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Prison and Its Alternatives

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Lister Sinclair
Good evening. I'm Lister Sinclair and this is *Ideas* on "Prison and Its Alternatives."

In the early 1970s, the state of Texas had about 14,000 people in its jails. Today the number is 140,000, and a capacity of 200,000 is planned for the millennium. The state of California has had the same explosive growth. In 1980, it devoted 2 per cent of its budget to prisons. In 1995, expenditures on prisons accounted for 10 per cent, surpassing the state's shrinking budget for higher education. A Rand Corporation study has estimated that, by the year 2002, prison spending will consume 18 per cent of California's resources. Other American states have been far more moderate, but the country, as a whole, still has four times as many of its citizens behind bars as it did in 1970.

In fact, the only country in the world with a larger proportion of its population in jail is Russia,which has 1-million people in prison. That's twice as many as in 1989. The states of Eastern Europe and the former Soviet republics have also increased their prison numbers. So to a lesser extent have the milder social-democratic regimes of Western Europe and Scandanavia. And so has Canada. The number of prisoners in jail in Canada has grown by about 4 per cent annually in the 1990s.

Beginning tonight, *Ideas* will examine this dramatic increase in imprisonment in a special series of ten programs by David Cayley. The series will look into the complex of cultural, economic and political forces driving this growth. It will assess the dangers of allowing it to continue, discover why some societies keep so many fewer prisoners than others and examine promising alternatives to imprisonment in use around the world. Tonight, part one of "Prison and Its Alternatives" by David Cayley.

David Cayley
In 1993, Norwegian criminologist Nils Christie published a book called Crime Control as Industry. The subtitle was a question: Towards GULAGS Western Style? The book examined the perverse rationality underlying the recent expansion of crime control in post-industrial economies. Societies of the Western type, Christie said, face two potential sources of disorder: growing inequalities in wealth and an emerging class facing permanent unemployment. The crime-control industry, he went on, is well adapted to these conditions. It creates jobs and wealth for those who build, supply and operate prisons, while controlling the underclass whom the new economy has excluded. In these circumstances, Christie saw a danger that a complacent majority within Western societies might begin to accept large concentrations of prisoners as a permanent, even beneficent feature of the social landscape.

Two years later—years in which prison growth continued unabated—the book was reissued. On the cover of the second edition, Christie deleted the question mark after the subtitle. In his mind, the emergence of "GULAGS Western Style" was no longer in question.

Nils Christie belongs to a generation of criminologists whose ideas contributed to a remarkable reduction in rates of imprisonment in several European countries between 1945 and 1980. He began his work in the years after World War Two with a study of the behaviour of Norwegian prison guards working in Nazi concentration camps during the war. He discovered that those who had treated their prisoners most considerately were those who had gotten to know a little bit about them, while those who had killed or abused them had held themselves aloof. The idea that willingness to punish depends on social distance became the foundation of his thought.

Later in a book of the early '80s called Limits to Pain, he examined the institution of imprisonment and probed the common assumption that the state should respond to real injuries and breaches in the community by a planned and calculated administration of pain to offenders. By how much, he wondered, does society corrupt itself in answering the often spontaneous infliction of pain through crime by a planned infliction of pain through imprisonment? He asked whether we hide what prisons really do behind a veil of euphemisms and whether there might not be a better, more direct way to restore the balance when a wrong has been done.

With this quizzical, doubting attitude, Nils Christie has become more and more alarmed at the steady increase in prison numbers throughout the Western world. Because prisons are by definition total institutions whose very essence is control, Christie views them as centres from which totalitarian thinking can spread. His book Crime Control as Industry expressed his apprehension about the potential consequences of uncontrolled growth in prison populations.

In April of 1995, he continued his effort to stem this rising

tide by inviting a distinguished group of criminologists and prison administrators to Oslo to discuss why this was happening and what could be done about it. I had produced a profile of Christie for *Ideas* around the time Crime Control As Industry was published, and we've remained in touch. He asked me to join these deliberations and to see what I could make of them. This series of programs is the result. Some of the interviews were recorded in Oslo. Some have been done since. But the journey began with Nils Christie and with the concerns he set out for me in Oslo.

