an aging prison population, we are also seeing a more dangerous one. Before the changes in the Rockefeller Laws, 60% of our prison population was in for non-violent offenses and 40% for violent offenses. Today that proportion is reversed, with 60% in for violent crimes and 40% for non-violent crimes. The majority of new offenders currently entering the system have committed violent crimes, posing a challenge to the safety and security of staff and other inmates. With the end the death penalty, the number of inmates serving sentences of life-without-parole has climbed from 4 in 1996 to 223 today (and demographic data suggests the number will grow by 15 each year if present trends continue).

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An aging and more dangerous inmate population creates two serious problems. The first is a financial one. Our older population costs more to hold because of increased medical costs associated with the aging process and our "lifers" cost more because they pose a greater security threat. While we have already moved to expand our long-term Walsh Medical Unit, we are also setting up a small, experimental assisted living unit near Walsh to better identify what type of services we may need in the next 5, 10 or 15 years.

The second problem these groups present is more complicated from a treatment and moral level. Simply put, what kind of treatment programs are appropriate for offenders serving a life sentence or entering the system with sentences of 50 years-to-life? Do we provide the same program for them as for those we know will be leaving prison in 3 or 5 or 10 years? Or do we look at our limited resources and make decisions based on other criteria? These are extremely difficult questions.

I believe that the system has come a long way since that tragic September day 40 years ago. We're doing a much better job in recognizing what our true responsibilities are as correctional professionals—acknowledging that our duty is first and foremost to the public, and that we best fulfill that duty when we operate prisons that are safe, humane, cost-efficient, and capable of returning inmates to the community better than they were when they entered our facilities, prepared to be productive, honest citizens. I accept the fact that we will not accomplish every change we want to see. Each of us comes to the table representing a personal agenda. We don't really trust one another. We each think we know what is right and that the other person does not. As a result, we don't really talk to one another, particularly before a problem develops, we don't communicate well, or listen openly, and because of that, we don't know how to compromise. I know we can do better.

Brian Fischer is Commissioner of the New York State Department of Corrections and Community Supervision, the nation's fourth-largest state correctional system, responsible for approximately 56,000 offenders incarcerated in 60 facilities, and close to 38,000 parolees under community supervision. Commissioner Fischer sits on the Standards Committee of the American Correctional Association and on the Executive Board of the Association of State Correctional Administrators. He was honored as "Warden of the Year" by the North American Association of Wardens and Superintendents in 2006 for his work at Sing Sing and by the New York State Bar Association with its award for "Outstanding Contribution in the Field of Corrections" in 2011. This article is adapted from Commissioner Fischer's Keynote Address at the "Attica Riot 40th Anniversary Conference" at University of Buffalo Law School on September 13, 2011. ■

15% or more of U.S. inmates suffer a serious mental illness—once they're released, what can we do to help them "make it" on the outside?

Reentry Planning for Offenders With Mental Disorders

Policy and Practice

Edited by Henry A. Dlugacz, M.S.W., J.D.

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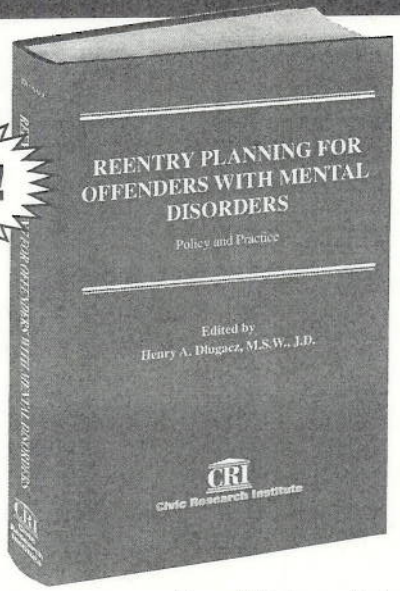

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