Nils Christie
It seems to have no end. The Russian prison figures, they are now close to 1-million. And the American prison figures passed an unbelievable number of 1.5-million last year. And then in addition came the new figures on how many who are out on probation and parole, and they are 3.5-million. That means 5-million of US citizens are under control of the legal apparatus. It's difficult to conceive what this figure means. It means actually that close to 2 per cent of the American population are under some sort of penal-law control just now. But that is on the population base of males and females, and nearly all of these are actually males. So, you can look away from the females, and then you get close to 4 per cent of all American males. But that 4 per cent includes everyone, from babies up to the very, very old people. So if you take only the mature population, then you come, in my calculation, around 7 or 8 per cent. What sort of situation is this? I don't know any earlier occasion in the Western world, in those societies we call democracies at least, where we have had this dramatic situation.

And then it goes further because these 7 or 8 per cent of the males under control are not representative. They are mostly from the inner cities. More than half of them are black and another probably one-fourth Hispanic.

This means that a system is now growing up where in large areas, the majority of the males are under control. So, I must confess, looking at this whole situation, I get both nervous and depressed, and I get a very unpleasant feeling of being in Central Europe in the 1930s.

David Cayley
The war on crime, in Nils Christie's view, is now more threatening than crime itself. In the United States, this war has been exceedingly well financed. The state of California alone has commissioned 17 new prisons in the last 15 years. In Russia, where they can't afford new prisons, the case is somewhat different. Russia's imprisonment rate has grown as fast as the American rate, but there they have had to make do with the existing space.

Nils Christie
Those not yet sentenced are in huge prisons that are overpopulated to an extent you can nearly not imagine. There are the most awful human conditions in these prisons. Rooms that would be okay for 8 to 10 people might have between 50 and 100 people in them. They sleep in three shifts to get a chance to lay down.

And Russia is not the only one: The Baltic states have overfilled prisons. Many of the former members of the USSR, these new states are also in the same trouble. So, it's trouble there, it's trouble in the United States, and even in Western Europe, there is a tendency to increase. And it will not become better when we are squeezed in between the Eastern and the Western examples.

So, if we want to preserve some of the basic elements of our social systems, we have to do something radical to get the prison figures down. I'm surprised that this is not taken up as a priority problem in the political debate in our democracies, that people don't see the danger signals. Because it is from these organizations for keeping control of the population that a cancerous growth of control and a danger of uncivilized control measures can come.

David Cayley
The danger of uncivilized control measures, for Christie, is that people get used to them. They begin to accept that there is a large and increasing number of citizens who ought to be subject to total control; as criminals, they have no claim on us and deserve nothing better. This can then lead to what Christie calls a "cancerous growth," as total control becomes a habit and begins to produce the conditions for its own expansion.

In this respect, Nils Christie fears the de-civilizing influence of both Russia and the United States. But he recognizes that cultural affinity is likely to give the American example a much more compelling influence on both Norway and Canada than the Russian. It is the United States that provides Christie with the most developed instance of crime control as industry, and so it is the American case that I will examine in the remainder of tonight's program.

Throughout the twentieth century, the United States has imprisoned a disproportionate number of its black citizens, and this disproportion has steadily increased. In 1926 when African Americans made up approximately 12 per cent of the population, they constituted 21 per cent of those admitted to prison. By 1993, black prison admissions had risen to 55 per cent, though their proportion in the population was nearly the same. The astonishing implications of this figure were made clear in a study released in the fall of 1995 by a Washington-based organization called The Sentencing Project. Marc Mauer is the assistant director of the project.

Marc Mauer
For African-American males in the age group 20 to 29, on any given day now, 1 in 3 of these young men is under some form of criminal justice supervision, either in prison or jail or on probation or parole. This is a snapshot picture on a single day. But there's a flow into and out of the system every day. So, if we were able to look at these rates over a period of a year or 5 years or 10 years, they would be far higher even than 1 in 3 in terms of some type of exposure to the criminal justice system in the black-male community. Just really astronomical rates to the point where it's become almost a typical experience of growing up as a black male in this society now.

David Cayley
Marc Mauer believes that the cause of this catastrophe is first of all economic. The well-paid industrial jobs that once made cities like Chicago and Detroit a mecca for African Americans born in the South have all but disappeared, and unemployment in the inner cities is extremely high. But he thinks criminal justice policy has also played a large part, particularly the unhappily named war on drugs, which has turned out to be a war on black America.

Marc Mauer
Decisions were made to fight this war primarily through using police and prisons rather than prevention and treatment. We see this in the fact that two-thirds of federal funding for drug issues goes to law enforcement, just one-third to prevention and treatment.

When this gets translated to the day-to-day practical level, we see that police have very disproportionately targeted inner-city communities for their drug law enforcement. Now, there are a whole host of reasons for this. In part, this comes because inner-city people have been asking for some solution to the drug problem. In part, it's much easier for police to patrol heavily populated areas. And drug users in inner cities are more likely to be using the drugs out on the street corner in plain view of the police rather than behind four walls in a suburban community or a business office or something like that. We know that drug use and abuse cuts across class and racial lines, but the enforcement of drug policy has been heavily directed towards low-income, inner-city residents.

On top of that, we get a whole host of sentencing policies: mandatory miniumums particularly applied to drug offences that have just ratcheted up the penalties involved in these drug offences to very severe terms so that now it's quite common to get a 5-, 10-, 15-year mandatory penalty for possession of drugs or possession with intent to sell relatively modest quantities. It's not necessarily major drug kingpins who are getting these mandatories but often people who are fairly low-level players in the drug trade and just ended up in the wrong place at the wrong time, being hit by these penalties.

David Cayley
Do you have a measure of drug use as opposed to punishment for drug use?

Marc Mauer
What we find in the best national surveys on drug abuse, conducted by the National Institute on Drug Abuse, shows us that African Americans constitute 13 per cent of monthly drug users and yet they represent 34 per cent—

David Cayley
People that used drugs in the last month?

Marc Mauer
Yes, within the past month. So, essentially this distinguishes them from people who have ever used drugs or used them in the past—these are fairly frequent users, and, therefore, presumably they should be more likely to come to the attention of the police because of their frequent use.

When we look at drug arrest statistics, we find that African Americans constitute 13 per cent of monthly drug users but 34 per cent of those arrested for drug possession. Now, there are some limitations in the data on drug users, and it's possible that African Americans or low-income ones are somewhat under-counted. But the magnitude of the difference between the 13 per cent use and the 34 per

cent arrest cannot be explained by any under-counting. It's just a very serious distinction, and I think a lot of it has to do with law-enforcement practices.

David Cayley
What about at conviction and sentencing?

Marc Mauer
We find, as we go through the system, that these disparities continue and are exacerbated. African Americans are 34 per cent of the arrests for drug possession, 55 per cent of the convictions for drug possession and fully 74 per cent of the people sentenced to prison. If we look at African Americans and Hispanics combined, they represent almost 90 per cent of all people sentenced to prison on a drug-possession charge.

David Cayley
The same bias has recently been reported in the administration of criminal justice in Ontario, though it's not so extreme. The Ontario Commission on Racism in the Criminal Justice System, which reported in January of 1996, found that 49 per cent of black men convicted of possession of a narcotic were sent to prison, as opposed to only 18 per cent of whites. It also found such disparities between races to be greatest in the area of drug enforcement.

But, in the United States, the problem is compounded by a policy of mandatory minimum sentences. This policy ties the hands of judges and transfers a lot of their power to prosecutors, because it's the charge that determines the sentence under such a policy. The result has been that whites are allowed to bargain to a lesser charge and avoid the mandatory minimum more often than blacks and Hispanics.

These sentencing policies, along with the policing policies that Marc Mauer mentioned earlier, have made the war on crime something more than just a figure of speech. American inner cities have become something like actual war zones. According to the American Department of Justice, 1 in 21 black men is now murdered. This is double the death rate of American servicemen during the Second World War. What has happened, in Nils Christie's view, has to be understood in both economic and political terms.

Nils Christie
With so many of the black and Hispanic incarcerated, they lose their citizen rights in the same process. The majority in the cities now will have been in prison certainly. They lose the right to vote. It is an efficient way of pacifying a huge segment of the population from all political participation. Then the rest of the population can sit down and say, Well, this is arranged through democratic procedures. I think we are very close to a border, where it will be difficult to defend this as a usual democratic measure.

The problem is aggravated by the phenomenon in the United States of crime control as industry. This is the No. 1 growth industry. People both at the federal and state levels complain again and again of the lobbying from all those who want a prison in their particular district. So, there is no end to this. Prison is useful, economic in the short run. And if—and this is so important—if it is only seen as a war, who counts money in a war? This will get priority, and you can see that other parts of the budget will be badly hurt.

So, it is a blessed situation for industry, it's a blessed situation for people who want to have minority groups under control, and it is a fatal situation for democratic ideals and for basic values within our social systems.

David Cayley
One of the casualties, according to Nils Christie, is justice, understood as a careful weighing and balancing of harms. Judicial discretion is increasingly hemmed in by strict sentencing tables and mandatory minimum sentences. Efficiency is prized over decency. Criminal justice has become a machine for the capture and punishment of criminals.

Nils Christie
It seems correct for the US situation to say it's a war that goes on. You can hear it in the terminology: the war against crime. You can see it in the commanding centres, because more and more the ministries are taking over. It is not a question of balancing a wrong thing done against punishment meted out, but it is the fight against crime that's important. And the judges are seen as a tool for fighting crime, instead of being seen as people who should evaluate if it was wrong and how wrong it was.

And you can see it in the perception of those put in prison. First of all, the prison isn't seen as a place for treatment or for education, but it is seen as a place for internment. There is no particular interest in how it will work out for them, except there is a strong tendency to feel that they

should not have it too good. And you can see lots of political pressure now to take away things that were earlier seen as obviously good, such as that they should have some freedom of movement inside the system, easy access to libraries and so on. Instead there are now demands for special clothing to mark them out as the old-fashioned, dangerous criminals, and chain gangs are appearing again. So, monster pictures are created, just as they are in war. And I think sensitivity to suffering within this system has also been reduced.

David Cayley
The abstract, insensitive, mechanical quality that Nils Christie notices in contemporary American criminal justice is related, he thinks, to the growing distance between social classes. The increased mobility of both people and property has reduced social solidarity, and punishment has become easier as the majority of the citizens have ceased to feel any connection with those who are made to suffer.

Nils Christie
In the old days when you were glued to your property, you could do a lot to escape less well-off neighbours, but there were limits. You might know them in a servant relationship, and you had also some identification for many other small reasons. You couldn't be too impossible; otherwise, your life would be miserable.

Today it doesn't matter. It's so easy to move to another place that loyalty to the local community tends to evaporate. This is a dangerous situation for social systems because when you leave, your money leaves. You can move everything that belongs to you. And why should you invest in personal relationships in a place you probably will leave? So, we create, by this fantastic mobility of money and property and persons, we create situations where there's too little to play on in the interchange between people, and, therefore, it's natural to ask for the official apparatus of law and order.

We are, in a way, living in a new totalitarian society. Economic thinking is taking over everywhere. Ideals from the economic institutions are the only valid ideals. So, it is difficult to survive if you are not living according to the melody of the economic system and if you are not an economic success. And again this creates insecurities that call for law and order.

David Cayley
The loss of complex, entangled local relationships can lead, in Nils Christie's view, to a dangerous single-mindedness. He observes this state of mind, for example, in a drug policy that has swelled prison populations thoughout the Western world. Conceiving the enforcement of drug laws as a war has allowed one objective to drive out all others and somehow blinded policy makers to the damage this obsession has caused.

Nils Christie
If only we were able to see that we can't control the drugs, that we've lost. As I saw in one British newspaper, "The War on Drugs Is Over, The Drugs Won." It is a completely correct characterization of the situation, so we will have to live with it and try to influence the drug use in much more civil ways than the present ones. We are destroying our social fabric by ignoring the consequences of our acts. We must use these terrible, dangerous developments within prisons as a severe warning sign. Do we really want to live in societies where a majority of the minority are in prisons and where concentration camps are the major cultural invention in the years to come?

David Cayley
In the last few years, various American states have passed new laws and regulations to make their prisons harsher. They have re-introduced chain gangs, striped prison uniforms and corporal punishments, like caning and whipping. They've abolished parole and introduced so-called three-strikes-and-you're-out rules, leading to such absurdities as a recently reported case in which a third-time felon in California got life for stealing cookies. Prisons have been stripped of all amenities. Grants for higher education have been discontinued.

Altogether these changes overturn the most fundamental axiom of humane prison administration: that people are sent to prison *as* punishment, not *for* punishment. In the United States today, sheriffs, wardens and state prison administrators from all corners of the country proudly proclaim their belief that prison should be as mean and unpleasant an experience as possible. Prisons, the current Governor of Massachusetts has said, should resemble a tour of the circles of hell.

This relish for harsh punishment rings strangely in the ears of Jerry Miller. Miller began his career as a psychiatric social worker and now heads the National Centre on Institutions and Alternatives. Between 1969 and 1971, as

Commissioner of the State of Massachusetts Department of Youth Services, he closed all of the state's reform schools and moved the kids into community-based programs. Later as commissioner in Pennsylvania, he was responsible for moving 400 juveniles out of adult prisons and into the community. In neither case was there any increase in juvenile crime. Since then he and his organization have crafted and supervised thousands of individualized alternative sentences for both juvenile and adult offenders.

Jerry Miller has just published a new book called Search and Destroy: African-American Males in the Criminal Justice System. He says that he is deeply disturbed at the way most Americans now view questions of crime and punishment.

Jerry Miller
If there were anything in my mind that defined our present situation with reference to corrections and imprisonment and punishment, it's this objectification of certain individuals or groups, primarily groups, as somehow or other qualitatively different from the rest of us, that those who break the law or those who are violent or those that do horrific things are not like us. And in fact, they are. It's a way we're trying to use to escape from ourselves or from the potential for evil, if you will, or the potential for violence that is part of the human condition, it's part of what we're all about. And to the degree that we run from that, to that degree, we'll never understand ourselves or what our society's about.

In another sense, it's the loss of narrative, it's the loss of stories that tie people one to another. And when you lose narrative, you retreat to categorization and to labels and to stereotypes, quick sound bites, quick picture opportunities.

So, it strikes me that, when one looks at imprisonment rates or the racial question or violence in our society, that at heart we really don't want to understand it, and we run almost in fright from understanding it. And we really are very prone to fall victim to those who will sloganeer on it and who will allow us the comfort of false reassurance that, indeed, this is not us, this is not you, this is not me, this is some other being.

David Cayley
This failure of sympathy, in Jerry Miller's view, has transformed many of what were once called the helping professions into institutions of punishment. And it has allowed the categorical yes/no, either/or logic of criminal justice to dominate more and more of American life.

Jerry Miller
What we have done is turn to the criminal justice system to deal with a wide range of personal and social and economic problems. And that has had a deadening effect on the democracy, but it's had an even more hurtful effect on elements of our society that you would have hoped would have been insulated against it. For example, it has turned probation, which was supposed to be an advocacy-oriented thing to keep people out of prison, it has turned probation officers into cops, what Andrew Rutherford calls "attack probation." Recently for example one of the chief probation officers in California wrote an article for a probation journal in which he said the measure of probation should not be how many people you can keep out of prison or what your recidivism rate is; it should be how many people you can put in prison, because you're preventing crime by doing such.

So, the goal has been totally perverted, where the role of the probation officer is to catch someone in a technical violation, not in a new crime, so that you can stash them in prison. In California for example, of the 120-, 125,000 people in prisons, between 40- and 50,000 are there on technical violations. They have not committed a new crime. They were out on probation or parole, and the probation officer found some technical way to bring them back. Had they committed a new crime, they would have had to go to court and be re-committed and tried on that. But they've done things like not keeping their appointments, having a dirty urine, moving without permission, marrying without permission, not getting a job. And so, that has been perverted.

But it's not only affected probation. It's affected child protective services, where now social workers join prosecutors to go out and catch issues of incest. Rather than try to keep families together or deal with these generally delicate issues within families, they come in with the meat axe of the criminal justice system, which rips families apart willy-nilly.

It's now a myth that helping professionals, psychiatrists, psychologists, social workers, are the bleeding hearts that come into court and testify that the persons really shouldn't be held accountable because of this or that. That is not true anymore, if it ever was. Now they come in as arms of the prosecution. They come in talking about

responsibility. They withdraw from the case in a clinical sense when crime is involved. And they are generally a pretty brutal crew that come from the helping professions into our courtrooms.

I recently took over a D.C. child welfare agency, for example, for the Federal Courts and was just shocked to find that the agency doesn't maintain social histories. I mean, talk about losing the narrative. They maintain diagnoses, they maintain charges of neglect and abuse. But there is almost no evidence that they care to get that involved in the case that they would understand the developmental history or what was happening to this family or this kid or this husband or this wife 5 years ago or 10 years ago or 12 years ago. That sense of continuity, that strand of the career, if you will, or of the human journey is lost. And that's for a reason. It's because that would threaten the whole structure that we've built around ourselves to deal with those we would prefer not to deal with.

David Cayley
What about for those imprisoned, what do you think are the consequences for them and for their communities?

Jerry Miller
Well, it's very clear. In some of the research, it's very clear. In this country for example, we have succeeded in disenfranchising a large percentage, if not the majority, of young black men or black men generally. Most of them now can't vote because they've lost their right to vote by having been convicted. In many states, you never vote again.

In an odd sort of twist, we have socialized particularly inner-city young men to the mores of the prison so that you now have on the streets the warped philosophy of violence that holds correctional settings together. The kinds of behaviours that seem meaningless or senseless to the average observer, like drive-by shootings, killing someone over their sneakers or their athletic jacket, those are not senseless at all to anyone who knows prison life. Those are precisely the things that are done day in and day out in a prison. It has to do with status, it has to do with respect in front of your peers. You learn not to open your mouth and say anything unless you are willing to deliver in violence. Now, in prison for the most part, it's confined to physical violence in terms of fights and maybe a knifing now and then. But on the streets in this country, we've thrown millions of handguns into the mix. Drive-by shootings are performance art. Very rarely would you see a person alone in a car, driving by and shooting people; it has do with whoever else is riding in the car and demonstrating his ability to be unfeeling and to get back at someone. It's the kind of thing that characterizes day-to-day prison life. And so, we have now on the streets people acting like they're in a prison or reform school, only without the walls and without the limits and with all the handguns that they wouldn't have were they in prison. So in a sense, imprisonment has resulted in a self-fulfilling prophesy on our streets. You don't have a reputation in many large cities unless you've been to prison. You certainly can't be a gang leader unless you've done time.

It's this upside-down world which the white majority has created and given to the blacks in this country as their salvation. As I say in my book, we've given them the criminal justice system. Rather than a decent system of care and assistance and family support, we have given them the criminal justice system, and that, by definition, is a hostile, alienating system. There's nothing healing about it. It may be necessary. But to use it as the major means of dealing with social and economic problems, that's what totalitarian societies do, and so, that's why I think it's an early warning sign as to where we're headed.

David Cayley
Americans, in Jerry Miller's view, increasingly view their prisoners as enemies. They place them, as he writes in his book, "outside human consideration." The idea is supported by moves in both the federal Congress and various state legislatures to strip prisoners of their rights. In the fall of 1995, for example, the Senate passed the Prison Litigation Reform Act, which has since been enacted into law. It severely limits the access of prisoners to the courts and the ability of courts to order improvements in prison conditions. This Act marks an explicit end to the movement to improve the civil rights of prisoners that began in the early '70s. That was when Al Bronstein was appointed to head The National Prison Project of the American Civil Liberties Union. This movement won its first great victory when Judge Frank Johnson found the prison system of Alabama to be in violation of the American Constitution. I spoke with Al Bronstein in Washington in the fall of 1995, and he recalled how the case had begun: with a letter from a 78-year-old prisoner.

Al Bronstein
Basically this letter said, "Dear Judge Johnson, I've been

in the Alabama prisons off and on for 40 years. They've never done anything for me, they just make me worse." The judge had been getting a lot of prisoner mail and prisoner petitions about particularly egregious complaints, and he decided that maybe it was time to really look at that. So, he took that letter and filed it as a case. And so, we were asked to come in, and he appointed us in that case basically to represent the court. We would be *amicus*, a friend of the court, but with the rights of a party.

And we went into that with a theory. We would try to prove that, if you looked at a prison as a pie, with one wedge or piece of the pie being the overcrowding, another piece being the medical care, another piece being the idleness, another piece being the violence, another piece being environmental health and safety, fire safety—that each one of those individual segments might not by itself give the court authority to do something, but if we could show that the totality of those conditions was actually making people worse than when they went in, was actually—a phrase that the Judge later coined—dehabilitating people, not rehabilitating but dehabilitating people, that that would be a violation of the cruel and unusual punishment clause of our Constitution.

David Cayley
In January of 1976, Judge Johnson ruled that the conditions of the Alabama prisons did constitute such a violation and ordered the state to remedy the situation. A year later, a similar finding was made in Rhode Island, and in the years since, many other cases involving prison conditions have been heard in American courts.

In January of 1995, for example, Judge Thelton Henderson of the US District Court of Northern California ruled against the Pelican Bay State Prison in a class action suit by prisoners there. The Governor of California had called Pelican Bay "a state-of-the-art prison" and "a model for the rest of the nation" when he dedicated the facility in 1990. Prisoners there ate alone, exercised alone and were confined alone in windowless cells for 22½ hours a day. Al Bronstein says that this regime was the latest expression of a recurring fantasy in British and American corrections: the perfect no-touch security machine for managing difficult people.

Al Bronstein
That's what Pelican Bay was, a very tightly controlled prison where the warden and the staff bragged that they didn't have to have any contact with prisoners, that prisoners were only talked to electronically. They exercised by themselves, they ate in their cells, they had no programming whatsoever.

And what happens and what happened in Pelican Bay and what the Judge found was that pretty soon prisoners begin to react to that kind of repression in all kinds of ways. They begin screaming and yelling at the guards if they see them going by, they begin throwing things, they store up feces. And you have to imagine how isolated you must feel to be able to consider storing up your own feces or urine and then throwing it at someone. I mean, you have to keep it in your house, in your cell. That's what happened at Pelican Bay.

And of course, that triggers a massive response by the staff. They begin beating up on prisoners. There was evidence that guards were storing up bags of urine and throwing it at prisoners, that they began to treat the prisoners brutally. Some of the prisoners began to, as a result of the sensory deprivation—and many of the people who are acting out in prison have mental health problems to begin with—began to crack under the strain of this and act out even more.

The court made findings, based on expert testimony, that the conditions there were actually creating serious mental health problems, the sensory deprivation was creating serious psychological problems and that the staff were engaging in massive, regular brutality. And that's what these super maximum-security prisons always result in.

David Cayley
Since Judge Henderson ruled against Pelican Bay, a United Nations human rights report has also condemned conditions there as "degrading and inhuman." The prison is now under court order to remedy these conditions. But that order may never be executed because of the provisions of the new Prison Litigation Reform Act. This Act, according to Al Bronstein, undermines the very basis on which prison administrations have previously agreed to improve conditions.

Al Bronstein
Much of our kind of prison litigation, in recent years, doesn't go to a trial. The prison officials know that they've got these problems, and so, they want to sit down with us and work out what we call a consent decree, which does not contain any confession of liability, because that's important to the prison officials. They save a little face,

and it does not expose them to individual suits for money damages. If they were to concede in writing that their system is unconstitutional, then prisoners could sue them for money, saying, Well, you've agreed that you're violating my rights. A consent decree doesn't concede anything. It just says, We recognize that there are some problems here to be fixed and we'd like to work together to fix them.

Well, this bill potentially terminates any existing consent decree. And there are consent decrees in about 20 of the states now, involving both state and local facilities. It terminates any consent decree that does not have a finding or a concession of unconstitutionality. And none of them do, because then there wouldn't be a consent decree. So, it's effectively cutting off access to the courts for prisoners.

David Cayley
In January of 1996 Al Bronstein retired as director of the National Prison Project, although he's continuing his work with the American Civil Liberties Union. He leaves at an hour when everything he achieved in 25 years is threatened. The promise of punishment, he says, is what plays in American politics today. It's a lesson he thinks American politicians learned when George Bush revived his flagging 1988 Presidential campaign by associating his opponent with a convict called Willie Horton.

Al Bronstein
Willie Horton was a black prisoner in Massachusetts, serving a very long sentence, who was given a furlough and, while on furlough, was alleged to have committed a horrible crime. Now there's some question as to whether he even did that, but that's besides the point. What was portrayed in that Presidential race day after day was the picture on the television and in the newspapers of this black man who had committed this horrible crime while out on furlough. And going after that on a regular basis, I think, made the difference in that Presidential race. Mr. Bush was elected President.

And all of our politicians thereafter began to realize that the way to win elections, which has nothing to do with crime, is to promise to be tough on prisoners, to be tough on criminals, to be tough on offenders, to be tough on ex-offenders. And so, what is going on and has gone on now for five or six years is a race to be meaner than the next person, to be more punitive.

And that's why you now see in a couple of states the return of chain gangs, literally gangs of prisoners in striped uniforms, mostly black, working on the road, chained to each other under the watchful eye of an armed guard. This is going back to the '30s, when we had very mean, punitive prisons in this country. It's why, throughout the country, many state legislatures have passed laws and governors have urged the passing of these laws to abolish all kinds of recreational activity in prisons, eliminating recreational equipment, eliminating TVs and radios on the so-called deterrence theory.

Their claim, which is made up of whole cloth, is that prisons are much too soft, they're too frilly, they're like country clubs, they're like fancy hotels. If we make them really mean and punitive, then people won't commit crimes anymore.

Well, we all know that in the nineteenth century, pickpocketing was a serious problem in London, and pickpockets were hung in the public squares. And thousands of people would come out to see the example, and all the pickpockets in London would come out to pick the pockets of the people watching the hanging pickpockets. I mean, we have 90 years of studies which indicate that you cannot achieve general deterrence with a harsh punishment system.

David Cayley
The dismay that Al Bronstein feels in the face of the American political scene today is shared by Jerry Miller. His recently issued book Search and Destroy was ready for the press a year ago, but the publisher held it back in hopes that Miller would add a more upbeat ending. Miller was unable to oblige his publisher and soften his conclusion. There are alternatives, he says, but most Americans today prefer the reckless fantasy that punishment is the answer to their problems.

Jerry Miller
I don't anticipate the book will get a positive review. I told my wife I think it will be trashed. I don't think it'll be because it's not accurate or because the research is not sound, but I think it's not a message that wants to be heard. I think this country wants to hear things like The Bell Curve, the genetics of crime, the need to get harsher. That's what we're in the mood to hear. And that, unfortunately, has characterized other nations that were about to go down the toilet.

In the book, I say advisedly that the situation in the US reminds me of some of the comments of the Danish sociologist Svend Ranulf when he looked into Germany in the middle, late '30s. He was not looking for Naziism in terms of genocide or where they were headed in terms of war; he was looking only and specifically at criminal justice policy. And, he said, everywhere he looked he saw a disinterested need to punish on the part of people. Punish, punish, punish. And then it was a matter of finding who to punish. And he related it to the disempowerment of the middle class in the Weimar Republic and to the frustration of the shopkeepers and people at that level, and it made them very ripe for the kinds of things that subsequently happened. And, I think, there's something of that dynamic going on in this country now.